

ORDINANCE NO. 2023 - 10

FIBER INTERNET FRANCHISE ORDINANCE

FOR THE

CITY OF CULLMAN, ALABAMA

AND

COOPERATIVE CONNECTION, LLC

DBA

SPROUT FIBER INTERNET

ORDINANCE NO. 2023 – 10

AN ORDINANCE GRANTING A FRANCHISE TO COOPERATIVE CONNECTION, LLC DBA SPROUT TO CONSTRUCT, OPERATE, AND MAINTAIN A FIBER INTERNET SYSTEM IN THE CITY OF CULLMAN, ALABAMA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN

The City Council of the City of Cullman Alabama ordains:

STATEMENT OF INTENT AND PURPOSE

City intends, by the adoption of this Franchise, to bring about the further development of a Fiber Internet System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Fiber Internet System. Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee has substantially complied with the material terms of the current Franchise under applicable laws;
2. Grantee’s technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. Grantee’s plans for operating the Fiber Internet System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
4. The Franchise granted to Grantee by City complies with the existing applicable state statutes, federal laws and regulations; and
5. The Franchise granted to Grantee is nonexclusive.
6. The terms and conditions of the Franchise Agreement are attached as Exhibit A.

ADOPTED BY THE CITY COUNCIL this the 12th day of December 2022.

President of the City Council

ATTEST:

City Clerk

APPROVED BY THE MAYOR this the 12th day of December 2022.

Mayor

EXHIBIT A

FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is between the City of Cullman, Alabama hereinafter referred to as the "Grantor" and Cooperative Connection, LLC D/B/A Sprout, hereinafter referred to as the "Grantee."

The Grantor hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future internet-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of an internet system on the terms set forth herein.

1. Definitions:

- a. "Cable Act" means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.
- b. "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act.
- c. "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC. Cable Channel as defined herein shall be the definition set forth in 47 U.S.C. § 522(4).
- d. "Franchise" means the authorization granted hereunder of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System and/or Internet Fiber System within the Service Area.
- e. "Gross Revenue" means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System and/or Internet Fiber System to provide Cable and/or Internet Services in the Franchise Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state or federal regulatory fees, the franchise fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law.
- f. "Public, Educational and Governmental Programming" ("PEG") means an access channel or channels provided by a cable operator for the general public, educational institutions and for local governments for programming.
- g. "Service Area" shall mean the geographic boundaries of the Grantor.
- h. "Streaming Service" shall mean any digital streaming service offering "video on demand" ("VOD"), linear and/or live event programming direct-to-consumer via Internet-connected devices, set-top boxes, platforms and/or applications, including subscription, ad-based and/or transactional VOD streaming services, streaming services and "over the top" streaming services.
- i. "Streets" means the public streets, avenues, highways, boulevards, concourses, driveways, tunnels, parkways, waterways, alleys, all other rights-of-way and easements, including but not limited to public utility easements, dedicated utility strips, or rights-of-

way dedicated for compatible uses now or hereafter, within the geographic boundaries of Grantor.

j. "Subscriber" means any person lawfully receiving any Internet Service from the Grantee.

2. **Granting of Franchise.** The Grantor hereby grants to Grantee a non-exclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets now in existence and as may be created or established during its terms; any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the construction, operation and maintenance of the Internet System, upon the terms and conditions set forth herein. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Internet System that is not prohibited by federal or state law.

The Parties covenant and agree that nothing in this Agreement, nor any separate or connected license/privilege tax, franchise fee and/or any other existing agreements between the Grantor, its affiliated boards (i.e., Utilities Board of the City of Cullman), and the Grantee, or any of the Grantee's affiliates, subsidiary companies or business ventures as an electric supplier, now or existing hereafter, shall exempt the Grantee, or any of the Grantee's affiliates, subsidiary companies or business ventures as an electric supplier, now or existing hereafter, from the obligations, terms, licenses, franchise fees or other agreements with the Grantor or its affiliated boards, nor shall any said licenses, franchise fees and/or agreements existing now or hereafter created exempt or nullify any obligation(s), term(s) and/or fee(s) thereunder to either Party.

3. **Term.** The Franchise shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 20. This Franchise will be automatically extended for an additional term of five (5) years, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the Federal Cable Act renewal procedures.

4. **Use of the Streets and Dedicated Easements.**

- a. Grantee shall have the right to use the Streets of the Grantor for the construction, operation and maintenance of the Internet System, including the right to repair, replace and enlarge and extend the Internet System, provided that Grantee shall utilize the facilities of utilities when available on reasonable terms and conditions.
- b. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.
- c. Grantee shall have the right to remove, trim, cut and keep clear of the Internet System, the trees in and along the Streets of the Grantor.

5. Maintenance of the System.

- a. Grantee shall at all times employ ordinary care in the maintenance and operation of the Internet System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor.
- b. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

6. Service.

- a. The Grantee shall continue to provide Internet Service to all residences within the Service Area where Grantee currently provides Internet Service. Grantee shall have the right, but not the obligation, to extend the Internet System into any other portion of the Service Area, including annexed areas. Internet Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access on reasonable terms and conditions to any such Subscriber's dwelling unit or other units wherein such Internet Service is provided.
- b. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Internet Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and subsection (a) above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall, within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Internet System to provide Internet Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format equivalent that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by electronic or certified mail, return receipt requested to the addresses set forth in Section 13 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Agreement, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section
- c. The Grantee shall comply with the standards and requirements for customer service standards and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of this Franchise.

- 7. PEG Programming.** Should the Grantee provide the service of Cable Channels as defined under 47 U.S.C. § 522(4) through its integrated Internet Protocol ("IP") enabled broadband platform of voice, data and video services, ("IP Network"), the video component of which is a switched, two-way, point-to-point and interactive service ("IP Video Service"), including sufficient bandwidth capacity to carry PEG channels required by the Grantor within the Grantor's service area, or should the Grantee provide Streaming Services offering VOD associated directly with the Grantee, then the following shall take effect:

- a. Grantee shall provide capacity in its system for the Grantor's PEG station after Grantee reaches 100 customers.
- b. Grantee shall be responsible for all costs associated with the transmission of said Channel from the current point of origination to the Grantee's headend.
- c. Grantee shall also pay the Grantor a PEG fee determined at the Grantor's sole discretion, but shall not exceed one (1%) percent of its gross revenues for PEG and institutional support, which shall not be offset against the franchise fees.
- d. The Grantor shall provide the Grantee forty-five (45) days advanced notice of the date on which it seeks to start collecting the fee, and the percentage it seeks to collect.
 - i. All fees paid to the Grantor shall be paid in accordance with 47 U.S.C. Sections 531(a)(4)(B) and may be used by the Grantor as allowed by federal law; further the PEG fee shall not be offset, deducted or chargeable as a credit against franchise fee payments required by this Agreement.
 - ii. Payments made for PEG and institutional network support shall be collected and paid in the same manner as the franchise fee outlined in this Agreement.
- e. Any operation of any PEG access channel by the Grantor shall be the responsibility of the Grantor, and the Grantee's only obligation, if any, is the responsibility of transmission of such channel.
- f. The Grantor shall be responsible to ensure that all transmissions, retransmissions, content, or programming that may be requested to be transmitted over a channel or facility by the Grantee in the future, if any, are provided or submitted to the Grantee, at the Grantee's designated connection point, in a manner or form that is capable of being accepted and transmitted by the Grantee, without requirement for additional alteration or change in the format or content by the Grantee, over the network of the Grantee, and which is compatible with the technology or protocol utilized by the Grantee to deliver the IP Video Service.
- g. Grantor may use a provider of its choosing, including self-provisioning, to deliver PEG content to Grantee's designated connection point, provided that the bandwidth and streaming specifications are followed.
- h. If technically possible and economically feasible, the Grantee will, at its discretion, use reasonable efforts to interconnect with the incumbent cable provider to provide PEG programming.
- i. Grantee must, collectively with all other video providers, provide the Grantor free of charge one (1) installation and monthly service to each public school, municipal government buildings, fire buildings, police buildings, and library buildings that are passed by Grantee's system. No more than one (1) provider shall provide the service required by this Section to any given location. Grantor will confer with all Providers and determine the assignments in a reasonable manner. Grantee shall not seek to offset recurring costs associated with the requirements of this Section against the franchise fees of this Agreement nor shall Grantee impose such costs on the schools or institutions receiving such free installations and service.
- j. Grantor may, at its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the expenses of supporting the PEG channel.
- k. The PEG channel shall be dedicated for PEG use for the term of the Franchise.

8. Insurance/Indemnity.

- a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Worker's Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all \$1,000,000 per occurrence C.S.L.	
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- b. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- d. Grantee hereby agrees to indemnify and hold the Grantor, including its agents, elected officials and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Internet System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Internet System.

9. Revocation.

- a. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If Grantee has not cured the breach within such sixty (60) day time period or if the Grantor has not otherwise received a satisfactory response from Grantee, the Grantor may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- b. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript and a certified copy of the findings shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such termination to an appropriate court, which shall have the power to review the decision of the Grantor de novo.

- c. Upon revocation of the Franchise, Grantee may remove the Internet System from the Streets of the Grantor, or abandon the Internet System in place.

10. Equal Protection. If any other provider of internet services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other state or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall, within thirty (30) days of a written request from Grantee, modify this Franchise to ensure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity. Nothing in this Section 9 shall be deemed a waiver of any remedies available to Franchisee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545.

11. Compliance with Laws. Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding internet service as they become effective. Grantee shall also conform with all generally applicable Grantor Ordinances, Resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor's Ordinances, Resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.

12. Change in Law. Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide Internet Service to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

13. Confidentiality. If Grantee provides any books, records or maps to the Grantor, the Grantor agrees to treat as confidential such books, records or maps that constitute proprietary or confidential information. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books, records or maps marked confidential to any person.

14. Notices/Miscellaneous.

- a. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address

provided below. Grantee shall provide thirty (30) days written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: City of Cullman
P.O. Box 278
Cullman, Alabama 35056
ATTN. City Clerk

Grantee: Cooperative Connection, LLC D/B/A Sprout
1626 First Ave SW
Cullman, Alabama 35055
ATTN. Todd McLeroy

Email: todd@mcleroyfirm.com

15. **Successors/Transferees/Assigns.** All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees, assigns, and any parents, subsidiaries or affiliated corporations or entities as applicable.
16. **Severability.** If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby
17. **Conflict.** In the event of any conflict between this Franchise and any Grantor Ordinance, Resolution, rule or regulation, this Franchise will prevail. In no way does this Agreement exempt or nullify any license, franchisee fee and/or any other existing agreements between the Grantor, its affiliated boards (i.e., Utilities Board of the City of Cullman), and the Grantee, or any of the Grantee's affiliates, subsidiary companies or business ventures as an electric supplier, now or existing hereafter.
18. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, epidemics, pandemics or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Internet System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
19. **Franchise Fee.**
 - a. Grantee shall pay to the Grantor quarterly an amount equal to five (5%) of the Gross Revenues for such **calendar quarter**, transmitted by electronic funds transfer to a bank account designated by Grantor. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.
 - b. The amount of franchise fee and the method of calculation shall be competitively neutral when compared to the amount or method of calculation of the franchise fee in any other

internet franchise or authorization to provide internet service granted by Grantor. In the event any other internet franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a Franchise Fee under this Section 19 shall be reduced by an equivalent amount.

- c. Each year during which the Franchise is in force, Grantee shall pay Grantor no later than forty-five (45) days after the end of each calendar quarter the franchise fees required by this section. The Grantor shall have the right to review the previous six (6) year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder.

20. **Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise.

21. **Acceptance and Entire Agreement.** The Grantor and the Grantee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise constitutes the entire agreement between the Grantor and the Grantee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

Considered and approved this the _____ day of _____, 2022.

Attest

City of Cullman, Alabama

Name/Title: _____

Woody Jacobs, *Mayor*

Accepted this the _____ day of _____, 2022, subject to applicable federal, state and local law.

Cooperative Connection, LLC D/B/A Sprout

Name/Title: _____