

## INTERNET ACCESS SERVICES AGREEMENT

This Internet Access Services Agreement ("Agreement") is effective July 31, 2022 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Frontier Communications of America, Inc., a Delaware corporation ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

### RECITALS

A. City desires to utilize the services of Contractor as an independent contractor to provide Internet access services.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Contractor and Contractor desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

#### 1. Contractor's Services.

A. Scope of Services. Contractor shall perform the services described in the Scope of Services and Approved Fee Schedule (the "Services") for Internet services, attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

1) Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be a Senior Enterprise Account Executive (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's Services under this Agreement.

B. Time for Performance. Contractor shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

C. Standard of Performance. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

Approved for Use 3/1/2021

D. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

E. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

F. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

**2. Term of Agreement.** The initial term of this Agreement shall be from the Effective Date until the date that is three (3) years after the services' Commencement Date, unless sooner terminated as provided in Section 12 of this Agreement. The Commencement Date shall be the date that the Internet access services specified in **Exhibit A** have been delivered, tested by the City staff and deemed to be fully functional and operational within 48 business hours. Following the expiration of the initial term, the Agreement shall automatically renew for successive one-month terms, unless either Contractor or City elects to not renew the Agreement by notice provided to the other Party at least thirty (30) days in advance of the expiration of the then-current term.

### **3. Compensation.**

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Contractor at the monthly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit A**. In no event shall Contractor be paid more than \$3,768.45 per month (\$3,589 monthly recurring charge and estimated monthly government fees/taxes if any) (the "Maximum Compensation") for such Services.

B. Expenses. The amount set forth in paragraph 3.A. above includes reimbursement for all expenditures incurred in the performance of this Agreement.

C. Unauthorized Services and Unanticipated Expenses. City will not pay for any services not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Contractor Representative authorize such services in writing prior to Contractor's performance of those services or incurrence of additional expenses. Any additional services authorized by the City Council, or (where authorized) the City Manager shall be compensated at the rates set forth in **Exhibit A**, or, if not specified, at a rate mutually agreed to by the Parties. At the request of the Contractor, the City Council may, in writing, reimburse Contractor for an unanticipated expense at its actual cost. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

### **4. Method of Payment.**

A. Invoices. Contractor shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Invoices must be submitted to Accounts Payable at [ap@manhattanbeach.gov](mailto:ap@manhattanbeach.gov). Each invoice shall itemize the Services rendered during the billing period, monthly rates charged, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten Business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 45 calendar days from date of invoice up to the Maximum Compensation set forth in Section 3 of this Agreement. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor. Notwithstanding the preceding sentence, if Contractor is a nonresident of California, City will withhold the amount required by the Franchise Tax Board pursuant to Revenue and Taxation Code Section 18662 and applicable regulations.

C. Audit of Records. Contractor shall make all records, invoices, time cards (if applicable), cost control sheets and other records maintained by Contractor in connection with this Agreement available during Contractor's regular working hours to City for review and audit by City.

**5. Independent contractor.** Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

## **6. Information and Documents.**

A. Contractor covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure.

B. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor. Notwithstanding the foregoing, each Party retains its rights to its own property provided or used in the execution of Services, and no rights, by license or otherwise shall vest to the other Party.

D. Contractor's covenants under this Section shall survive the expiration or termination of this Agreement.

**7. Conflicts of Interest.** Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar Services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section into any subcontract that Contractor executes in connection with the performance of this Agreement.

## **8. Indemnification, Hold Harmless, and Duty to Defend.**

### **A. Indemnities.**

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, Contractors or their officers, agents, servants or employees (or any entity or individual

that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, Contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any

insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

## **9. Insurance.**

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds. These limits can be satisfied through a combination of primary liability and umbrella/excess liability policies.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

4) Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of copyright, trademark or trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, unauthorized disclosure of private information, and alteration of electronic information (subject to the terms and conditions of the policy). The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer authorized to write insurance in the State of California with a rating of A-VII or better in the latest edition of the A.M. Best Insurance Rating Guide.

C. Additional Insured. The commercial general liability and automobile liability policies shall contain an endorsement or policy language naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The commercial general liability, auto liability, and excess liability insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor hereby waives rights of subrogation against City.

F. Cancellations or Modifications to Coverage. The commercial general and automobile liability policies required under this Agreement shall contain policy language or be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City.

G. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section, City will give Contractor written notice of the deficiency. If Contractor fails remedy the deficiency within thirty (30) days after receipt of the notice, City may either terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

H. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance, policy language, and endorsements evidencing and effecting the coverages required under this Section. Contractor shall provide current certificates to be placed on file with City's Risk Manager. Contractor shall provide insurance certificates proof to City's Risk Manager to evidence that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same

coverage. Contractor shall furnish such insurance certificates at least two (2) business weeks after the renewal date of the coverages.

I. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 8 of this Agreement.

J. Subcontractor Insurance Requirements. Contractor shall ensure each of its subcontractors that perform Services under this Agreement procure insurance that is appropriate for the type and level of service being provided.

## **10. Mutual Cooperation.**

A. City's Cooperation. City shall provide Contractor with all pertinent Data, documents and other requested information as is reasonably available for Contractor's proper performance of the Services required under this Agreement.

B. Contractor's Cooperation. In the event any claim or action is brought against City relating to Contractor's performance of Services rendered under this Agreement, Contractor shall render any reasonable assistance that City requires.

**11. Records and Inspections.** Contractor shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

## **12. Termination of Agreement.**

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Contractor at least five calendar days before the termination is to be effective. Contractor may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Contractor shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Contractor, City shall pay Contractor based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor



for the full performance of the Services required by this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation.

C Notwithstanding the foregoing, if City cancels any Service or Equipment prior to delivery of any Equipment or installation of the Service or Equipment, City shall pay a cancellation charge equal to the NON-RECURRING CHARGES (NRC) and one (1) month of Monthly Recurring Charges (MRC) for the Service, plus the total costs and expenditures of Contractor in connection with establishing the Service prior to Contractor's receipt of notice of cancellation, including but not limited to any Equipment restocking fees. Following installation, City may terminate a Service or Equipment by providing at least thirty (30) days prior written notice to Contractor. All unpaid amounts shall be due upon termination of any Service identified in Exhibit A for any reason. In addition, if any Service or Equipment is terminated by City for any reason other than breach by Contractor or by Contractor due to City's breach, then City shall pay Contractor a termination charge equal to the applicable MRC and all related taxes and surcharges multiplied by the number of months remaining in the Service Term. Partial months shall be prorated.

**13. Force Majeure.** Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

**14. Default.**

A. Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default.

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Contractor with written notice of the default. Contractor shall have thirty (30) calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

**15. Notices.** Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Contractor's and City's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

**TO CITY:**

City of Manhattan Beach  
Attn: Information Technology Dept.  
1400 Highland Avenue  
Manhattan Beach, California 90266

**TO CONTRACTOR:**

Frontier Communications  
Attn: Senior Account Executive or such  
other person designated  
111 Field Street  
Rochester, NY 14620

**COPY TO CITY ATTORNEY:**

City of Manhattan Beach  
Attn: City Attorney  
1400 Highland Avenue  
Manhattan Beach, CA 90266

**16. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

**17. Prohibition of Assignment and Delegation.** Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs. Notwithstanding the foregoing, Contractor may assign this Agreement to any successor to the business of

Contractor by merger, consolidation or sale of assets or to any corporation controlling, controlled by or under common control with Contractor.

**18. No Third Party Beneficiaries Intended.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**19. Waiver.** No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

**20. Final Payment Acceptance Constitutes Release.** The acceptance by Contractor of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Contractor for anything done, furnished or relating to Contractor's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within thirty (30) calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Contractor, its employees, subcontractors and agents.

**21. Corrections.** In addition to the above indemnification obligations, Contractor shall correct, at its expense, all errors in the work which may be disclosed during City's review of Contractor's report or plans. Should Contractor fail to make such correction in thirty (30) days, such correction may be made by City, and the cost thereof shall be charged to Contractor. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Contractor under this Agreement up to the amount of the cost of correction.

**22. Non-Appropriation of Funds.** Payments to be made to Contractor by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Contractor's services beyond the current fiscal year, this Agreement shall cover payment for Contractor's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year. City shall provide Contractor with written notice of such non-appropriation as soon as possible from the time that Licensee becomes aware of such non-appropriation. If City exercises this termination right under the provisions of this

Section 22, it may not during the unexpired original term of Services obtain like services from a new provider it may not during the unexpired term of Services obtain like services from a new provider pursuant to an agreement between the City and that new provider executed after such non-appropriation.

**23. Exhibits.** Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

**24. Entire Agreement and Modification of Agreement.** This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

**25. Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

**26. Word Usage.** Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

**27. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

**28. Business Days.** "Business days" means days Manhattan Beach City Hall is open for business.

**29. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

**30. Attorneys' Fees.** In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a

declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

**31. Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

**32. Counterparts.** This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

**33. Corporate Authority.** Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

*[SIGNATURE PAGE FOLLOWS]*

The Parties, through their duly authorized representatives are signing this Agreement.

City:

City of Manhattan Beach,  
a California municipal corporation

Contractor:

Frontier Communications of America, Inc.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: Bruce Moe  
Title: City Manager

DocuSigned by:  
*Edgar Gomez* 6/21/2022  
972ED5E4A186484  
By: \_\_\_\_\_  
Name: Edgar Gomez  
Title: Enterprise Sales Director

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Liza Tamura  
Title: City Clerk

**PROOF OF AUTHORITY TO BIND  
CONTRACTING PARTY REQUIRED**

APPROVED AS TO FORM:

DocuSigned by:  
*Quinn Barrow, City Attorney* 7/6/2022  
C24C6E263545445  
By: \_\_\_\_\_  
Name: Quinn M. Barrow  
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

DocuSigned by:  
*Julie Bondarchuk* 7/5/2022  
A2994BD2D805429  
By: \_\_\_\_\_  
Name: Steve S. Charelian Julie Bondarchuk  
Title: Finance Director Acting Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:  
*Terry Hackelman* 6/30/2022  
B0869D172EF14B3...  
By: \_\_\_\_\_  
Name: Terry Hackelman  
Title: Information Technology Director

## **EXHIBIT A**

### **SCOPE OF SERVICES AND APPROVED FEE SCHEDULE**

#### **Approved Fee Schedule**

Frontier Communications (Frontier), Internet Service Provider (ISP) (Contractor) shall provide business-class Internet connectivity without bursting capabilities Dedicated Internet Access (DIA) services to the below locations as specified:

- City Hall Data Center located at 1400 Highland Avenue, Manhattan Beach, CA 90266
  - 2 Gigabit/2 Gigabit Ethernet Internet Access, \$2,299 monthly recurring charge;
  - 254 static Class C IPs, \$50 monthly recurring charge; and
  - Non-recurring charges \$0.00, Installation charges waived in if any.
- Public Works City Yard located at 3621 Bell Avenue, Manhattan Beach, CA 90266
  - 1 Gigabit/1 Gigabit Ethernet Internet Access, \$1,190 monthly recurring charge;
  - 254 static Class C IPs, \$50 monthly recurring charge; and
  - Non-recurring charges \$0.00, Installation charges waived if any.

The Dedicated Internet Access Service Level Agreement (“SLA”) described within **Exhibit B** attached hereto are incorporated into this Agreement by this reference.

**EXHIBIT B**  
**Service Level Agreement**

**This Dedicated Internet Access Service Level A Agreement (“SLA”)** applies to the Dedicated Internet Access (DIA) Services in the Agreement. The terms of this SLA apply exclusively to the Dedicated network elements directly within Frontier’s management responsibility and control (“On-Net Service”).

**1. Operational Objectives**

- A. **Availability:** Circuit Availability is the ability to exchange data packets with the nearest Frontier Internet Point of Presence (“POP”) or DIA City egress port (Z location) via the ingress port (A location). “Service Outage” occurs when packet transport is unavailable or when the output signal is outside the limits of this service guarantee. Availability is measured by the number of minutes during a calendar month that the On-Net Service is operational, divided by the total minutes in that calendar month. Calculation is based on the stop-clock method beginning at the date and time of the City-initiated trouble ticket and ends when Frontier restores SLA-compliant circuit operation. Frontier’s On-Net Service Availability commitment and applicable Service credit are outlined in **Table 1A**, subject to Sections 3 and 4 below.

<b>Table 1A: Dedicated Internet Access</b>		
<b>Circuit Availability (CA)</b>	<b>MRC Service Credit</b>	
<b>Availability</b>	<b>99.99%</b>	Below 99.99% Service Credit 30% MRC

- B. **Mean Time to Repair (MTTR):** MTTR is a monthly calculation of the average duration of time between Trouble Ticket initiation (in accordance with Section 2B) and Frontier’s reinstatement of the DIA Service to meet the Availability performance objective. The MTTR objectives, and credits applicable to a failure to meet such objectives, are outlined in **Table 1B**, subject to Sections 3 and 4 below.

<b>Table 1B: Dedicated Internet Access</b>		
<b>Mean Time To Repair</b>	<b>MRC Service Credit</b>	
<b>MTTR</b>	<b>4 Hours</b>	25 % MRC above 4 hrs
		50% MRC above 6 hrs.

- C. To the extent applicable, the City is entitled to one Service Credit per Service Outage (i.e. for either the higher of Circuit Availability credit or Mean Time to Repair credit, if applicable). If applicable, the On-Time Provisioning credit would be in addition to the Service Outage credit.

**2. Service Outage Reporting Procedure.**

- A. Frontier will maintain a point-of-contact for City to report a Service Outage, twenty-four (24) hours a day, seven (7) days a week.
- B. When DIA Service is impacted from a Service Outage, City must contact Frontier’s commercial City support center (also known as the “NOC”) at 1-(888) 637-9620 to identify the Service Outage and initiate an investigation of the cause (“Trouble Ticket”). Responsibility for Trouble Ticket initiation rests solely with City. Once the Trouble Ticket has been opened, the appropriate Frontier departments will initiate diagnostic testing and isolation activities to determine the source. In the event of a Service Outage, Frontier and City will cooperate to restore the Service. If the cause of a Service Outage is a failure of Frontier’s equipment or facilities, Frontier will be responsible for the repair. If the degradation is caused by a factor outside the control of Frontier, Frontier will cooperate with City to conduct testing and repair activities at City’s cost and at Frontier’s standard technician rates.
- C. A Service Outage begins when a Trouble Ticket is initiated and ends when the affected DIA Service is Available; provided that if the City reports a problem with a Service but declines to allow Frontier access for testing and repair, the Service will be considered to be impaired, but will not be deemed a Service Outage subject to these terms.
- D. If Frontier dispatches a field technician to perform diagnostic troubleshooting and the failure was caused by the acts or omissions of City or its employees, affiliates, contractors, agents, representatives or invitees; then City will pay Frontier for all related time and material costs at Frontier’s standard rates.

**3. Credit Request and Eligibility.**

- A. In the event of a Service Outage, City may be entitled to a credit against the applicable DIA Service MRC if (i) City initiated a Trouble Ticket; (ii) the Service Outage was caused by a failure of Frontier’s equipment, facilities or personnel; (iii) the Service Outage warrants a credit based on the terms of Section 1; and (iv) City requests the credit within thirty (30) days of last day of the calendar month in which the Service Outage occurred.
- B. Credits do not apply to Service Outages caused, in whole or in part, by one or more of the following: (i) the acts or omissions of City or its employees, affiliates, contractors, agents, representatives or invitees; (ii) failure of power; (iii) the failure or malfunction of non-Frontier equipment or systems; (iv) circumstances or causes beyond the control of Frontier or its representatives; (v) a Planned Service Interruption; (vi) Emergency Maintenance or (vii) interruptions resulting from Force Majeure events as defined in City’s Agreement. In addition, City will not be issued credits for a Service Outage during any period in which Frontier is not provided with access to the Service location or any Frontier network element, or while City is testing and/or verifying that the problem has been resolved. “Planned Service Interruption” means any Service Outage caused by scheduled maintenance, planned enhancements or upgrades to the Frontier network; provided that Frontier will endeavor to provide at least five (5) business days’ notice prior to any such activity if it will impact the Services provided to City. “Emergency Maintenance” means maintenance which, if not performed promptly, could result in a serious degradation or loss of service over the Frontier network.



- C. Notwithstanding anything to the contrary, all credit allowances will be limited to maximum of 50% of the MRC for the impacted DIA Service, per month. For cascading failures, only the primary or causal failure is used in determining Service Outage and associated consequences. Only one service level component metric can be used for determining Service credits. In the event of the failure of the Service to meet multiple metrics in a one-month period, the highest Service credit will apply, not the sum of multiple Service credits. For example, If City's Service Outage triggers both operational objectives (i.e. Circuit Availability and Mean Time to Repair), City will receive the highest available Service Credit, but not both.
  - D. This SLA guarantees service performance of Frontier's Dedicated Internet Access services only. This SLA does not cover TDM services [DS1, NxDS1, or DS3 services] or other voice or data services provided by Frontier. This SLA does not apply to services provided over third party non-partner facilities, through a carrier hotel, or over Frontier facilities which terminate through a meet point circuit with a third party non-partner carrier.
  - E. The final determination of whether Frontier has or has not met SLA metrics will be based on Frontier's methodology for assessment of compliant performance. Service Outage credits are calculated based on the duration of the Service Outage, regardless of whether such Service Outage is the result of failure of the Service to meet one or more performance metric.
  - F. Credit allowances, if any, will be deducted from the charges payable by City hereunder and will be expressly indicated on a subsequent bill to City. Credits provided pursuant to this SLA shall be City's sole remedy with regard to Service Outages.
4. **Chronic Outage:** An individual DIA Service qualifies for "Chronic Outage" status if such service fails to meet the Availability objectives, and one or more of the following: (a) a single Trouble Ticket extends for longer than 24 hours, (b) more than 3 Trouble Tickets extend for more than 8 hours, during a rolling 6 month period, or (c) 15 separate Trouble Tickets of any duration within a calendar month. If an DIA Service reaches Chronic Outage status, then City may terminate the affected DIA Service without penalty; provided that City must exercise such right within ten (10) days of the DIA Service reaching Chronic Outage status and provide a minimum of 15 days prior written notice to Frontier of the intent to exercise such termination right.