

NORTH CAROLINA  
DURHAM COUNTY

LICENSE AGREEMENT FOR  
UNDERGROUND CONDUIT FOR SLEEVING FIBER  
OPTIC CABLE FOR LICENSEE'S SOLE USE

THIS LICENSE AGREEMENT, made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **CITY OF DURHAM**, a municipal corporation ("the City"), and **Freudenberg IT**, ("the Licensee");

WITNESSETH:

In consideration of the performance of the conditions hereinafter set forth on the part of the Licensee, the City of Durham hereby grants to the Licensee, a license to construct and maintain conduit for sleeving fiber optic cable for the sole use of Licensee, and Licensee accepts the conditions set forth herein. Such cable shall be located in the City-maintained right-of-way containing Park Knoll Drive, and in State-maintained rights-of-way containing Davis Drive, East Cornwallis Road, and T. W. Alexander Drive. Hereinafter, the underground conduit for sleeving fiber optic cable shall be referred to as ("the System") which is made a part of this License Agreement.

The Licensee expressly agrees that:

(1) Plan; Fees

(a) *Plan.* Installation of the System will be in accordance with a written plan, and any modifications to the plan, approved by the Engineering Division of the Public Works Department.

(b) *Inspection.* The work shall be subject to inspection, and Licensee will pay the City utility inspection fees at the current rate before installing the system.

(2) Limitations on Use of System. The System will be used entirely by Licensee for internal communications among its constituent entities. The System, and any service provided by the system, shall not be sold to, exchanged with, or traded to any other persons or entities unless written approval is obtained from the City Manager or his/her delegee. In the event of sale, use, exchange, or trade involving a person or entity that sells service to other users, such entity shall have a franchise or license approved by the City Council, or other similar City Council approval.

(3) Installation, traffic controls

(a) *Standards.* The work shall conform to all requirements of law, ordinance, professional standards, and additional requirements of the City Public Works Department.

(b) *Traffic Control.* All traffic control measures required for installation of the System shall be the responsibility of the Licensee.

(c) *Depth.* The underground fiber optic cable system shall be at a depth not less than three (3) feet below the surface of the street.

(4) Performance Guarantee; Other Remedies. As a condition of installation of the System or performance under this License, the City may require a bond or other performance guarantee in an amount to be determined by the City, to ensure the proper repair of right of way disturbed as a result of installation, maintenance, or repair of the System. The Licensee will

assume the cost of installation, maintenance, and repair of the System, and the cost of repairs to the right of way necessitated by installation, maintenance, and repair of the System. Such repairs shall meet City standards. Upon notice from the City that repair to the City's right of way has not been made to the City's satisfaction Licensee shall immediately undertake further repair and restoration. Failure to complete repairs and restoration that meet City standards within 3 months of written notice from the City that additional repairs are needed shall, in the City's discretion, result in forfeiture of the performance guarantee. In addition, the City shall have available all remedies allowed by law to enforce the requirements of this License.

(5) Indemnification

(a) To the maximum extent allowed by law, Licensee shall indemnify and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this license (including but not limited the installation, maintenance, or repair of the System, traffic control and impacts from traffic diversion and control, and the repair and restoration of the right of way necessitated by installation and repair of the System) as a result of acts or omissions of Licensee or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a", Licensee shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City of Durham ("City").

(b) *Definitions.* As used in subsections "a" above and "c" below--"Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines (including but not limited to those levied by the N.C. Department of Natural Resources and Community Development), penalties, royalties, settlements, and expenses (including interest and reasonable attorneys' fees assessed as part of any such item); and "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees.

(c) *Limitation of Licensee's Obligation.* Subsection "a" above shall not require the Licensee to indemnify or hold harmless the City, its independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of the City, its independent contractors, agents, employees, or indemnitees.

(6) Revocation. The City may revoke this license upon written notice to Licensee. Within 1 year of receipt of such notice, the Licensee shall remove, at its sole expense, all materials, equipment, and supplies that the City requests be removed, and shall repair and restore the areas containing the facilities removed to the condition they were in prior to the removal.

(7) Relocation. At its own expense, the Licensee shall, upon the request of the City, relocate the System or a portion of the System, if the City requests relocation for any reason. By way of illustration and not limitation, such reasons may include but are not limited to interference with the construction, installation, repair, or maintenance of any underground utilities of the City and changes to the grade of the street or right of way, or other work on the street or right of way. In the event of relocation Licensee shall be responsible for repair and restoration as is described in Paragraph (3) above.

(8) Emergencies. Paragraphs (6) and (7) above shall not limit the City's actions in responding to emergencies, public nuisances, or similar exigent circumstances that in the reasonable discretion of the City require excavation or other entry into the right of way area used by Licensee. The City shall not be liable for any injury or damage to Licensee's equipment, cable, lines, or other apparatus, or costs of reinstallation, in the event of City authorized activity to respond to the above described circumstances.

(9) No Property Right. This license conveys no property right or interest in any area of the right of way.

(10) Police Power Authority. This License does not exempt Licensee in whole or in part from compliance with any lawful requirements, or limit the City from exercising any regulatory, police power, legislative, governmental, or other power or function. Licensee shall comply with all lawful City enactments that may impact the facilities that are the subject of this license. Such authority may include, but is not limited to, the authority to charge fees for the continuing use of the City right of way.

(11) No transfer. This license agreement is not transferable and if the System changes ownership, the new owner shall enjoy no rights under this agreement, and shall be responsible for either removing the System or applying for a new License.

(12) No Third Party Rights. This License is issued for the benefit of Licensee and not any other Person and no other persons or entities may claim any rights under this License.

(13) Choice of Law and Forum. This License is made in Durham County, North Carolina. It shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this License shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This limitation as to forum shall not apply to subsequent actions to enforce a judgment entered  
in actions heard pursuant to this section.

(14) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this License, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(15) Severability. If any provision of this License shall be unenforceable, the remainder shall be enforceable to the extent permitted by law.

(16) Modifications. Entire Agreement. A modification of this License is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This License contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(17) City's Manager's Authority. The power to modify, revoke, or terminate this License, and to enforce its provisions on behalf of the City may be exercised by City Manager or a Deputy City Manager without City Council action.

IN WITNESS WHEREOF, the City and Licensee have caused this License to be executed under seal themselves or by their respective duly authorized agents or officers.

**Freudenberg IT**

ATTEST:

\_\_\_\_\_

\_\_\_\_\_ (Manager)

**State of** \_\_\_\_\_  
**County of** \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that \_\_\_\_\_ personally (1) appeared before me this day, (2) stated that he or she is a manager of \_\_\_\_\_, a limited liability company organized and existing under the laws of the State of \_\_\_\_\_, (3) acknowledged that the foregoing agreement with the City of Durham carries on in the usual way the company's business, and (4) acknowledged the due execution of the contract on behalf of the company. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_ Notary Public

**ATTEST**

**CITY OF DURHAM**

\_\_\_\_\_

**By:** \_\_\_\_\_

preaudit certificate, if applicable \_\_\_\_\_