

MASTER OPERATIONS AGREEMENT

THIS MASTER OPERATIONS AGREEMENT (the “Agreement”) is entered into this ____ day of _____, 2024 (the “Effective Date”), by and between Brightspeed of NC LLC (“Brightspeed”), whose address is 1120 S Tryon St Ste 700, Charlotte, North Carolina 28203, and the City of Fayetteville (“City”), a North Carolina municipal incorporation whose address is 433 Hay Street, Fayetteville, NC 28301 (hereinafter, Brightspeed and City may be referred to in the aggregate as “Parties”, and each singularly as a “Party”).

RECITALS

WHEREAS, Brightspeed is an enterprise which constructs, installs, and operates fiber networks in order to provide and internet services.

WHEREAS, Brightspeed desires to upgrade its existing fiber network infrastructure covering a substantial portion of the City of Fayetteville (“FTTP Network”); and

WHEREAS, Brightspeed will invest its own capital in order to upgrade the existing fiber network throughout the City subject to this Agreement and the assurances provided by the City contained herein; and

WHEREAS, the City is a duly incorporated North Carolina municipality and is vested with all rights and authority through the North Carolina General Assembly; and

WHEREAS, the City is vested with the right and authority to allow installation and construction of utilities and other public services within the City owned right-of-way; and

WHEREAS, the City desires Brightspeed to upgrade its fiber network throughout the City and surrounding community in order to provide fiber voice, and internet service to its residents.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

I. Brightspeed Project Commitments

A. FTTP Network. Brightspeed will construct an FTTP Network capable of providing Internet fiber services to residents and businesses in the City. The FTTP Network will be solely funded by Brightspeed.

B. Residential Services. Brightspeed will provide the following Internet services to residential consumers in the City:

(1) Fiber Internet. Incredibly fast symmetrical Internet speeds up to 1/1 Gbps.

(2) Wireless Home Networking. The ability to connect to multiple devices wirelessly to Brightspeed's Internet service.

C. Business Services. Brightspeed will provide the following Internet services to businesses in the City:

(1) Fiber Internet. Incredibly fast symmetrical Internet speeds of 1/1 Gbps and beyond.

D. Project Timeline. Brightspeed will use commercially reasonable efforts to complete the Project within 3 years of the commencement of physical construction in the City.

II. City Project Commitments.

A. Construction Permits. The Parties agree that Exhibit A sets forth all of the information Brightspeed will be required to submit to the City to obtain a construction permit from the City. Additionally, upon execution of this Agreement, Brightspeed and City mutually agree to collaboratively develop and implement a set of protocols and processes that will aid the City in overseeing the Project.

B. Construction Procedures. The Parties agree to adhere to the construction procedures set forth in Exhibit B during construction of the FTTP Network.

III. Miscellaneous.

A. Indemnification. To the extent permitted by law, Brightspeed agrees to indemnify and hold harmless the City and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of Brightspeed, its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the City by Brightspeed does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law.

B. Solicitation. Brightspeed will be allowed to conduct door-to-door consultative sales in the City between the hours of 10:00 a.m. and no later than 7:00 p.m. or sunset. All such sales activity shall be conducted in accordance with applicable laws and City ordinances.

C. Term. This Agreement shall last for ten (10) years from the Effective Date.

D. No Joint Venture. This Agreement is not intended to create, nor will it be construed to create, any partnership, joint venture, or employment relationship between the City and Brightspeed, and neither Party will be liable for the payment or performance of any debt, obligations, or liabilities of the other Party, unless expressly assumed in writing.

E. Entire Agreement Amendments. This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior understandings or agreements, whether oral or in writing regarding the subject matter of this Agreement. Without limiting the foregoing,

the Parties acknowledge that, in cases of conflict, their mutual intent is for the terms of this Agreement to supersede any contrary terms or provision in any City ordinance or franchise agreement between the Parties. This Agreement may not be amended or modified in any way except by a writing signed by the authorized representatives of the Parties.

- F. Applicable Law. This Agreement will be governed by all the laws of the State of North Carolina without regard to the choice of law provisions thereof.
- G. Venue. The Parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Cumberland County, North Carolina for purposes of adjudicating any matter arising out of or relating to this Agreement.
- H. No Third-Party Beneficiaries. No rights or privileges of either Party hereto shall inure to the benefit of any other person or entity, and no such other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

Accepted and agreed to as of the date first written above (“Effective Date”).

BRIGHTSPEED of NC, LLC

James Horn

By: _____

ATTEST:

Mike Stirwalt

CITY OF FAYETTEVILLE,
NORTH CAROLINA

By: _____

DOUGLAS J. HEWETT, ICMA-CM
City Manager

ATTEST:

PAMELA J. MEGILL, City Clerk

EXHIBIT A

Construction Permit Information

Sample Construction Drawings

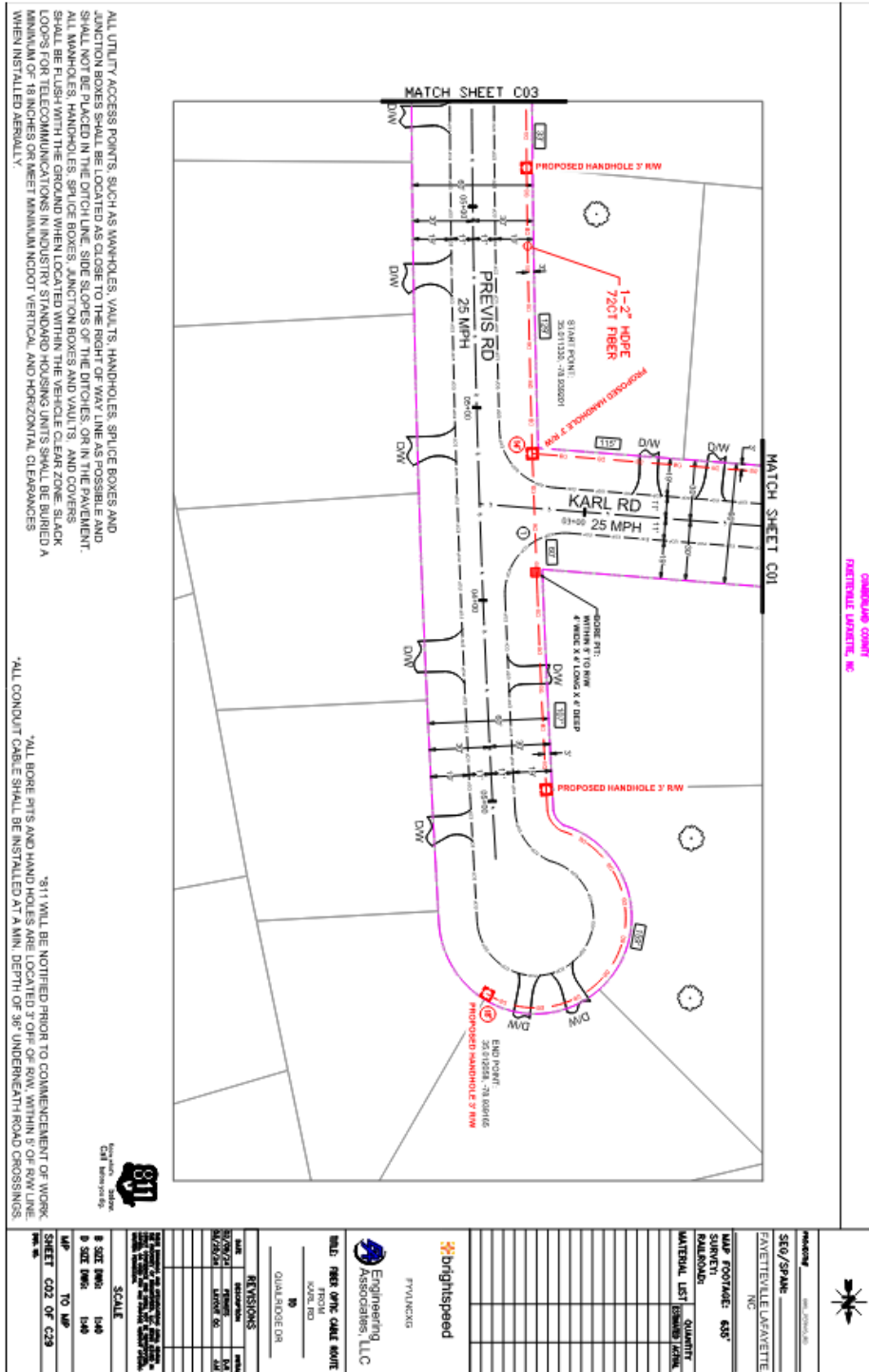


EXHIBIT B

Construction Procedures

- A. Utility Easements. For purposes of this Section A, a “Utility Easement” is defined as an easement set aside for use by a public utility but not owned or controlled by the City. The Parties agree that Brightspeed is not required to obtain a permit or pay fees to the City before installing aerial or underground facilities in Utility Easements.
- B. Utility Poles. Subject to the following requirements, Brightspeed of NC LLC will have the ability to place utility poles in the City rights-of-way and utility easements on a limited basis:
- (1) Brightspeed of NC LLC will not seek to install a utility pole in any areas of the City where all telecommunications, cable and electric utilities are located underground.
 - (2) Brightspeed of NC LLC must be unable to use an existing utility pole in the general area where it wishes to place a utility pole due to high make ready costs or excessive delays gaining access to the existing utility poles.
 - (3) Any requested utility pole will be added to an existing utility pole line.
 - (4) Any requested utility pole will be located on the same side of the road as an existing utility pole line.
 - (5) Brightspeed of NC LLC will make reasonable accommodations requested by the City to improve the aesthetics and safety of a requested utility pole in the area where it is to be located, such accommodations may include, but are not limited to, the color and material of the proposed utility pole and sight line considerations.
 - (6) The location of a requested utility pole will not adversely affect the health, safety or welfare of any person.
 - (7) Brightspeed of NC LLC will make the requested utility pole available to any other communications provider on just and reasonable terms subject to loading requirements and space availability.
 - (8) When Brightspeed of NC LLC is either notified by the City or becomes aware that a utility company has installed a new utility pole that will accommodate Brightspeed of NC LLC’s fiber facilities in any area where Brightspeed of NC LLC has installed a utility pole, Brightspeed of NC LLC will submit an application to attach to the new utility pole within sixty (60) days of such notification.. Provided Brightspeed of NC LLC is able to obtain access to the new utility pole under terms and conditions that are reasonable and customary within the communications industry, upon approval of Brightspeed of NC LLC’s application,, Brightspeed of NC LLC will promptly move its fiber facilities to the new utility pole and will remove the Brightspeed of NC LLC utility pole from the right-of-way..

- (9) For avoidance of doubt, the process described in Subsection B of this Exhibit B shall apply to areas that may already contain PWC utility poles so long as those utility poles are located in City right-of-way or in a City owned easement. The City also acknowledges that, subject to applicable law, Brightspeed of NC LLC may place utility poles in Utility Easements even if there are existing utility poles in those easements.
- C. Underground Construction. When installing its facilities underground, Brightspeed of NC LLC will install its fiber utilizing boring technology and procedures. In areas with high construction costs and/or where the deployment of conduit is not cost effective or feasible, on a case-by-case basis, subject to City approval, which approval will not be arbitrarily, discriminatorily, or unreasonably withheld, conditioned or delayed, Brightspeed of NC LLC may install its fiber utilizing open trench or micro-trenching technology and procedures.
- D. Utility Location Procedure. The Parties agree that the following procedure will be exclusively used any time Brightspeed of NC LLC is required to insert a hole in a driveway, walkway or street to locate other utilities under and across paved or concrete surfaces. Brightspeed of NC LLC will utilize an 8” minimum core drill to remove the pavement and then remove debris utilizing a vacuum excavator to visually expose the path to cross the street. After the crossing is completed, the excavated pothole will be backfilled with a flowable stabilized sand/cement slurry mix comprised of at least 2 bags/yard of cement to completely fill the excavation hole to the depth of the existing pavement. Where possible the core plug removed to access the pothole will then be cleaned and coated with epoxy resin around the outside surface of the plug and replaced in the excavation hole so that it is even with the top of the existing surface of the driveway, walkway or street.
- E. Restoration. Brightspeed of NC LLC will use commercially reasonable efforts to restore property within 3 business days of the boring, subject to factors beyond Brightspeed of NC LLC’s reasonable control. If the City believes Brightspeed of NC LLC has not properly restored any property, it shall notify Brightspeed of NC LLC in writing. Upon receipt of such notice, provided Brightspeed of NC LLC was the party that impacted the property, Brightspeed of NC LLC shall have 10 business days to restore the impacted property. If Brightspeed of NC LLC fails to restore the impacted property in such time frame, the City reserves the right to exercise any remedies it may have at law or in equity including, if applicable, restoring the property and requiring Brightspeed of NC LLC to reimburse the City for the cost of such work. Notwithstanding the foregoing, the City agrees to treat all users of the City right-of-way equally and will not impose any cost, burden or penalty on Brightspeed of NC LLC that it does not impose on other users of the City right- of-way as a result of Brightspeed of NC LLC’s failure to restore property in a timely fashion. Consideration will be given to the amount of restoration needed with each boring or other damage and Brightspeed of NC LLC will endeavor to conduct borings in a manner which requires the least amount of restoration (e.g. when appropriate using streets and sidewalks for equipment rather than lawns, etc.). After boring under the street / curb and sidewalks, Brightspeed of NC LLC will inspect for any heaving that may have occurred from the boring process. Notwithstanding the foregoing, in no event will Brightspeed of NC LLC

be required to repair, replace or restore any personal property of a property owner that was improperly located in a utility easement.

- F. Status Meetings. Brightspeed of NC LLC will provide the City with weekly updates on its construction activities and will conduct monthly construction status meetings with the City. The City agrees that the City Manager, Assistant City Manager, or their designee will attend all monthly construction status meetings. Brightspeed of NC LLC will also be available for any additional construction status meetings or phone calls reasonably requested by the City. Accordingly, the City agrees that it will not suspend any Brightspeed of NC LLC construction activities without first notifying Brightspeed of NC LLC and giving Brightspeed of NC LLC a reasonable opportunity to address or cure any issues. Notwithstanding the foregoing, the City may immediately suspend Brightspeed of NC LLC's construction activities without notice if the health, welfare or safety on any person is, in the City's sole discretion, threatened.

- G. Construction Communications Plan. Brightspeed of NC LLC will implement a construction communications plan and will use commercially reasonable efforts to meet the following timelines and standards, as they relate to each approved permit application area:
 - (1) At least 30 days, but no more than 45 days, prior to the commencement of construction in a residential area, Brightspeed of NC LLC will send a detailed letter to the residential addresses in that area advising occupants of upcoming construction activities.
 - (2) At least 14 days, but no more than 30 days, prior to the commencement of construction in a residential area, Brightspeed of NC LLC will send postcard reminder to the residential addresses in that area reminding occupants of upcoming construction activities.
 - (3) At least 3 days, but no more than 7 days, prior to the commencement of construction in a residential area, Brightspeed of NC LLC will send out street teams to place signs in the yards of those residential properties where Brightspeed of NC LLC will commence with construction activities.
 - (4) Each communication sent to a residential address will include the URL to Brightspeed of NC LLC's construction website: [Brightspeed of NC LLCinc.com/construction](http://BrightspeedofNCLLCinc.com/construction). On this website residents can find additional information regarding the construction plans in their area. Following construction, property owners will also be able to use this website to submit damage claims in the event Brightspeed of NC LLC inadvertently causes damage to their property.

- H. Safety Protocol. During the course of the Project, Brightspeed of NC LLC will follow all applicable OSHA Guidelines.

- I. Subcontractor Identification. For any subcontractors Brightspeed of NC LLC hires or otherwise uses during the course of the Project, such subcontractor shall have a clear marker or other piece of identification that indicates they are working on behalf of Brightspeed of NC LLC.

- J. Traffic Control Plan. Traffic control devices shall be installed and maintained in accordance with the most recent edition of the Manual of Uniform Traffic Control Devices (MUTCD). A traffic control plan shall be submitted for review and approval for any work completed on City owned roadways with a speed limit equal to or higher than 35 mph or any proposed road closures a minimum of 5 days prior to installation.
- K. Work Hours. Brightspeed of NC LLC and its contractors may perform construction activities including, but not limited to, boring, aerial construction, pulling cable, splicing and clean-up work (“Construction Activities”) from 7:00 a.m. until sunset, Monday through Friday. Brightspeed of NC LLC and its contractors will perform all Construction Activities with the exception of boring, which will not be performed on the weekend, from 7:00 a.m. until sunset, Saturday and Sunday.