

CITY COUNCIL
OF
HAVRE DE GRACE, MARYLAND

ORDINANCE NO. 1117

Introduced by _____ Council President Ringsaker

AN ORDINANCE BY THE MAYOR AND CITY COUNCIL OF HAVRE DE GRACE, MARYLAND, ADOPTED PURSUANT TO THE AUTHORITY OF ARTICLE XI-E OF THE MARYLAND CONSTITUTION, THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AND SECTIONS 33 AND 34 OF THE HAVRE DE GRACE CITY CHARTER TO APPROVE CONTRACT WITH THINKBIG NETWORKS LLC

On: 8/14/2023
at: 7:00 p.m.

Ordinance introduced, read first time, ordered posted and public hearing scheduled.

PUBLIC HEARING

A Public Hearing is scheduled for 8/21/2023 at 7:00 p.m.

EXPLANATION
Underlining indicates matter added to existing law.
[Bold Brackets] indicate matter deleted from existing law.
Amendments proposed prior to final adoption will be noted on a separate page with line references or by handwritten changes on the draft legislation.

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32 **WHEREAS**, the Mayor and City Council of Havre de Grace (“City”) recognizes the need
33 and understands the benefit of bringing state-of-the-art fiber optic broadband to the citizens of
34 Havre de Grace; and

35
36 **WHEREAS**, ThinkBig Networks LLC (“ThinkBig”) is a Maryland limited liability
37 company in good standing that installs and operates fiber optic broadband services throughout
38 Maryland, including Harford County.

39
40 **WHEREAS**, ThinkBig desires to install, lease, use and maintain fiber optic cable in the
41 City of Havre de Grace, and portions of such fiber optic network may be located within public and
42 private easements and third-party rights-of-way within the City.

43
44 **WHEREAS**, the City desires to grant to ThinkBig the right to install such fiber optic
45 network in City rights of way, and in exchange, to obtain from ThinkBig the right to use and light
46 specifically designated dark fiber strands for public purposes on the terms and conditions set forth
47 in the attached Agreement.

48
49 **WHEREAS**, the Parties believe this Agreement will be of material benefit to both, as well
50 as a benefit to the citizens of Havre de Grace.

51
52 **NOW THEREFORE**, it is determined, decided, and ordained by the City Council that the
53 Mayor is authorized to execute an Agreement with ThinkBig substantially in the form attached
54 hereto as Exhibit 1 together with any other supporting documents necessary to fulfill the purposes
55 set forth above.

56
57 ADOPTED by the City Council of Havre de Grace, Maryland this __ day of _____, 2023.

58
59 SIGNED by the Mayor and attested by the Director of Administration this ____ day of
60 _____, 2023.

61
62
63 ATTEST:

MAYOR AND CITY COUNCIL
OF HAVRE DE GRACE

64
65
66
67 _____
68 Stephen J. Gamatoria
69 Director of Administration

70
71 _____
72 William T. Martin
73 Mayor

74
75 Introduced/First Reading: 8/14/2023
Public Hearing:
Second Reading/Adopted:
Effective Date:

Exhibit 1

AGREEMENT FOR INSTALLATION OF FIBER OPTIC BROADBAND NETWORK IN THE CITY RIGHTS OF WAY AND DARK FIBER LEASE BETWEEN THE MAYOR AND CITY COUNCIL OF HAVRE DE GRACE AND THINKBIG NETWORKS, LLC

This **AGREEMENT FOR INSTALLATION OF FIBER OPTIC BROADBAND NETWORK IN THE CITY RIGHTS OF WAY AND DARK FIBER LEASE** (“Agreement”) is entered into this _____ day of _____, 2023 (“Effective Date”) by and between the Mayor and City Council of Havre de Grace, a municipal corporation organized under the laws of the state of Maryland (“City” or “Customer”) and ThinkBig Networks, LLC, a Maryland limited liability company with offices at 519 Morgnec Road, Chestertown, MD 21620 (“TBN”). (“ThinkBig” or “TBN”) (collectively, “the Parties”).

WHEREAS, the City recognizes the need and understands the benefit of bringing state-of-the-art fiber optic broadband to the citizens of Havre de Grace; and

WHEREAS, ThinkBig is a Maryland limited liability company that installs and operates fiber optic broadband services throughout Maryland, and has a history of partnerships with Maryland counties regarding installing and operating fiber optic broadband networks; and

WHEREAS, ThinkBig has or will have the rights and authority to use and maintain fiber optic cable, whether its own or as owned by a third party and leased by ThinkBig, which may be located within public and private easements and third-party rights-of-way, in the Fiber Route contemplated within this Agreement; and

WHEREAS, the City desires to obtain from ThinkBig the right to use and light specifically designated fiber strands on the routes subject to the terms and conditions set forth below and further defined within the attached form of Lease Order; and

WHEREAS, this Agreement reflects the terms and conditions agreed upon by the City and ThinkBig with respect to the use of Public Rights-of-Way for the construction and implementation of a broadband network, and the City’s ability to lease dark fiber for public purposes; and

WHEREAS, the Parties believe this Agreement will be of material benefit to both, as well as a benefit to the citizens of Havre de Grace.

NOW, THEREFORE, in consideration of mutual promises set forth herein and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the City and ThinkBig agree as follows:

43 **Section 1. Definitions**

- 44 i. Abatement Period: From the Effective Date of this Agreement, the period
45 of time during which fees will not be payable by ThinkBig pursuant to
46 Section 4.2 of this Agreement.
- 47 ii. Acceptance Date: The date when Customer delivers (or is deemed to have
48 delivered) notice of acceptance of a completion notice with respect to a
49 Segment, including completion notice with respect to installation of Dark
50 Fiber that will be used by the City.
- 51 iii. Affiliate: An entity that now or in the future, directly or indirectly, controls,
52 is controlled by, or is under common control with, a party to this Agreement.
53 For purposes of the foregoing, "control" shall mean the ownership of (i)
54 greater than fifty percent (50%) of the voting power to elect the directors of
55 the company, or (ii) greater than fifty percent (50%) of the ownership
56 interest in the company.
- 57 iv. Anchor Sites/Hotspots: Locations on City Property where the Dark Fiber
58 will be accessible via electronic or equipment connections, or wirelessly via
59 Wi-Fi hotspots.
- 60 v. Backbone Fiber: The main fiber path extending from a home network to a
61 targeted service area and including the fiber paths to neighborhoods.
- 62 vi. Broadband: System relating to high-speed data transmission in which the
63 bandwidth installed is shared by more than one simultaneous signal.
- 64 vii. Customer Fibers: The number of fibers set forth in a Lease Order Form.
- 65 viii. Dark Fiber: Fiber provided without electronic and/or optical equipment and
66 which is not "lit" or activated.
- 67 ix. Drop: The fiber optic cable that connects the Network to a subscriber's
68 premises.
- 69 x. Effective Date: The date upon which this Agreement is fully signed and
70 executed by both Parties.
- 71 xi. Fiber Route: ThinkBig's conduit fiber optic communications system, which
72 ThinkBig maintains the rights to use or authority to use, whether by
73 ownership or via third party lease or permissions.
- 74 xii. Force Majeure: Acts of God; acts of public enemies, including terrorist
75 attacks; orders of any kind of the government of the United States of
76 America or the State of Maryland or any of their departments, agencies,
77 political subdivisions, or officials, or any civil or military authority;
78 insurrections; riots; labor strikes; landslides; lightning; earthquakes; fires;
79 hurricanes; volcanic activity; storms; floods; droughts; explosions; partial
80 or entire failure of utilities or other event that is catastrophic and beyond the
81 ability of the parties to reasonably anticipate or control.

- 82 xiii. Governmental Authority: Includes, but is not limited to, the authority of any
83 federal, state, regional, Customer, city, municipal, local, territorial, or tribal
84 government. whether foreign or domestic, or any department, agency,
85 bureau or other administrative or regulatory body obtaining authority from
86 any of the foregoing, including without limitation, courts. public utilities
87 and sewer authorities.
- 88 xiv. Lateral Fiber: The fiber paths that connect the Dark Fiber to Anchor
89 Sites/Hotspots (and which does not include Dark Fiber) consisting of either
90 twelve or two strands as further detailed in the Fiber Lease Order. Lateral
91 Fiber does not include subscriber Drops for purposes of this Agreement.
- 92 xv. Lease Fee: The Fee specified in a Lease Order Form.
- 93 xvi. Lease Order Form: The Customer's order for certain fibers.
- 94 xvii. Municipal Purposes: A non-profit governmental use exclusively for the
95 benefit of the citizens of Havre de Grace and not to the benefit of another
96 commercial or non-profit organization.
- 97 xviii. Network: the fiber optic broadband network constructed by ThinkBig.
- 98 xix. Non-commercial purposes: A use other than for commercial purposes or
99 financial gain of any kind. For purposes of this Agreement, financial gain
100 includes without limitation any revenue, compensation, or other benefit on
101 behalf of the City or by any sponsor of the City.
- 102 xx. Person: Any natural person, corporation. partnership, limited liability
103 company, business trust joint venture, association, company, or
104 Governmental Authority
- 105 xxi. Public Rights-of-Way: the surface of and the area across, in, over, along,
106 above and below the surface of the public streets, roads, highway, freeways,
107 bridges, tunnels, lanes, paths, public ways or places, alleys, courts,
108 boulevards, sidewalks, ways, drives, circles, waterways, parkways,
109 easements, or similar property, or other public rights-of-way now or
110 hereafter held by the City for the purpose of public travel and shall include
111 other similar easements or rights-of-way as shall be now held or hereafter
112 held by the City which shall, within their proper use and meaning, entitle
113 ThinkBig to the use thereof for the purposes of installing poles, wires, fiber,
114 cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances,
115 attachments, and other property as may be ordinarily necessary and
116 pertinent to the Network.
- 117 xxii. Required Rights: All rights, licenses, permits, authorizations, franchises,
118 rights-of-way, easements, and other approvals required by law,
119 Governmental Authority or otherwise.
- 120 xxiii. Segment: Fibers or cable between Segment End Points.

- 121 xxiv. Segment End Points: The originating end point and terminating end point
- 122 of a fiber or cable route.
- 123 xxv. Segment End Point Facilities: Facilities which are owned or otherwise used
- 124 by TBN to accommodate or house switch equipment, fiber optic
- 125 transmission, and/or associated ancillary equipment to serve as a switch
- 126 terminal, transport concentrator, hub terminal or junction.
- 127 xxvi. Subscriber: A resident or business that lawfully receives broadband data
- 128 service distributed by the Network.
- 129

130 **Section 2. Grant of Use of Public Rights-of-Way**

131
132 **2.1 Grant of Authority.** Subject to the terms and conditions herein, the City hereby
133 grants to ThinkBig the right to own, construct, extend, install, operate, maintain,
134 upgrade, and rebuild a fiber optic Network in the Public Rights-of-Way, including
135 property over which the City has a sufficient easement or right-of-way to provide
136 such services.

137
138 **2.2 Term.** This Agreement shall be for a period of thirty (30) years, commencing
139 on the Effective Date and expiring on the thirtieth anniversary of the Effective Date
140 in 2053 (“Expiration Date”), and which Agreement is automatically renewable for
141 an additional term of nineteen (19) years unless this Agreement is terminated by
142 either party after providing no less than sixty (60) days written notice to the other
143 prior to the Expiration Date. Termination under this provision is in addition to any
144 other right to terminate provided under this Agreement. The Parties may negotiate
145 a new agreement upon the expiration or termination of this Agreement.

146
147 **2.3 Non-Exclusivity.** The rights conferred by this Agreement are non-exclusive.
148 Nothing in this Agreement shall affect the right of the City to confer similar rights
149 to other parties to construct, operate, or maintain a similar network or provide
150 similar services.

151
152 **2.4 Conduit Fees.** ThinkBig shall pay the conduit fees set forth in Section 5.

153
154 **Section 3. Construction and Maintenance of Network.**

155
156 **3.1 Construction Commitment.** ThinkBig shall engineer, construct, install,
157 operate, and maintain all necessary fiber and equipment for the Network and shall
158 provide, market, and sell broadband data services within the City. The Network
159 will include all constructed Service Drops. The parties acknowledge that
160 constructing Service Drops is contingent upon customer subscriptions for
161 broadband service with ThinkBig, and that any Service Drops constructed will be
162 incorporated as part of the Network.

163
164 **3.2 Build Plan.** ThinkBig will begin construction in the areas of Havre de Grace
165 West of Route 40. ThinkBig will construct the fiber network in a contiguous

166 manner starting in the areas West of Route 40 and finishing in the areas East of
167 Route 40. ThinkBig desires to pass every property in the Havre de Grace area, but
168 agrees that at a minimum, within 3 years, ThinkBig will pass at least one property
169 in the area East of Route 40 for every two properties passed in the area West of
170 Route 40.

171
172 **3.3 Governmental Approvals.** ThinkBig shall ensure that all necessary approvals
173 have been obtained before installing any part of the Network, including all
174 applicable permits and licenses.

175
176 **3.4 Technical Requirements of Network.** The Network shall meet the following
177 minimum technical performance requirements:

- 178 i) Passive Optical Network (“PON”) to provide up to one Gbps downstream
179 and 1000 Mbps symmetrical service to all subscribers.
- 180 ii) Latency <10 milliseconds to the internet exchange point in Ashburn,
181 Virginia. ThinkBig will ensure that its upstream providers of bandwidth to
182 the internet exchange point in Ashburn, Virginia commit to provide service
183 to ThinkBig that provides this requirement.
- 184 iii) Backup power of at least 72 hours in case of an electric outage for all
185 electronics, excepting those electronics at a subscriber’s premises.
- 186 iv) The Network shall comply with all current applicable codes, including the
187 National Electrical Safety Code, the National Electric Code and any other
188 applicable federal laws and regulations and the laws, ordinances, and
189 construction standards of the State of Maryland.

190
191 **3.5 Customer Service Requirements.** ThinkBig shall meet the following
192 minimum service requirements with respect to its Subscribers:

- 193 i) ThinkBig will offer residential products and services competitive with
194 existing suppliers offering the same type of product and service within a
195 forty-five (45) mile radius of the City.
- 196 ii) ThinkBig shall open at least one (1) physical office in the City for a period
197 of three (3) years from the Effective Date, or the date the Subscriber
198 network becomes operational (whichever is later) to regularly offer in-
199 person customer service support to Subscribers. After expiration of three
200 (3) years, ThinkBig shall maintain at least one physical office in Harford
201 County to regularly offer in-person customer service support to Subscribers.
- 202 iii) The Network shall be neutral with respect to applications, websites, type of
203 use, and type of end-user device.
- 204 iv) ThinkBig will not collect or sell personal information from a customer
205 without express written approval.
- 206 v) ThinkBig will offer data services that do not limit, quota, cap, or otherwise
207 ration a user’s total upload and download data capacity to an extent that

limits reasonable use of broadband. So long as such uncapped services are available for purchase by City Subscribers, ThinkBig may offer services that do cap data capacity.

3.6 Subscriber Installations. Any dwelling unit within three hundred feet (300’) Drop distance from the distribution line within the Network shall be entitled to installation at no charge other than applicable installation fees for the individual subscriber’s drop. For any dwelling unit in excess of three hundred feet (300’) Drop distance, ThinkBig will extend service and the Subscriber shall pay ThinkBig’s actual cost of installation from its distribution line within the Network from which a usable signal can be obtained with such cost being only the incremental cost beyond three hundred feet (300’) Drop distance for any installation.

3.7 Disconnection and Relocation. ThinkBig shall, at no cost to the City, protect, support, temporarily disconnect, relocate in the same street or other public way and place, or remove from any street or any other public way or place, any of its property as required by the City or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety, and welfare. In requiring ThinkBig to undertake any such obligation, the City shall treat ThinkBig the same as, and require no more of, than any similarly situated entity. ThinkBig shall have the right to seek reimbursement under any applicable insurance or government program that offers reimbursement for such activities.

Section 4. Lease of Dark Fiber to the City.

4.1 Dark Fiber Available to City. ThinkBig agrees to make available to the City, certain dark fiber optic cable strands for the purpose of providing public access to wireless internet and to provide subsidiary connectivity to the City for uses not currently served by the City’s existing broadband network accessed through Harford County’s HMAN system. The City acknowledges that ThinkBig is not supplying nor is it obligated to supply the City with any optical or electronic equipment or related facilities, all of which are the sole responsibility of the City.

4.2 Lease Order Form. The City and ThinkBig shall complete a Lease Order Form for Customer Fibers which will identify the quantity and location of fibers to be leased. The Lease Order Form shall be substantially in the form attached hereto as Exhibit A and the terms and conditions of the Lease Order Form are incorporated herein by reference and made a material part hereof. In the event of ambiguity between the provisions of a properly executed Lease Order Form and the terms of this Agreement, the terms of this Agreement shall govern (“Lease”).

4.3 Grant of Lease. As of the Lease Effective Date for each particular Lease Order, ThinkBig grants to the City, and the City acquires from ThinkBig a lease to use, for

254 the purposes of and subject to the restrictions described herein, the fibers for the
255 Lease Term. This is not a sale of fiber and under no circumstances will a Lease
256 Order or this Agreement constitute conveyance of property, ownership rights, or
257 legal title thereto.

258
259 **4.4 Compliance with Laws.** City represents and warrants that it will use the Dark
260 Fibers and the Lease hereunder in compliance with all applicable government
261 codes, ordinances, laws, rules and regulations.

262
263 **4.5 Use of ThinkBig Network.** Subject to the provisions of this Agreement, City
264 may use the Dark Fiber and the Lease as a medium for providing
265 telecommunications services as either lit or dark to itself for non-profit municipal
266 purposes. City is permitted to use the leased fiber for non-commercial purposes
267 only. City acknowledges and agrees that it has no right to use any fibers, other than
268 its designated Dark Fiber as described more fully in the Lease Order.
269 Notwithstanding the above, the City reserves the right to charge a fee to end users
270 of the municipal service to recoup expenses associated with the costs of installation
271 or maintenance of the optical or electronic equipment or related to facilities not
272 covered by the Lease Order but which may be required to be incurred by the City
273 for the Dark Fiber to become operational.

274
275 **4.6 No Interference.** City shall not use the Customer Fibers in any way which
276 physically interferes with or otherwise adversely affects the use of the fibers, cable
277 or conduit of any other Person using the ThinkBig Network.

278
279 **4.7 Interconnection Points.** With prior notice and approval by ThinkBig, City
280 shall have the right to interconnect the Customer Fibers with other fibers provided
281 by City or another carrier within any Segment End Point Facility. City may also
282 interconnect the Customer Fibers with other fibers provided by City or another
283 carrier at any technically feasible location other than a Segment End Point Facility
284 (collectively, the "Interconnection Points"). City shall reimburse ThinkBig for the
285 cost of such construction and interconnections but only after the costs for
286 construction of such Interconnection Points has been reviewed by the City's
287 procurement officer and approved by the City's Director of Administration to
288 determine if such costs are within the City budget. If the costs cannot be covered
289 by expenditures already approved by the City budget, such expenditure shall be
290 submitted to the City Council for approval.

291
292 **4.8 Lease Fees.** Fees shall be set forth in the Lease Order Form. City agrees to pay
293 any Non-Recurring Fees when the Lease Order Form is fully executed by both
294 parties, unless otherwise stated in the individual Lease Order Form. Annual
295 recurring fees shall be due on the first day of August during the Lease Term. In the
296 event the Lease begins on a date other than on the first day of August or ends on a
297 date other than the first of day of August, then the first Lease Fee shall be prorated.

298

299 **4.9 Refunds or late fees.** There shall be no late fees applied to payment of the
300 Lease fees. Nor shall there be any refunds for any interruption of service provided
301 that service is restored without cost to the City. Should the City incur out of pocket
302 costs to restore service, Think Big agrees to reimburse the City for such costs.
303

304 **4.10 Term of Lease Agreement.** Subject to the default provisions as set forth in
305 Article 7, the Lease for each Segment shall become effective on the date written in
306 the Lease Order and shall terminate on the date when all Lease Order Forms have
307 expired or terminated pursuant to the Terms of this Agreement. However, all other
308 provisions of this Agreement which are expressly stated herein to survive such
309 Lease termination shall remain binding on the parties hereto.
310

311 **4.11 Lease Term Expiration.** Upon the expiration or termination of the Lease, all
312 rights to the use of the Customer Fibers therein shall revert to ThinkBig without
313 reimbursement of any of the Lease Fee or other sums, costs, fees or expenses
314 previously made with respect thereto so long as the Compensation for the use of
315 Public Rights of Way has been paid through July 31st of the next payment term at
316 the time of Lease expiration.
317

318 **4.12 Customer Termination.** The City may terminate the Lease for convenience
319 for any Segment prior to the end of the Lease upon sixty (60) days prior written
320 notice to ThinkBig. Termination of the Lease shall not affect the conduit fees
321 payable pursuant to Article 5 of this Agreement so long as the City is using any
322 Customer Fiber.
323

324 **4.13 Operation, Maintenance and Repair; Relocation.** ThinkBig will not be
325 responsible for performing any work other than as specified as follows:
326

327 i) **Maintenance.** From the Lease Effective Date with respect to each
328 Segment, the maintenance of the ThinkBig Network within such Segment
329 shall be provided in accordance with the maintenance and repair standards
330 set forth in Exhibit B.

331 ii) **Failure to Perform Maintenance.** In the event ThinkBig has failed to
332 perform its obligations relating to the maintenance of the Customer Fibers
333 pursuant to Exhibit "B" for any reason. ThinkBig agrees that City, with
334 written approval from ThinkBig, may access the ThinkBig Network and the
335 Interconnection Points solely for the purpose of providing maintenance to
336 the Customer Fibers, provided such maintenance shall be performed by
337 persons sufficiently qualified to perform such maintenance. ThinkBig shall
338 reimburse Customer's pre-approved reasonable costs of performing such
339 maintenance activities. In order to access the ThinkBig Network, City must
340 give prior notice to ThinkBig of access required, purpose of access, and the
341 Persons who will be obtaining access within ten (10) days of access. City
342 agrees to follow any third-party access protocols when accessing the
343 ThinkBig Network.

344 iii) **Relocation.** If underlying route owner is required to relocate any portion
345 of the Network, ThinkBig shall have the right to reasonably determine the
346 extent and timing of such relocation, and any such relocation shall
347 incorporate fiber meeting or exceeding the specifications set forth in Exhibit
348 "C" and be subject to Acceptance Testing. In the event relocating the
349 Network may reasonably be expected to cause an interruption or loss of
350 service to the Customer Fibers, ThinkBig shall notify Customer of said
351 possibility.
352

353 **Section 5. Compensation to the City for Use of Public Right of Way.**

354
355 **5.1 Fees Fixed According to State Value.** Upon expiration of the Abatement
356 Period, ThinkBig shall pay to the City a fee for use of the Public Rights-of-Way,
357 due and payable on the first day of August following expiration of the Abatement
358 Period and on the same day every year thereafter for as long as this Agreement
359 remains in force. The Fixed Fees shall be pro-rated to the effective date the first
360 conduit was installed. ThinkBig’s annual conduit fees at the linear rate shall be
361 fixed according to the rates set forth in the City Code Chapter 177, Article II, as
362 may be amended from time to time.
363

364 **5.2 Fees Payable Regardless of Lease.** The parties recognize that the availability
365 of the Dark Fiber has value to the City in excess of the fees contemplated under the
366 Lease. It is the intent of the parties that the Lease fee set forth in Section 4 above
367 be a complete offset to the conduit fees due and payable under City Code Chapter
368 177, Article II. Notwithstanding that intent, however, if within three (3) years of
369 installation the City is unable to use the Dark Fiber being offered by ThinkBig on
370 the terms and conditions set forth in this Agreement as a result of a Force Majeure
371 or due to technical complications preventing the City from accessing the Dark Fiber
372 (prior to its becoming lit and operational) or ThinkBig’s failure to install Dark Fiber
373 in the downtown areas of the City as contemplated by this Agreement, then
374 ThinkBig will still be responsible for the conduit fees beginning on the second
375 anniversary of this Agreement based upon the linear feet of their fiber optic network
376 located in the Public Rights of Way pursuant to City Code Chapter 177, Article II.
377 Once a Lease Order is signed and the City’s Dark Fiber becomes lit and operational,
378 this Section 5.2 of the Agreement shall no longer be of any force and effect.
379

380 **Section 6. Insurance.**

381
382 **6.1 Insurance Policy Required.** ThinkBig shall obtain and maintain, in full force
383 and effect, at its sole cost and expense, during the term of this Agreement, the
384 following minimum insurance coverage with an insurance company that is
385 authorized to conduct business in Maryland and which has an A.M. Best rating (or
386 equivalent) no less than A-minus, indemnifying the City from and against any and
387 all claims for injury or damage to persons or property, both real and person, caused
388 by the construction, installation, reconstruction, operation, maintenance, or

removal of the Network by ThinkBig or any of its contractors, subcontractors, agents or employees in the following amounts:

- i) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any single occurrence.
- ii) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).
- iii) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.
- iv) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage.

6.2 Additional Insureds. The City, its officials, and its employees shall be designated as additional insureds under each of the insurance policies required in this Section.

6.3 No Cancellation Without Alternative Policy. ThinkBig shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section and without submitting insurance certificates to the City verifying ThinkBig has obtained such alternative insurance. ThinkBig shall provide the City with at least thirty (30) days prior written notice in the event there is an adverse material change in coverage, or the policies are cancelled or not renewed.

6.4 Proof of Insurance. ThinkBig shall deliver to the City Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective date of the Agreement, upon request by the City.

Section 7. Default & Disputes.

7.1. Right to Terminate. If the City has reason to believe that ThinkBig has not complied with any material provision of this Agreement, it shall notify ThinkBig in writing of the nature of such alleged noncompliance and the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the City does not notify ThinkBig of any noncompliance or violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

7.2 Time to Cure. Notwithstanding whether the City notifies ThinkBig, upon the occurrence of an Event of Default, as defined below, ThinkBig shall have thirty (30) days from such occurrence to: (i) respond to the City, if ThinkBig contests the assertion of noncompliance; (ii) notify the City, if City is not yet aware of such Event of Default, (iii) cure such noncompliance; and (iv) in the event that, by nature

434 of the noncompliance, it cannot be cured within the thirty (30) day period, inform
435 the City in writing how much additional time is necessary to complete the cure and
436 provide a reasonable schedule for curing such cure, provided that City shall grant
437 such additional time to cure if ThinkBig shall have promptly commenced efforts to
438 cure and continues to diligently pursue its efforts to cure.
439

440 **7.3 Remedies.** Upon the occurrence of an Event of Default, the City may, at its
441 sole option, seek any and all remedies available under this Agreement and at law
442 or equity.
443

444 **7.4 Events of Default.** The following actions by ThinkBig shall constitute a default
445 under this Agreement (collectively, “Events of Default”):
446

- 447 i) ThinkBig changes its name or address from that set forth herein, unless it shall
448 have given the City no less than thirty (30) days prior written notice.
- 449 ii) ThinkBig enters into any transaction of merger or consolidation (unless ThinkBig
450 is the surviving entity), unless the surviving entity is organized and existing under
451 the laws of the United States or any state thereof and prior to the consummation of
452 such event: (A) the surviving entity executes and delivers an agreement containing
453 such person’s effective assumption and agreement to perform all of ThinkBig’s
454 obligations hereunder and the City consents to such agreement in writing, which
455 consent will not be unreasonably withheld.
- 456 iii) ThinkBig breaches any representation or warranty contained herein or made any
457 incorrect representation or warranty in any other document furnished to the City
458 in connection herewith.
- 459 iv) ThinkBig fails to maintain the insurance required by this Agreement.
- 460 v) ThinkBig becomes insolvent or ceases to do business in the ordinary course’ or
461 makes a general assignment for the benefit of its creditors, files a voluntary petition
462 in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in
463 reorganization, arrangement, adjustment, composition, liquidation, dissolution or
464 similar relief; an involuntary petition in bankruptcy, other insolvency protection
465 against a party is filed and not dismissed within sixty (60) days; or a party fails to
466 observe and perform any material term of this Agreement and such failure
467 continues for a period of thirty (30) days after written notice from the City may:
468 terminate this Agreement and any Lease Order Form, in whole or in part, in which
469 event such party shall have no further duties or obligations thereunder, and/or (B)
470 pursue any remedies the party may have under this Agreement. at law or in equity.
- 471 vi) Any representation or warranty made by ThinkBig in any documents entered into
472 in connection with this Agreement or any information provided by ThinkBig in
473 connection with the transactions evidence by this Agreement is materially
474 incomplete, incorrect or misleading as of the date made or delivered.
- 475 vii) ThinkBig fails to observe or perform any material obligation under this Agreement
476 and fails to cure such default within the time provided under this Agreement.
477

478 **Section 8. General Provisions.**

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8.1 Entire Agreement. This written instrument, including any Appendix or Exhibits hereto, contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and ThinkBig.

8.2 Captions and Headings. All captions and headings of each section and paragraph in this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of the Agreement.

8.3 Force Majeure. If for any reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation of this Agreement during the bona fide continuance of such inability.

8.4 Assignment & Transfer. Neither ThinkBig nor any Affiliated Entity shall transfer, assign, or otherwise encumber, through its own action or by operation of law, its right, title, or majority ownership interest in the Network or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions in this Agreement.

8.5 Governing Law. This Agreement shall be governed and construed by and in accordance with the laws of the State of Maryland without regard to conflicts of laws principles.

8.6 Change of Law. In the event there is a change in a federal or state statute or regulation applicable to the Network or this Agreement, the City or ThinkBig may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and ThinkBig shall amend this Agreement to comply with such change in statute or regulation.

8.7 Compliance with All Laws. ThinkBig shall comply with all federal, state, and generally applicable local laws and regulations.

8.8 Waiver of Jury. The parties waive any right to a jury trial in any litigation that may arise to enforce the terms of this Agreement.

522 **8.9 Venue.** If suit is brought by a party to this Agreement, the parties agree that
523 trial of such action shall be vested exclusively in the state courts of Maryland,
524 Harford County.

525
526 **8.10 Nondiscrimination.** As a condition of entering into this Agreement,
527 ThinkBig may not discriminate on the basis of race, color, religion, ancestry,
528 national origin, sex, age, marital status, sexual orientation, sexual identity, genetic
529 information or an individual’s refusal to submit to a genetic test or make available
530 the results of a genetic test or on the basis of disability, or other unlawful forms of
531 discrimination in the solicitation, selection, hiring, or commercial treatment of
532 subcontractors, vendors, suppliers, or commercial customers, nor shall ThinkBig
533 retaliate against any person for reporting instances of such discrimination.
534 ThinkBig shall provide equal opportunity for subcontractors, vendors, and
535 suppliers to participate in all of its public sector and private sector subcontracting
536 and supply opportunities, provided that this clause does not prohibit or limit lawful
537 efforts to remedy the effects of marketplace discrimination that have occurred or
538 are occurring in the marketplace. ThinkBig understands that a material violation of
539 this clause shall be considered a material breach of this Agreement. This clause is
540 not enforceable by or for the benefit of, and creates no obligation to, any third party.

541
542 **8.11 Severability.** If any section, provision, or clause of this Agreement is held by
543 a court of competent jurisdiction to be illegal, invalid, or unenforceable, or is pre-
544 empted by federal or state laws or regulations, such section, provision, or clause
545 shall be deemed to be severable from the remaining portions of this Agreement and
546 shall not affect the legality, validity, or enforceability of the remaining portions of
547 this Agreement. In addition, Sections 6 (Insurance) and 8 (General Provisions) shall
548 survive the expiration or termination of this Agreement.

549
550 **8.12 Representations & Warranties.** ThinkBig represents and warranties that it
551 is duly organized and validly existing and in good standing under the laws of the
552 jurisdiction of its organization, duly qualified to do business in each jurisdiction it
553 is located or operates, and has full limited liability company power and authority to
554 enter into and perform its obligations under this Agreement, and that the execution,
555 delivery and performance by ThinkBig of this Agreement have been duly
556 authorized by all necessary limited liability company action on the part of
557 ThinkBig.

558
559 **8.13 Third Party Beneficiaries.** Nothing in this Agreement is or was intended to
560 confer third-party beneficiary status on any person other than the parties to this
561 Agreement to enforce the terms of this Agreement.

562
563 **8.14 Appropriations.** It is not anticipated that the City will be making any
564 appropriations out of the City budget for the performance under this Agreement
565 other than installation of electronic and optical equipment to cause the Dark Fiber
566 to become lit and operational. Notwithstanding the foregoing, City will cooperate
567 with ThinkBig and provide any necessary consents or information to the extent

necessary to secure grant or other funding for the installation of fiber optic broadband networks contemplated under this Agreement.

8.15 Individual Liability. ThinkBig agrees that no elected or public official of the City shall be held individually liable under this Agreement.

8.16 Sovereign Immunity. To the extent it may have any, the City does not waive any defense related to its sovereign immunity or status as a municipality of the State of Maryland.

8.17 Notices. All notices required by this Agreement shall be made via hand delivery or registered certified mail with confirmed receipt at the addresses first listed above, or as notified to a party in writing:

To the City:

City of Havre de Grace
Attn: Director of Administration
711 Pennington Avenue
Havre de Grace, MD 21078

With copy to:

City Attorney
224 N Washington Street
Havre de Grace, MD 21078

To ThinkBig:

ThinkBig Networks
Attn: CEO, Dee Anna Sobczak
PO Box 1388
Brooklandville, MD 21022

With a copy to:
dsobczak@thinkbignets.com

or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith.

8.18 Counterparts. This Agreement may be signed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument; and in pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one complete set of such counterparts.

613 **8.19 Publicity.** Neither party shall have the right to use the other party's or its
614 Affiliates' trademarks, service marks or trade names or to otherwise refer to the
615 other party in any marketing, promotional or advertising materials or activities.
616 Neither party shall issue any publication nor press release relating to any
617 contractual relationship between ThinkBig and the City, except as may be required
618 by law or agreed between the parties in writing.
619

620 **8.20 Relationship of Parties.** The relationship between City and ThinkBig shall
621 not be that of partners, agents, or joint ventures for one another, and nothing
622 contained in this Agreement shall be deemed to constitute a partnership or agency
623 agreement between them for any purposes, including but not limited to federal
624 income tax purposes.
625

626 **8.21 Construction.** The language in all parts of this Agreement shall be construed
627 simply, as a whole and in accordance with its fair meaning and not strictly for or
628 against either party. The parties hereto acknowledge and agree that this Agreement
629 has been negotiated by the parties and has been the subject of arm's length and
630 careful negotiation over a considerable period, that each party has been given the
631 opportunity to independently review this Agreement with legal counsel, and that
632 each party has the requisite experience and sophistication to understand, interpret
633 and agree to the language of the provisions hereof. Accordingly, in the event of an
634 ambiguity in or dispute regarding the interpretation of this Agreement, this
635 Agreement shall not be interpreted or construed against the party preparing the
636 Agreement.
637

638 **8.22 Indemnification.** Each party shall indemnify the other from claims by third
639 parties arising from damage to tangible property, personal injury, or death caused
640 by such party's negligence or willful misconduct. Such indemnification shall
641 include, without limitation, awards, settlements, and all costs and expenses
642 associated with the claim (including legal fees and court costs).
643

644 **8.23 Tax Exemption.** The City is a tax-exempt governmental entity and will
645 provide ThinkBig network an exemption certificate to the extent any taxes (such as
646 consumption, sales, use, gross receipts, excise, access, bypass, franchise or other
647 taxes, fees, duties, charges or surcharges) would otherwise be applicable to the Dark
648 Fiber being provided under the Lease pursuant to the terms of this Agreement. The
649 City reserves the right to impose a surcharge to any end user of the Dark Fiber to
650 recover such taxes if applicable.
651

652 [SIGNATURE PAGE FOLLOWS.]
653

654
655 **IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date(s)
656 referenced below:

657
658 **MAYOR AND CITY COUNCIL OF HAVRE DE GRACE**

659
660 By: _____ Date: _____
661 William T. Martin, Mayor

662
663
664 ATTEST:
665 _____
666
667 Stephen J. Gamatoria, Director of Administration

668
669
670 Approved for Legal Sufficiency this ____ day of _____, 2023.

671 _____
672
673 April C. Ishak, City Attorney

674
675
676 **THINKBIG NETWORKS, LLC**
677 By: _____ Date: _____
678 Mark Wagner, President

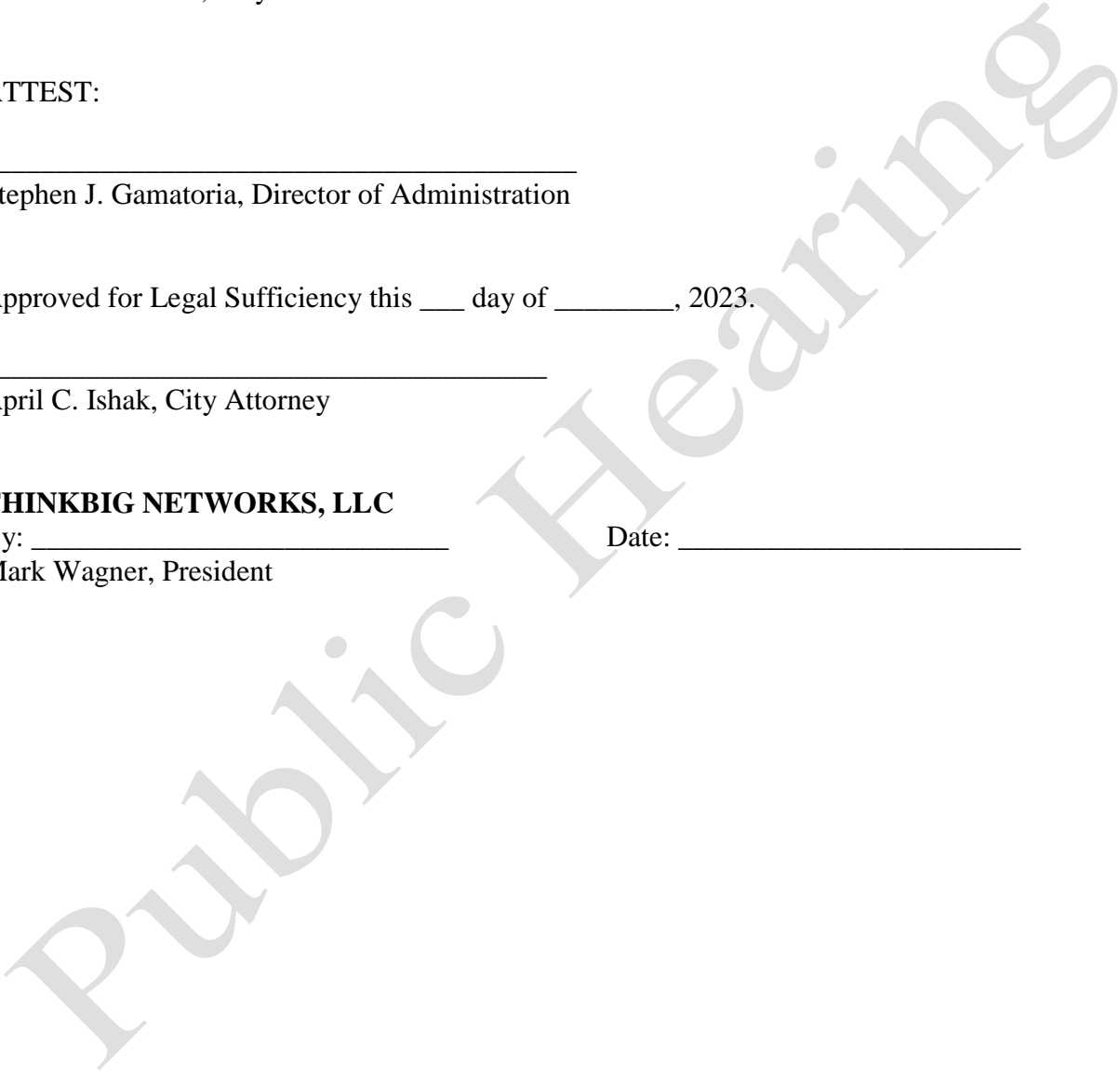


EXHIBIT A

Dark Fiber Lease Order Form
Between The Mayor and City Council of Havre de Grace and ThinkBig Networks, LLC

Table with 2 columns: Field Name and Value. Fields include Order Date, Order#, Customer, Dark Fiber Agreement Expiration Date, and Term (30 year).

This Dark Fiber Lease Order Form is incorporated into the Agreement for Installation of Fiber Optic Broadband Network and Dark Fiber Lease Agreement (the "Agreement") executed by the Mayor and City Council of Havre de Grace Customer ("Customer" or "HdG") and ThinkBig Networks, LLC ("TBN" or "ThinkBig") dated _____. Unless otherwise noted, capitalized terms used but not defined herein shall have the same meaning set forth in the Agreement.

1. Order. Customer hereby orders the following Customer Fibers and TBN hereby agrees to deliver the following Customer Fibers, all pursuant to and in accordance with the terms of the Agreement.

Table with 7 columns: Fiber Type, Fiber Count, Fiber Pairs, Buffer Tube, (blank), Targeted Completion Date, Initial Requested Service. Rows include ThinkBig Networks HdG Backbone Fiber (12, Six Pairs, Blue) and ThinkBig Networks HdG Laterals (2, One pair, Blue).

*The route of the Segments shall be as depicted and described in Schedules attached hereto as The Project Plan ("Appendix A").

2. Lease Fee. Customer agrees to pay, as compensation for the use of the Customer Fibers, the fees set forth

Table with 3 columns: All Leased Fiber, Lease Fee, and Description. Row for HdG with fee of \$0.81 per linear foot of all underground fiber optic cable/conduit installed in HdG Public Rights-of-Way by ThinkBig pursuant to the Agreement as of the date of this Lease Order.

- 23 3. One time construction costs: N/A
- 24
- 25 4. Acceptance Testing Package. TBN will provide the following deliverables to Customer
- 26 as part of the Acceptance Testing Package:
- 27 • Completion Notice
- 28 • Final Route Map (as-builts)
- 29 • Circuit ID or unique fiber ID
- 30 • NOC Escalation list and local contacts
- 31 • Fiber Test Results (Bi-Directional OTDR. Bi-Directional Power Meter).
- 32
- 33 5. The Lease fee becomes payable on the same date the conduit fee is payable under the
- 34 Agreement.
- 35
- 36

MAYOR AND CITY COUNCIL OF HAVRE DE GRACE

37
38
39
40
41 By: _____ Date: _____
42 William T. Martin, Mayor

43
44
45 ATTEST:
46
47 _____
48 Stephen J. Gamatoria, Director of Administration

EXHIBIT B

Maintenance and Repair Standards

ThinkBig Service Contact-Escalation List (calls and texts are accepted):

- 1. Dave Insley, 443-962-0378
- 2. Craig Malang, 571-436-0865
- 3. Dave Barr, 410-699-0133
- 4. Dave Hartman, 443-850-0764
- 5. Mark Wagner, 443-677-6728
- 6. Dee Anna Sobczak, 410-215-0396

Scheduled Maintenance

Routine maintenance and repair of the Customer Fiber ("Scheduled Maintenance") shall be performed by or under the direction of ThinkBig, at ThinkBig's reasonable discretion.

Scheduled Maintenance shall commence with respect to each Segment upon the Effective Date of this Agreement.

Unscheduled Maintenance

Non-routine maintenance and repair of the Customer Fiber that is not included as Scheduled Maintenance ("Unscheduled Maintenance") shall be performed by or under the direction of ThinkBig. Unscheduled Maintenance shall commence with respect to each Segment upon the Effective Date. Unscheduled Maintenance shall consist of:

- "Emergency Unscheduled Maintenance" in response to an alarm identification by ThinkBig's Operations Center, notification by the Customer or notification by any third party of any failure, interruption, or impairment in the operation of fibers within the ThinkBig Network, or any event imminently likely to cause the failure, interruption or impairment in the operation of City Fiber or fibers within the ThinkBig Network.
- "Non-Emergency Unscheduled Maintenance" in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of fibers within the City Fiber or ThinkBig Network not covered by Scheduled Maintenance. The City shall immediately report the need for Unscheduled Maintenance to ThinkBig in accordance with reasonable procedures agreed by the Parties from time to time. ThinkBig will log the time of the City's report, verify the problem and dispatch personnel immediately to take corrective action.

Operations, Maintenance, and Repair

ThinkBig shall have on call (24) hours a day, seven (7) days a week trained and qualified personnel. ThinkBig's maintenance personnel will be available for dispatch twenty-four (24) hours

44 a day, seven (7) days a week. ThinkBig will not be responsible for monitoring the performance or
45 operation of the Customer Fiber; in the event that the Customer detects a failure in the operation
46 of the Customer Fiber which may indicate the need for Unscheduled Maintenance, The Customer
47 shall report the failure to ThinkBig's representative. ThinkBig will provide the Customer with
48 contact information for reporting the failure and will update the contact list as necessary.
49

50 **Planned Service Work Period**

51 Scheduled Maintenance that is reasonably expected to produce any signal discontinuity must be
52 coordinated between the Parties. Generally, this work should be scheduled after 12:01 and before
53 4:59 a.m. Monday through Friday, local time, with exceptions made only as needed for
54 emergencies. The intent is to avoid jeopardy work during high-traffic periods.
55

56 **Cooperation and Coordination**

57 In performing its services hereunder, ThinkBig shall take workmanlike care to prevent impairment
58 to the signal continuity and performance of the Customer Fibers. The precautions to be taken by
59 ThinkBig shall include notifications to the Customer. In addition, ThinkBig shall reasonably
60 cooperate with Customer in sharing information and analyzing the disturbances regarding the
61 Customer Fiber. If any Scheduled or Unscheduled Maintenance hereunder requires a traffic roll or
62 reconfiguration involving cable, fiber, electronic equipment, or regeneration or other facilities of
63 the Customer, then Customer shall, at ThinkBig's reasonable request, make such personnel of the
64 Customer available as may be necessary in order to accomplish such maintenance, which
65 personnel shall coordinate and cooperate with ThinkBig in performing such maintenance as
66 required of ThinkBig hereunder.
67

68 ThinkBig shall notify Customer at least (5) calendar days prior to the date in connection with any
69 Planned Service Work Period ("PSWP") of any Scheduled Maintenance and as soon as possible
70 after becoming aware of the need for Unscheduled Maintenance. The Customer shall have the right
71 to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance
72 so long as this requirement does not interfere with ThinkBig's ability to perform its obligations
73 under the Agreement. If Scheduled Maintenance is canceled or delayed for whatever reason as
74 previously notified, ThinkBig shall notify Customer at ThinkBig's earliest opportunity, and will
75 comply with the provisions of this Agreement to reschedule any delayed activity.
76

77 **Customer Fiber**

78 ThinkBig shall have its first maintenance personnel at the site requiring Emergency Unscheduled
79 Maintenance activity within four (4) hours after the time ThinkBig becomes aware of an event
80 requiring Emergency Unscheduled Maintenance, unless delayed by Force Majeure Events.
81 ThinkBig shall maintain a 24-hour toll-free telephone number to contact repair personnel.
82 ThinkBig's personnel shall dispatch maintenance and repair personnel along the system to handle
83 and repair problems detected in the ThinkBig Network: (i) upon notification by one of ThinkBig's
84 personnel or agents, (ii) upon notification through the ThinkBig's and/or the Customer's remote
85 surveillance equipment, (iii) upon notification by the Customer to ThinkBig, or (iv) upon
86 notification by a third party.
87

88 ThinkBig's representatives that are responsible for initial restoration of a cut cable shall carry on
89 their vehicles the typically appropriate equipment that would enable a temporary splice, with the
90 objective of restoring operating capability in as little time as possible. ThinkBig shall maintain and
91 supply an inventory of spare cable in storage facilities supplied and maintained by ThinkBig at
92 strategic locations to facilitate timely restoration.
93

94 **Restoration**

95 ThinkBig shall respond to any event giving rise to the need for Unscheduled Maintenance as
96 quickly as possible (allowing for delays caused by Force Majeure Events) in accordance with the
97 procedures set forth herein.
98

99 When restoring a cut cable in the ThinkBig Network, the parties agree to work together to restore
100 all traffic as quickly as possible. ThinkBig, promptly upon arriving on the site of the cut, shall
101 determine the course of action to be taken to restore the cable and shall begin restoration efforts.
102 ThinkBig shall splice fibers tube by tube or ribbon by ribbon or fiber buffer by fiber buffer, rotating
103 between tubes, ribbons or buffers operated by the parties having an interest in the cable, including
104 Customer and all future fiber users of the system; provided that, operating fibers (i.e., fibers which
105 have been jumpered to the Customer's or another party's space or equipment) in all buffer tubes or
106 ribbons or fiber bundles shall have priority over any non-operating fibers in order to allow
107 transmission systems to come back on line; and provided further that, ThinkBig will continue such
108 restoration efforts until all lit fibers in all buffer tubes or ribbons are spliced and all traffic restored.
109 Notwithstanding the foregoing, ThinkBig does not guarantee any specific rotational prioritization
110 for the Customer considering the overriding requirement for expediency in restoration of services
111 to all parties.
112

113 **Facilities**

114 The Customer will be solely responsible for providing and paying for the direct cost of any and all
115 maintenance of all electronic, optical, and other equipment, materials and facilities used by the
116 Customer in connection with the operation of the Customer Fiber, none of which is included in the
117 maintenance services to be provided hereunder.
118

119 **Subcontracting**

120 ThinkBig may subcontract any of the maintenance services hereunder; provided that ThinkBig
121 shall require the subcontractor(s) to perform in accordance with the requirements and procedures
122 set forth herein and does not add an additional markup for the work. The use of any such
123 subcontractor shall not relieve ThinkBig of any of its obligation's hereunder.
124
125

1 **EXHIBIT C**

2
3 **Testing Standards and Process**

4
5 Fiber shall be ITU-T G.652D compliant or better. All splices shall be the fusion type. Splices
6 shall have an optical attenuation of no more than 0.1dB at both 1550nm and 1310nm.

7
8 At the time of construction, ThinkBig shall provide bidirectional OTDR test results end-to-
9 end of each fiber strand dedicated to the Customer at 1310 and 1550 nm. If a result is not in
10 compliance, the Company shall remediate the fault within one week or on a mutually
11 agreeable schedule. If necessary, the Company shall provide replacement strands from its own
12 portion of the cable to replace faulty strands. The Company shall notify the Customer when
13 tests will take place, and the Customer may at its discretion observe the tests.

14
15 A fiber strand shall be deemed compliant if total end-to-end link attenuation does not exceed
16 manufacturer specifications at 1310 nm and 1550 nm with allowances for splices (0.1 dB per
17 splice) and connectors (0.5 dB per mated connector pair).

18 When the Customer wishes to activate the Customer Fibers, it shall request in writing the
19 endpoints, the desired connection, and routing of the fiber and the splicing required.
20 ThinkBig shall schedule the work, including a second round of fiber tests, to be performed
21 within one week or on a mutually agreeable schedule. If necessary, ThinkBig shall provide
22 replacement strands from its own portion of the cable to replace faulty strands. ThinkBig
23 shall notify the Customer when end-to-end tests will take place, and the Customer may at
24 its discretion observe the tests.

25
26 A fiber strand shall be deemed compliant if total end-to-end link attenuation does not exceed
27 manufacturer specifications at 1310 nm and 1550 nm with allowances for splices (0.1dB per
28 splice) and connectors (0.5 dB per mated connector pair).