

**TELECOMMUNICATIONS SYSTEM CONSTRUCTION AGREEMENT**

**BY AND BETWEEN**

**GLENWOOD TELEPHONE, INC.**

**AND**

**[CONTRACTOR]**

\_\_\_\_\_, 2024

## TELECOMMUNICATIONS SYSTEM CONSTRUCTION AGREEMENT

This Telecommunications System Construction Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), by and between **Glenwood Telephone, Inc.**, a Georgia corporation (the “Company”) and [**Contractor**], a \_\_\_\_\_ (the “Contractor”) (hereinafter each individually referred to as a “Party” and collectively as the “Parties”).

### W I T N E S S E T H:

**WHEREAS**, the Company is undertaking to construct broadband infrastructure project to reliably provide internet access and service in accordance with the requirements of the Capital Project Funds Grant (the “Grant”) and the Governor’s Office of Planning and Budget (“OPB”) (collectively, the “Project”);

**WHEREAS**, the Company desires to hire a contractor for the Project in compliance with the state and federal statutory and regulatory requirements related to the Grant;

**WHEREAS**, the Company desires to engage Contractor to perform all **construction services** requested by the Company as set forth in this Agreement, and as subsequently agreed to by the Parties, in order to enable the Company to complete the Project; and

**WHEREAS**, Contractor desires to accept such engagement pursuant to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I GENERAL

**1.1** Defined Terms. All capitalized terms used in this Agreement that are not defined in Exhibit A shall have the definitions set forth elsewhere herein. Words, phrases, or expressions used in this Agreement which are not capitalized terms or otherwise defined herein, and which have an accepted meaning in the custom and usage of the business of telecommunications services shall have that meaning unless the context clearly indicates otherwise.

**1.2** Interpretation. Unless the context otherwise requires:

- (a) Words singular and plural in number shall be deemed to include the other, and pronouns having masculine or feminine gender shall be deemed to include the other.

- (b) Any reference in this Agreement to any Person includes its successors and permitted assigns and, in the case of any Governmental Authority, any Person(s) succeeding to its functions, authority, and capabilities.
- (c) Any reference in this Agreement to any section, subsection, attachment, article, schedule, or exhibit means and refers to the section or article contained in, or attachment, schedule, or exhibit attached to, this Agreement. All attachments, schedules, and exhibits referred to herein are hereby incorporated by reference.
- (d) Other grammatical forms of defined words or phrases have corresponding meanings.
- (e) A reference to writing includes typewriting, printing, lithography, photography, and any other mode of representing or reproducing words, figures, or symbols in a lasting and visible form, including writing communicated electronically.
- (f) A reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed unless the text indicates otherwise.
- (g) A reference to a Party includes that Party's successors and permitted assigns.
- (h) A reference to a document or agreement, including this Agreement, includes a reference to that document or agreement (including any attachments, schedules, and exhibits thereto) as novated, amended, supplemented, or restated from time to time.
- (i) Unless otherwise expressly provided herein, any consent, acceptance, satisfaction, cooperation, or approval required of a Party under this Agreement shall not be unreasonably withheld, conditioned, or delayed.
- (j) Unless otherwise expressly provided herein, "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term.
- (k) The words "hereof," "herein," "hereunder," and other words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (l) The words "shall" and "will" mean "must," and shall and will have equal force and effect and express an obligation.

**1.3 Construction of Terms.** The Parties to this Agreement acknowledge that each Party has participated in the drafting of this Agreement and agree that this Agreement shall not be interpreted against one Party or the other based upon who drafted it. In the event of a conflict between the text of the body of this Agreement and any Exhibit, the terms of the Exhibit shall prevail to the extent of such conflict.

**1.4 Captions.** All indices, titles, subject headings, section titles, and similar items in this Agreement are provided for the purpose of reference and convenience only and are not intended to be inclusive or definitive or to affect the meaning of the contents or scope of this Agreement.

**1.5 Financing.** All or part of the financing of the Project, including eligible costs of materials, construction, installation, and construction, shall be through the Grant Agreement for the reimbursement of money under the Grant.

**1.6 Other Agreements.** Subject to, and without limiting, Contractor's obligations under Article II, it is understood that Contractor may from time to time enter into similar agreements with other companies that do not compete with the Company during the Term of this Agreement or interfere with Contractor duties hereunder without the necessity of obtaining prior approval of the Company.

## **ARTICLE II DUTIES OF THE CONTRACTOR**

**2.1 Duties of Contractor.** The Project includes construction of broadband infrastructure for approximately one hundred fifty-two and thirteen hundredths (152.13) miles of fiber optic cable to be installed underground and related infrastructure and equipment. Contractor shall perform the construction for the Project as set forth in this Agreement, including providing a minimum of four (4) plow crews and two (2) bore crews; provided, that if more crews are needed for the Project, the Parties will mutually agree to such number. The Parties may at any time develop a Scope of Work to document the Work to be performed, and any such Scope of Work shall be attached as Exhibit B to this Agreement. The Work shall include the provision or furnishing of labor, supervision, services, tools, equipment, transportation, storage, power, permits, and licenses required to install and connect the fiber and shall also include the provision and installation of any related equipment required to terminate the fiber and cables at the demarcation points (the "Work"). The Company shall not be responsible for and the Work shall not include the provision of electronic, optronic, or other equipment and materials required for the Company's utilization of the fiber and cables. In performing the Work, Contractor has no direct authority over other entities (including but not limited to the Engineer or the Company's personnel, contractors, subcontractors, etc.). The Contractor is solely responsible for safety at the job site(s). The Contractor is not responsible or liable for safety of any but its own personnel at the job site(s) or for construction delays caused by others. Contractor shall ensure that its Work comply with all applicable laws, regulations, and interpretations, including the Grant requirements and rules incorporated or referenced herein. The Company's President may in his sole discretion increase, decrease, or eliminate any milestones or deliverables from a Scope of Work. During this Agreement, Contractor shall report directly to and take direction from Company's President and the Engineer, which at a minimum shall include at least one (1) inspector from Engineer per two (2) plow crews. Contractor is not authorized to take, and shall not take, any action hereunder which would bind the Company without the Company's prior written consent.

- (a) When consistent with reasonable professional judgment, Contractor shall be entitled to rely on the accuracy and completeness of information provided by Company and Engineer,

including any portions of the Project designed by other consultants to Company, without performing independent checks or analyses. Contractor makes no warranty of any design services furnished by others, including Engineer. Notwithstanding the foregoing, when requested by Company, Contractor will verify the accuracy and completeness of such information provided by others.

**2.2 Completion Date.** Contractor agrees to make commercially reasonable efforts to complete the Work, including all construction and installation, in accordance with the requirements and specifications set forth in this Agreement on or before \_\_\_\_\_, 20\_\_ (the “Completion Date”); provided that if Contractor reasonably determines that completing the Work by such date is not feasible, Contractor shall notify the Company and Engineer in accordance with Section 2.3, and if the Company grants an extension, the Completion Date shall be the date set forth in the extension.

**2.3 Delays.** In the event that there may be a delay in the Project, Contractor may seek an extension of the Project timeline or milestones by sending the Engineer and the Company written Notice of such delay and request for an extension. The Company and Engineer shall review such Notice and grant or deny such extension.

**2.4 Liquidated Damages Not a Penalty.** Each Party agrees and acknowledges that the damages that the Company would incur due to a delay in achieving the Completion Date would be difficult or impossible to predict with certainty, and the liquidated damages set forth in this Section 2.4 are an appropriate approximation of such damages and not a penalty. In the event the Contractor’s completion of the Work is delayed beyond the Completion Date, the Contractor shall pay liquidated damages to the Company (the “Daily Delay Damages”) of one thousand dollars (\$1,000) for each day through and until the earlier of (a) the completion of the Project or (b) termination of this Agreement by the Company for Contractor’s failure to complete the Project. The total amount of Daily Delay Damages shall not exceed one hundred percent (100%) of the total contract value under Section 2.5. The Daily Delay Damages shall be the Company’s sole remedy for such delay.

**2.5 Compensation.** The Company will pay Contractor up to a maximum amount of \_\_\_\_\_ (\$\_\_\_\_\_) on a cost reimbursement basis under the Grant Agreement for the Work, costs, and expenses related to the Project. This specified limit notwithstanding, if scope increases merit increasing this amount for the eligible costs, or expenses related to the Work, such increases will be discussed and, if approved by the Company, documented by a mutually agreed change order, prior to Contractor entering into such additional work or incurring such costs or expenses. For services, costs, and expenses related to the Work that are not eligible for reimbursement under the Grant Agreement or that are outside the scope of the Grant for the Project, the Company shall review such costs, and expenses and make payment in accordance with Section 4.1. Contractor must present receipts or other documentation to the Company to support any and all costs and expenses submitted for payment.

**2.6 Independent Contractor.** Notwithstanding anything contained in this Agreement to the contrary, the Company and Contractor are and shall act as, and for all purposes shall be deemed to be, independent contractors. No contract of employment, partnership, joint venture, or any other relationship except that of independent contractors shall be deemed to exist between the Company and Contractor. Contractor shall have sole and exclusive responsibility for the payment of all

federal, state, and local income taxes and for Social Security and other similar taxes with respect to any compensation or benefits provided by the Company hereunder. Contractor is not authorized to bind the Company or to incur any obligation or liability on behalf of the Company except as expressly authorized by the Company in writing.

**2.7 Proprietary Interest.** The Contractor agrees that the Company may possess plats, plans, specifications, drawings, instructions, methods, practices, models, samples, data, computer or other apparatus programs, or other technical or business information (written, oral, or otherwise) furnished or disclosed to Contractor that are the property of the Company or the Engineer, and, when in tangible form, shall be held in confidence by Contractor and any of its subcontractors, and shall be used only for the purpose of performing its work under this Agreement, and may be used for other purposes only upon such terms and conditions as may be mutually agreed by the Parties in writing. All the foregoing information will be returned to the Company or Engineer, upon completion of the Work.

**2.8 Insurance Requirements.** Before the Contractor commences the Work, Contractor must ensure that it has obtained the following insurance and that the Company is named as an additional insured on all policies except for workers' compensation: (i) commercial general liability insurance providing personal injury, bodily injury, and property damage with a combined single limit of not less than \$5,000,000 per occurrence; (ii) workers' compensation insurance and employee liability insurance, as required by Georgia law, covering all of its employees who perform any of its obligations under this Agreement; and (iii) automobile liability insurance covering death or injury to any person or persons, or damage to property arising from the operation of vehicles or equipment, with limits of not less than \$5,000,000 per occurrence. The required minimum limits of coverage shown above do not limit or diminish the Contractor's liability under this Agreement. Contractor's (and any subcontractor's) insurance policies are the primary insurance policies with respect to any claims, losses, damages, liabilities, and actions arising out of or relating to Contractor's or any subcontractor's performance of, or failure to perform, its obligations under this Agreement to the extent covered thereby.

**2.9 Underlying Rights.**

- (a) Prior to or as of the Completion Date, Contractor shall use commercially reasonable efforts to obtain all rights, licenses, authorizations, easements, rights-of-way, and other agreements necessary for the use of poles, conduit, cable, wire, or other physical plant facilities, as well as any other such rights, licenses, authorizations (including any necessary state or federal authorizations such as environmental permits), easements, rights-of-way, and other agreements necessary for the installation and use of the fibers, as required for Contractor to perform its obligations hereunder, in accordance with the terms and conditions hereof, including and subject to underlying real property and contractual limitations and restrictions (collectively the "Underlying Rights"). The Contractor shall use commercially reasonable efforts to cause such Underlying Rights to remain effective during the Term.
- (b) To the extent the fibers or cables will be installed on or upon real property or facilities owned, managed, or controlled by the Company, the Company shall provide Contractor,

as to the Company's interest in such real property, such written easements, rights-of-way, and other permits and authorizations as Contractor may reasonably require to permit Contractor to complete the work.

### **ARTICLE III TERM AND TERMINATION**

**3.1** Term. This Agreement shall become effective as of the Effective Date and, unless terminated in accordance with the terms hereof, and shall continue in full force and effect until **December 31, 2026** (the "Expiration Date") (the Effective Date to the Expiration Date is the "Term").

**3.2** Termination. The Company may terminate this Agreement upon thirty (30) days prior written Notice to Contractor. Contractor may terminate if the Company materially breaches obligations under this Agreement and such breach is not cured within thirty (30) after delivery of the Contractor's Notice or such longer time as the Contractor may specify in the Notice. Upon termination, all documents, working papers, and other pertinent information relating to the Work being performed hereunder in Contractor's possession, or under Contractor's control, will be forwarded to the Company, and the Company will make payment, in accordance with Section 4 hereof, for all satisfactory Work actually received by the Company prior to the date of such termination.

### **ARTICLE IV BILLING AND PAYMENT**

**4.1** Billing.

(a) Monthly Statement. Contractor shall mail electronically or otherwise cause to be delivered the Monthly Statement to Engineer for approval. Following written approval by Engineer, Contractor shall mail electronically or otherwise caused to be delivered Company, as soon as reasonably practical following the end of each Month, but no later than the tenth (10th) day of the Month, a statement showing the charges for the Work rendered for the applicable Month (the "Monthly Statement"). Such Monthly Statement shall also include an itemized summary of the Work, including each fiber route, and costs incurred by the Contractor on the Project. Monthly Statements shall be deemed delivered on the date shown on the electronic mail confirmation. Payment shall be delayed thirty (30) days for any Monthly Statement delivered after the tenth (10th) of each Month.

(b) Eligibility under Grant. Payment by the Company from the Grant shall only be for eligible expenses and costs. For any ineligible expenses and costs, the Company shall make payment within thirty (30) days of receipt of Monthly Statement for such ineligible expenses and costs or from being notified that such expenses or costs are deemed ineligible by the OPB or the Treasury. For eligible expenses, the Company shall make payment no later than sixty (60) days after receipt of the Monthly Statement;

provided that such time period is not extended or affected by the other provisions of this Section 4.1.

- (c) Reimbursement Process. The Company shall submit eligible expenses and costs under the Grant for reimbursement in accordance with the Grant Agreement and statutory and regulatory requirements within five (5) Business Days after receipt of the Monthly Statement (the "Reimbursement Deadline"); provided that, if the OPB sets a different Reimbursement Deadline, the Parties agree that such submission will be made in accordance with such Reimbursement Deadline and the timeline set forth in this Section 4.1 shall be adjusted accordingly. In the event that the OPB requires additional documentation or delays reimbursement, the Parties agree to cooperate and submit the necessary paperwork to the OPB and adjust the timeline set forth in this Section 4.1 accordingly. Following receipt of reimbursement, the Company shall make payment of the amount due by check in immediately available funds on or before the tenth (10th) Business Day after receipt of the reimbursement (the "Due Date"). All such payments shall be deemed to have been made when said check is mailed by the Company. Notwithstanding anything herein to the contrary, the receipt of reimbursement by the Company from the Grant of amounts payable to Contractor is a condition precedent to any payment obligation of the Company hereunder.

**4.2** Electronic Transfer. The Parties may agree to electronic transfer of payments. Information necessary to accomplish electronic transfer of payments due shall be provided in writing by Notice pursuant to Section 7.3.

**4.1** Disputed Amount. If the Company, in good faith, disputes the correctness of any amount due from the Company or credit owed to the Company under a Monthly Statement rendered by Contractor, the Company shall provide Contractor with written Notice of such amount and the basis for the Company's dispute. No later than the Reimbursement Deadline, the Company shall submit for reimbursement all amounts claimed in good faith by Contractor to be due pursuant to this Agreement so long as such amount is not (a) manifestly erroneous or (b) materially inconsistent with amounts billed previously for similar periods for such Work and costs.

**4.2** Written Notice of Disputed Monthly Statement. Upon receipt of the Company's Notice disputing the correctness of any amount due under a Monthly Statement, Contractor shall promptly review such Monthly Statement and shall Notify the Company of any error in Contractor's determination of amounts owed by the Company and, if appropriate, issue an amended Monthly Statement in the amount of any payment that the Company is required to make or any reimbursement that Contractor is required to provide in respect of such redetermination. If any disputed amount is determined to be due from one Party to the other Party, whether by arbitration or otherwise, it shall be paid within ten (10) Days of such determination. To the extent Contractor disagrees with the Company's basis for questioning the original Monthly Statement, Contractor shall provide a written explanation of its position. Any dispute must be initiated by Notice given not more than the later of: (i) one (1) year after the rendering of the applicable Monthly Statement or (ii) the Expiration Date.



**4.3 Books and Records.** Each Party shall maintain accurate records and books of account in accordance with generally accepted accounting principles. All records and expenditures of the Contractor are subject to monitoring, examination, demand for documents, production of personnel, access to systems, and/or audits conducted by any and all federal or state officials and auditors, including the U.S. Department of Treasury Inspector General, OPB, the Georgia Department of Audits and Accounts, the State of Georgia Inspector General, and the Department of Community Affairs, or their duly authorized representatives or designees. Upon request from the Company, Contractor shall provide requested records and expenditures within five (5) Business Days of the date of request. Failure to comply with the request may result in termination of this Agreement and recoupment of Grant money paid to Contractor by the Company.

(a) **Records Retention.** Contractor must maintain and retain fiscal records and supporting documentation for expenditures paid to Contractor from the Company via reimbursement under the Grant for a period of seven (7) years from the later of: (i) completion of the Project; (ii) submission of the final expenditure report by the Company following the receipt by the Company of the final Monthly Statement; or (iii) any litigation, dispute, or audit. In the event that the Company is directed by OPB to retain records for longer periods of time or to transfer certain records to OPB or federal custody, the Company shall provide written Notice of the same to Contractor, and Contractor shall promptly comply with such Notice.

(b) **Audit and Corrective Action.** If any audit, monitoring, investigation, review of the Grant or other compliance review by the OPB reveals any discrepancies, inadequacies, or deficiencies which are necessary to correct in order to maintain compliance with the Grant Agreement, this Agreement, applicable laws, regulations, or other obligations hereunder, Contractor agrees to assist the Company with a corrective action plan to correct such discrepancies, inadequacies within fifteen (15) days. Contractor understands and agrees that Contractor must make every effort to address and resolve all outstanding issues, findings, or actions identified by federal or state officers and auditors through the corrective action plan or any other corrective action plan. Failure to address these findings promptly and adequately may result in payment being withheld by the Company, other requirements being imposed, or other penalties.

**4.4 Open Records Act.** The Parties acknowledge and understand that Monthly Statements and any reimbursements submitted by the Company are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-71, *et seq* (the “ORA”). The Parties shall comply with the ORA, as interpreted by judicial opinions and opinions of the Attorney General of the State of Georgia.

## **ARTICLE V DISPUTE RESOLUTION**

**6.1 Informal Resolution.** The Parties will meet as needed to implement the terms of this Agreement and will make good faith attempts to informally resolve any disputes. If the Parties are unable to informally resolve any dispute after ten (10) Business Days, such dispute shall be

escalated to the chief executive officers or executive officers of the Company and the Contractor for ten (10) Business Days.

**6.2** Arbitration. If the two chief executive officers or executive officers fail to agree on a resolution within such ten (10) Business Day period, any Party, upon written Notice to the other Party, may submit such unresolved dispute to binding arbitration to be held in Wheeler County, Georgia pursuant to the Commercial Arbitration Rules of the American Arbitration Association in effect on the date that such Notice is given. If the Parties are unable to agree on a single arbitrator within fifteen (15) days, each Party shall select an independent arbitrator and the two (2) arbitrators shall select a third arbitrator. The arbitrator or party-appointed arbitrators shall be competent and experienced in matters involving the telecommunications and broadband business in the United States, with at least ten (10) years of telecommunications and broadband industry experience and shall be impartial and independent of either Party and the party-appointed arbitrators and not employed by any of the parties in any prior matter. The decision of the arbitrator(s) shall be final and binding upon the Parties and shall include written findings of law and fact. Any judgment pursuant to arbitration may be obtained and enforced by either Party in a court of competent jurisdiction. Each Party shall bear the cost of preparing and presenting its own case. The cost of the arbitration, including the fees and expenses of the arbitrator(s), shall be shared equally by the Parties hereto unless the award otherwise provides. The obligation herein to arbitrate shall not be binding upon any Party with respect to requests for preliminary injunctions, temporary restraining orders, or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES**

**6.1** Mutual Representations and Warranties. Each Party represents and warrants as of the Effective Date that:

- (a) It has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (b) It has taken all requisite corporate action to approve the execution, delivery, and performance of this Agreement;
- (c) This Agreement constitutes a legal, valid, and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights, and general equitable principles; and
- (d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state, or federal

government agency, court, or body.

**6.2** Representations and Warranties of Contractor. Contractor represents and warrants as of the Effective Date that:

- (a) It is not debarred, suspended, otherwise excluded or declared ineligible in the System for Award Management (SAM);
- (b) It shall comply with all applicable standards, order, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. § 7401, *et seq.*;
- (c) It shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Pollution Control Act, 42 U.S.C. § 1251, *et seq.*;
- (d) It shall comply with 31 U.S.C. § 1352, which provides that none of the payments made hereunder from the Grant may be expended by it to pay or reimburse any person to influence, or attempt to influence, an officer or employee of an agency, member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with any federal action concerning the Grant or renewal;
- (e) It shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award or payment by the Company from the Grant;
- (f) It shall comply with the requirements of E-Verify, O.C.G.A. § 13-10-90, *et seq.*; and
- (g) It shall comply with the requirements of Davis-Bacon Act, 40 U.S.C. § 276a to 276a-7.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

**7.1** Confidentiality. The Parties understand and agree that the terms and conditions of this Agreement, all documents referenced herein, communications between the Parties regarding this Agreement, as well as any financial or business information of either Party are confidential (“Confidential Information”). Such Confidential Information shall not be used for any purpose other than for performance of a Party’s obligations under this Agreement and shall not be disclosed by either Party to any individual other than the directors, officers, and employees of such Party or its Affiliates or contractors, consultants, or agents of such party or its Affiliates who agree to maintain the confidentiality of confidential information. However, neither Party shall be required to keep confidential any information that (a) becomes publicly available other than through the receiving party; (b) is required to be disclosed pursuant to a governmental or judicial rule, order, or regulation; (c) the disclosing party independently develops; (d) becomes available to the disclosing party without restriction from the third party; or (e) is required by its lender and is given

to such lender on a confidential basis. The Parties' obligations regarding Confidential Information shall continue until the date three (3) years after termination or expiration of this Agreement.

**7.2 Indemnification.** Contractor agrees to indemnify, defend, and hold harmless Company from and against claims, losses, or demands asserted by any third party to the extent caused by acts, errors, or omissions arising out of the negligent or wrongful performance of services by Contractor or any breach hereof. The Company agrees to indemnify, defend, and hold harmless Contractor from and against claims, losses, or demands asserted by any third party to the extent caused by acts, errors, or omissions arising out of the negligence of the Company. Contractor and Company agree that these indemnity obligations apply even if a claim or loss arises in whole or in part from the negligence, strict liability, or other wrongful act or omission of the indemnified party in which case the indemnifying party's obligation shall be reduced in proportion to the indemnified party's contributing negligence or fault. Nothing in this Section 7.2 will require indemnification prohibited by O.C.G.A. § 13-8-2. If Contractor hires subcontractors to perform all or a portion of the work, Contractor shall use good faith efforts to cause each subcontractor performing work on-

site to name Contractor and Company as beneficiaries of an indemnity that is substantially similar to the one set forth in this Section 7.2.

**7.3** Notices. Unless otherwise provided herein, all Notices and communications by a party concerning this Agreement shall be addressed to the other party as follows:

If to Company:

Glenwood Telephone Company  
Attn: James O'Brien  
22 West 4<sup>th</sup> Avenue  
Glenwood, Georgia 30428  
Phone: (912) 523-5111  
Email: glenwoodtelephone@gmail.com

With a copy to:  
Autry, Hall & Cook, LLP  
Attn: David R. Cook and Merry Luong  
3330 Cumberland Boulevard  
Suite 185  
Atlanta, Georgia  
Phone: (770) 818-4442  
Email: cook@ahclaw.com  
luong@ahclaw.com

If to Contractor:

[Name]  
Address:  
Attn:  
Phone:  
Email:

or at such other address as either Party may designate from time to time in writing to the other party.

All Notices in connection with this Agreement must be in writing and may be sent by U.S. mail, email, or by commercial overnight delivery service; provided, however, that any notices regarding assignment, termination, breach of the Agreement, or assertion of a claim under the Agreement must be sent by U.S. mail or commercial overnight delivery service. Notices shall be deemed served or delivered to the addressee or its office upon confirmation of sending an email, on the day after being sent when sent by overnight delivery service, or three (3) days after deposit in the mail when sent by U.S. mail

**7.4** Force Majeure. Neither Party shall be in default for non-performance under this Agreement to the extent such non-performance is the result of acts of God; fire; flood; lack of or

delay in transportation; changes in applicable ordinances, laws, rules, orders, regulations, restrictions, or requirements of any Governmental Authority; war or civil disorder; pandemic; endemic; strikes or other labor disputes; or any other cause beyond the reasonable control of such Party. The Party claiming relief under this Section 7.4 shall Notify the other in writing of the existence of the event relied on and the cessation or termination of said event, and the party claiming relief shall exercise commercially reasonable efforts to mitigate and avoid continuation of force majeure so as to recommence timely performance as soon as practicable. If an event of force majeure occurs, the time for performance will be extended for the duration of the condition and a reasonable time thereafter according to the nature of the event.

**7.5**     Events of Default. If a Party:

- (a) fails to pay any amount due under this Agreement within thirty (30) days after notice of such failure; or
- (b) breaches any material obligation under this Agreement (other than a payment obligation) and fails to cure such breach within thirty (30) days after such Party receives written notice of such breach; or
- (c) subject to then-current bankruptcy laws, makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy, or files any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution, or similar relief;
- (d) subject to then current bankruptcy laws, has filed against it an involuntary filing of a petition in bankruptcy or other insolvency protection that is not dismissed within ninety (90) days thereafter;
- (e) fail to comply with any state or federal statute, regulation, or order governing the Grant or payments therefrom.

then this will constitute a default of this Agreement and the non-defaulting party may terminate this Agreement and pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance, or injunctive relief.

**7.6**     Assignment. This Agreement is for professional services to be provided by Contractor, specifically, and may not be assigned or transferred by Contractor to, or the duties or services of Contractor performed or provided by, any third party without the prior written consent of the

Company. This Agreement may be assigned by the Company (by operation of law or otherwise) without consent or notice.

**7.7 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors or assigns.

**7.8 Headings.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content.

**7.9 Entire Agreement.** This Agreement constitutes the entire and final agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Agreement, the terms of this Agreement shall prevail. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party and delivered to the party relying on the writing.

**7.10 Attorney Fees, Costs and Expenses.** Except as otherwise expressly provided herein, each of the Parties hereto shall pay its own respective legal and accounting fees and all other expenses and fees incurred by it in connection with the transactions contemplated by this Agreement.

**7.11 Third Party Beneficiary.** Other than as specifically set forth herein, this Agreement is not intended to, and shall not, create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties and their permitted successors and assigns, and the rights and obligations of each of the Parties under this Agreement are solely for the use and benefit of and may be enforced solely by the Parties, their permitted successors, and assigns.

**7.12 No Partnership.** This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or between any Party and the other Party's Affiliates to impose any partnership obligation or liability upon either Party or their Affiliates. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind.

**7.13 No Personal Liability.** Each Party acknowledges and agrees that in no event shall any Affiliate, partner, member, shareholder, owner, attorney, consultant, officer, director, or employee of either Party be personally liable to the other Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party.

**7.14 Further Assurances.** If any Party reasonably determines or is reasonably advised that any further instruments or any other things or actions are necessary or desirable to carry out the terms of this Agreement, then the other Party shall perform and execute and deliver, or cause to be

performed, executed and delivered, all such further actions, instruments and things reasonably necessary and proper to carry out the terms of this Agreement.

**7.15 Governing Law.** The construction, interpretation, and performance of this Agreement shall be governed by the laws of the State of Georgia without regard to its conflict of laws provisions.

**7.16 Limitations of Remedies, Liability, and Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE (EXCEPT TO THE EXTENT THAT AN INDEMNIFYING PARTY PURSUANT TO THE PROVISIONS OF SECTION 7.2 HEREOF IS OBLIGATED TO INDEMNIFY AGAINST THIRD PARTY CLAIMS FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES). IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PROVISIONS OF THIS SECTION 7.15 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

**7.17 Choice of Forum.** It is the Parties intent that disputes arising out of this Agreement or the actions of the Parties leading up to the Agreement be resolved in accordance with the binding arbitration provisions set forth above. Notwithstanding the foregoing, each Party irrevocably consents and agrees that any litigation arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought in the federal courts in Wheeler County, Georgia. By execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such courts and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such courts over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such courts



arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such courts (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

**7.18 Jury Trial Waiver.** EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

**7.19 Counterparts.** This Agreement may be separately executed in counterparts, each of which when so executed shall be deemed to constitute one and the same Agreement. This Agreement, and any counterpart thereof, may be executed with electronic signatures and delivered via facsimile or electronic .pdf, it being the express intent of the Parties that this Agreement and any counterparts thereof, delivered via facsimile or electronic .pdf copy shall have the same force and effect as if they were originals.

**7.20 Non-Waiver.** No Party shall by any act, delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default and no failure to exercise, nor any delay in exercising, on the part of a Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power, or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by a Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that the Party would otherwise have on any future occasion or as a waiver of any other default or defaults whether of a like kind or different nature.

**7.21 Severability.** Except as otherwise stated herein, any provision, article or section declared or rendered unlawful by a Governmental Authority, or deemed to be unlawful because of a statutory change, will not render the remaining portions of this Agreement invalid; provided,

however, that in such event the Parties shall promptly negotiate in good faith for not less than thirty (30) days to restore this Agreement as nearly as possible to its original intent.

**7.22 Time.** Time is of the essence to the performance of the terms and conditions of this Agreement; provided, however, that if the final date of any period which is set for a time provision under this Agreement falls on a day that is not a Business Day, in such event the time of such period shall be extended to the next Business Day.

**7.23 Subcontractors.** Each Party must supervise and manage all services performed under this Agreement by any of the Party's subcontractors. Each Party must ensure that any subcontractor that performs services at the Party's direction complies fully with the terms of this Agreement. Nothing contained in this Agreement shall create any contractual relationship between a Party's subcontractor and the other Party. Before any subcontractor commences services, the Party supervising such subcontractor must ensure that the subcontractor has obtained the following insurance and that each of Contractor and the Company is named as an additional insured on same: (i) commercial general liability insurance providing personal injury, bodily injury, and property damage with a combined single limit of not less than \$5,000,000 per occurrence; (ii) workers' compensation insurance and employees' liability insurance, as required by Georgia law, covering all of its employees who perform any of its obligations under this Agreement; and (iii) automobile liability insurance covering death or injury to any person or persons, or damage to property arising from the operation of vehicles or equipment, with limits of not less than \$5,000,000 per occurrence.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

GLENWOOD TELEPHONE COMPANY, INC.

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

Name: Jim O'Brien

Title: Chief Executive Officer

[CONTRACTOR]

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

Name:

Title:

## **Exhibit A DEFINITIONS**

**“Affiliates”** means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

**“Agreement”** has the meaning set forth in the preamble.

**“Business Day”** means any day other than a Saturday, Sunday or any day that has been established as a bank holiday and a Business Day shall commence at 8:00 a.m. and close at 5:00 p.m. EPT.

**“Company”** has the meaning set forth in the preamble.

**“Completion Date”** has the meaning set forth in Section 2.2.

**“Confidential Information”** has the meaning set forth in Section 7.1.

**“Daily Delay Damages”** has the meaning set forth in Section 2.4.

**“Due Date”** has the meaning set forth in Section 4.1.

**“Effective Date”** has the meaning set forth in the preamble.

**“Engineer”** means Palmetto Engineering and Consulting, Inc. or its successors or assigns.

**“Expiration Date”** has the meaning set forth in Section 3.1.

**“Governmental Authority”** means any supranational, federal, or state authority or other political subdivision thereof, having jurisdiction over the Company, Contractor, the Project, or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

**“Grant”** has the meaning set forth in the recitals.

**“Grant Agreement”** means that certain agreement by and between the Company and the State of Georgia as defined in the Capital Projects Fund Terms and Conditions and its incorporated documents.

**“Intellectual Property”** has the meaning set forth in Section 2.4.

**“Month”** means a calendar month.

**“Monthly Statement”** has the meaning set forth in Section 4.1.

**“Notice”** or **“Notify”** means a communication from one Party to the other Party conforming to the requirements of Section 7.3.

**“OPB”** has the meaning set forth in the recitals.

**“ORA”** has the meaning set forth in Section 4.7.

**“Party”** or **“Parties”** has the meaning set forth in the preamble.

**“Person”** means any individual, corporation, limited liability company, partnership, limited partnership, joint venture, trust, unincorporated organization, association, Governmental Authority, or other entity.

**“Project”** has the meaning set forth in the recitals.

**“Proprietary Property”** has the meaning set forth in Section 2.2.

**“Reimbursement Deadline”** has the meaning set forth in Section 4.1.

**“Scope of Work”** has the meaning set forth in Section 2.1 and Exhibit B.

**“Term”** has the meaning set forth in Section 3.1.

**“Underlying Rights”** has the meaning set forth in Section 2.7.

**“Work”** has the meaning set forth in Section 2.1.

**EXHIBIT B**  
**SCOPE OF WORK**