

**RIGHT OF WAY USE AGREEMENT
BY AND BETWEEN
THE
CITY OF HARVARD, IL
AND
SURF AIR WIRELESS, LLC**

This Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the City of Harvard, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “City”) and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (including its operational affiliates, and lawful assignee, hereinafter, “Grantee”) this 14th day of February, 2024 (the “Effective Date”). City and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

STATEMENT OF INTENT

WHEREAS, the City intends, by adoption of this agreement, to bring about further development and operation of a city-wide Fiber Optic Network to provide Internet Access Service. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public in general. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a city-wide Fiber Optic Network.

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1.

“BIAS” means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service and any service that the FCC determines, from time to time, to be functionally equivalent, but not other service.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to only provide BIAS to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be

considered a Fiber Optic Network to the extent such facility is also used in the transmission of BIAS directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Fiber Optic Network in the Franchise Area. For the avoidance of doubt, this Agreement qualifies under the above.

“Franchise Area” means the legal boundaries of the City and shall also include any additions or subtractions thereto by annexation or other legal means.

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Fiber Optic Network as of the Effective Date of this Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Way” shall mean **the surface of, and the space above (generally our clients prefer to limit, where possible, to this stuff going below ground so that we are not dealing with a punch of poles being erected)** and below, any public street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The City hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Franchise Area and, for that purpose, to **erect**, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, **pedestals, amplifiers**, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation of, the Fiber Optic Network, and to provide such services over the Fiber Optic Network as may be lawfully allowed. Grantee shall not be required to pay franchise fees to the City under this Agreement. **Same comment as above re: the network being installed below ground being preferred.**

2.2. Permit and License Fees. Grantee shall not be required to pay any additional permit or license fees to the City under this Agreement, including any site specific permits for

the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. In the event Grantee installs facilities that shall not provide “Telecommunications” as defined under the TIMFA, Grantee shall so inform the City and be subject to the City’s permit and license fees for such installation. **We do not want to charge a license fee at all? Just confirming.**

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City’s Application for High-Speed Fiber Optic **(do we have such a thing?)** Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain in the locations mentioned in the Application. The permit must be obtained prior to any work commencing. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. If there are any conflicts between the Permit’s conditions and restrictions and this Agreement, this Agreement will control.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). Grantee shall apply for renewal for up to four (4) additional terms of five (5) years each thereafter (each a “Renewal Term”), for which the renewal will not be unreasonably withheld unless Grantee notifies City of its intent to not renew. Grantee must provide written notice of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways. If requested by the City, Grantee will relocate the facilities at Grantee’s sole cost to accommodate any public works project in the City.

2.7. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

2.8. Parking. Notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt

from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. **Do we want a time limitation for this exemption of parking restrictions so they aren't leaving vehicles at night, etc.**

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a fiber optic network.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. **Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions applicable in Ordinance 6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY and all other applicable ordinances of the Code of Ordinances of the City of Harvard, as may be amended from time to time.**

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aurally or underground. Grantee shall consult and cooperate in good faith with the City about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment. In the event there is a conflict with any other provision herein, this provision shall control.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Director of Public Works or his designee and the City Engineer prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way during the construction and installation of the network, the Grantee will be responsible for the costs and expenses to return the Public Way to the condition it was in prior to the commencement of the construction.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way or the rights of abutting and adjoining landowners, whether the construction and installation is aerial or underground.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City. Grantee accepts the Public Way in its current condition.

3.6. Grantee understands and agrees the City, public utilities and/or cable television companies and their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights and rights granted in the future by the City.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7 .

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number that the City can contact to request Grantee's coordination pursuant to this Section.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way as a result of the repair or maintenance being performed, Grantee will be responsible for the costs and expenses to return to Public Way to the condition it was in prior to the commencement of the maintenance or repairs.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where

the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation upon the benefitted subscriber. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement. City shall make good faith effort to comply with this section, but in the event this Section is breached, there shall be no damages recoverable.

Why take this on?

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the City.

4.6.1 Grantee shall provide BIAS to the following locations, at the highest speed for ongoing services:

805 W Brinks – Wastewater plant

900 W Brink – Public Works

607 Galvin Pkwy – Pool

807 E W McKinley – Lion’s Park

900 E McKinley – Library

1204 8th St – Northfield Park

250 W Park St – Mary’s Park

201 W Diggins – City Office

203 W Diggins - Police

4.6.2 Grantee will provide BIAS as described in in section 4.6.1 at no charge to the City.

SECTION 5: Oversight and Regulation by City.

5.1. Proprietary Information. The City agrees to treat any confidential or proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement.

6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. Within thirty (30) days after receiving a request for consent, the City shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within ninety (90) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume the obligations of the Grantee under this Agreement.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. **Insurance.** Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, at their request, provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. **Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident.** Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. A certificate establishing compliance with this Section shall be provided to the City prior to the start of any work and the insurance shall be primary and not contributory.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "**Indemnitees**") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "**Indemnification Events**"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "**timely**" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. **Limitation of Liability.** In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence),

strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice (or, if such default cannot be cured within such sixty (60) day period, if the Grantee does not commence and diligently continue actions to cure such default), the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving a second written notice to take effect within thirty (30) days after such initial cure notice period unless Grantee shall cure such default within said thirty (30) days. This second notice time period does not apply to the relocation of facilities.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4. Ordinance 6.18 pertaining to Public Properties - CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY. This agreement is subject to the City of Harvard ordinance that implements policies and procedures for constructing facilities on rights of way within the City's jurisdiction.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return

receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the City:

City of Harvard
201 Diggins Street
Harvard, IL 60033
ATTN: Mayor

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: CEO

With copy to:

ZRFM
50 N. Virginia
Crystal Lake, IL 60098
ATTN: Timothy J. Clifton

With copy to:

Rowland & Moore LLP
1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McHenry County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an

instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

CITY OF HARVARD,
an Illinois municipal corporation

SURF AIR WIRELESS, LLC,
a Delaware limited liability company

By _____
Mayor

By _____
Its _____

ATTEST:

City Clerk

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“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Way” shall mean **the surface of, and the space above (generally our clients prefer to limit, where possible, to this stuff going below ground so that we are not dealing with a punch of poles being erected)** and below, any public street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The City hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Franchise Area and, for that purpose, to **erect**, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, **pedestals, amplifiers**, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation of, the Fiber Optic Network, and to provide such services over the Fiber Optic Network as may be lawfully allowed. Grantee shall not be required to pay franchise fees to the City under this Agreement. **Same comment as above re: the network being installed below ground being preferred.**

2.2. Permit and License Fees. Grantee shall not be required to pay any additional permit or license fees to the City under this Agreement, including any site specific permits for

the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. In the event Grantee installs facilities that shall not provide “Telecommunications” as defined under the TIMFA, Grantee shall so inform the City and be subject to the City’s permit and license fees for such installation. **We do not want to charge a license fee at all? Just confirming.**

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City’s Application for High-Speed Fiber Optic **(do we have such a thing?)** Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain in the locations mentioned in the Application. The permit must be obtained prior to any work commencing. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. If there are any conflicts between the Permit’s conditions and restrictions and this Agreement, this Agreement will control.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). Grantee shall apply for renewal for up to four (4) additional terms of five (5) years each thereafter (each a “Renewal Term”), for which the renewal will not be unreasonably withheld unless Grantee notifies City of its intent to not renew. Grantee must provide written notice of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways. If requested by the City, Grantee will relocate the facilities at Grantee’s sole cost to accommodate any public works project in the City.

2.7. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

2.8. Parking. Notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt

from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. **Do we want a time limitation for this exemption of parking restrictions so they aren't leaving vehicles at night, etc.**

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a fiber optic network.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. **Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions applicable in Ordinance 6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY and all other applicable ordinances of the Code of Ordinances of the City of Harvard, as may be amended from time to time.**

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aurally or underground. Grantee shall consult and cooperate in good faith with the City about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment. In the event there is a conflict with any other provision herein, this provision shall control.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Director of Public Works or his designee and the City Engineer prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way during the construction and installation of the network, the Grantee will be responsible for the costs and expenses to return the Public Way to the condition it was in prior to the commencement of the construction.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way or the rights of abutting and adjoining landowners, whether the construction and installation is aerial or underground.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City. Grantee accepts the Public Way in its current condition.

3.6. Grantee understands and agrees the City, public utilities and/or cable television companies and their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights and rights granted in the future by the City.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7 .

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number that the City can contact to request Grantee's coordination pursuant to this Section.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way as a result of the repair or maintenance being performed, Grantee will be responsible for the costs and expenses to return to Public Way to the condition it was in prior to the commencement of the maintenance or repairs.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where

the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation upon the benefitted subscriber. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement. City shall make good faith effort to comply with this section, but in the event this Section is breached, there shall be no damages recoverable.

Why take this on?

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the City.

4.6.1 Grantee shall provide BIAS to the following locations, at the highest speed for ongoing services:

805 W Brinks – Wastewater plant

900 W Brink – Public Works

607 Galvin Pkwy – Pool

807 E W McKinley – Lion’s Park

900 E McKinley – Library

1204 8th St – Northfield Park

250 W Park St – Mary’s Park

201 W Diggins – City Office

203 W Diggins - Police

4.6.2 Grantee will provide BIAS as described in in section 4.6.1 at no charge to the City.

SECTION 5: Oversight and Regulation by City.

5.1. Proprietary Information. The City agrees to treat any confidential or proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement.

6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. Within thirty (30) days after receiving a request for consent, the City shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within ninety (90) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume the obligations of the Grantee under this Agreement.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. **Insurance.** Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, at their request, provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. **Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident.** Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. A certificate establishing compliance with this Section shall be provided to the City prior to the start of any work and the insurance shall be primary and not contributory.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "**Indemnitees**") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "**Indemnification Events**"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "**timely**" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. **Limitation of Liability.** In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence),

strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice (or, if such default cannot be cured within such sixty (60) day period, if the Grantee does not commence and diligently continue actions to cure such default), the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving a second written notice to take effect within thirty (30) days after such initial cure notice period unless Grantee shall cure such default within said thirty (30) days. This second notice time period does not apply to the relocation of facilities.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4. Ordinance 6.18 pertaining to Public Properties - CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY. This agreement is subject to the City of Harvard ordinance that implements policies and procedures for constructing facilities on rights of way within the City's jurisdiction.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return

receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the City:

City of Harvard
201 Diggins Street
Harvard, IL 60033
ATTN: Mayor

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: CEO

With copy to:

ZRFM
50 N. Virginia
Crystal Lake, IL 60098
ATTN: Timothy J. Clifton

With copy to:

Rowland & Moore LLP
1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McHenry County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an

instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

CITY OF HARVARD,
an Illinois municipal corporation

SURF AIR WIRELESS, LLC,
a Delaware limited liability company

By _____
Mayor

By _____
Its _____

ATTEST:

City Clerk

**RIGHT OF WAY USE AGREEMENT
BY AND BETWEEN
THE
CITY OF HARVARD, IL
AND
SURF AIR WIRELESS, LLC**

This Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the City of Harvard, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “City”) and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (including its operational affiliates, and lawful assignee, hereinafter, “Grantee”) this 14th day of February, 2024 (the “Effective Date”). City and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

STATEMENT OF INTENT

WHEREAS, the City intends, by adoption of this agreement, to bring about further development and operation of a city-wide Fiber Optic Network to provide Internet Access Service. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public in general. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a city-wide Fiber Optic Network.

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1.

“BIAS” means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service and any service that the FCC determines, from time to time, to be functionally equivalent, but not other service.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to only provide BIAS to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be

considered a Fiber Optic Network to the extent such facility is also used in the transmission of BIAS directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Fiber Optic Network in the Franchise Area. For the avoidance of doubt, this Agreement qualifies under the above.

“Franchise Area” means the legal boundaries of the City and shall also include any additions or subtractions thereto by annexation or other legal means.

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Fiber Optic Network as of the Effective Date of this Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Way” shall mean **the surface of, and the space above (generally our clients prefer to limit, where possible, to this stuff going below ground so that we are not dealing with a punch of poles being erected)** and below, any public street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

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the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. In the event Grantee installs facilities that shall not provide “Telecommunications” as defined under the TIMFA, Grantee shall so inform the City and be subject to the City’s permit and license fees for such installation. **We do not want to charge a license fee at all? Just confirming.**

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City’s Application for High-Speed Fiber Optic **(do we have such a thing?)** Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain in the locations mentioned in the Application. The permit must be obtained prior to any work commencing. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. If there are any conflicts between the Permit’s conditions and restrictions and this Agreement, this Agreement will control.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). Grantee shall apply for renewal for up to four (4) additional terms of five (5) years each thereafter (each a “Renewal Term”), for which the renewal will not be unreasonably withheld unless Grantee notifies City of its intent to not renew. Grantee must provide written notice of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways. If requested by the City, Grantee will relocate the facilities at Grantee’s sole cost to accommodate any public works project in the City.

2.7. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

2.8. Parking. Notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt

from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. **Do we want a time limitation for this exemption of parking restrictions so they aren't leaving vehicles at night, etc.**

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a fiber optic network.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. **Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions applicable in Ordinance 6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY and all other applicable ordinances of the Code of Ordinances of the City of Harvard, as may be amended from time to time.**

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aurally or underground. Grantee shall consult and cooperate in good faith with the City about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment. In the event there is a conflict with any other provision herein, this provision shall control.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Director of Public Works or his designee and the City Engineer prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way during the construction and installation of the network, the Grantee will be responsible for the costs and expenses to return the Public Way to the condition it was in prior to the commencement of the construction.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way or the rights of abutting and adjoining landowners, whether the construction and installation is aerial or underground.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City. Grantee accepts the Public Way in its current condition.

3.6. Grantee understands and agrees the City, public utilities and/or cable television companies and their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights and rights granted in the future by the City.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7 .

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number that the City can contact to request Grantee's coordination pursuant to this Section.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way as a result of the repair or maintenance being performed, Grantee will be responsible for the costs and expenses to return to Public Way to the condition it was in prior to the commencement of the maintenance or repairs.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where

the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation upon the benefitted subscriber. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement. City shall make good faith effort to comply with this section, but in the event this Section is breached, there shall be no damages recoverable.

Why take this on?

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the City.

4.6.1 Grantee shall provide BIAS to the following locations, at the highest speed for ongoing services:

805 W Brinks – Wastewater plant

900 W Brink – Public Works

607 Galvin Pkwy – Pool

807 E W McKinley – Lion’s Park

900 E McKinley – Library

1204 8th St – Northfield Park

250 W Park St – Mary’s Park

201 W Diggins – City Office

203 W Diggins - Police

4.6.2 Grantee will provide BIAS as described in in section 4.6.1 at no charge to the City.

SECTION 5: Oversight and Regulation by City.

5.1. Proprietary Information. The City agrees to treat any confidential or proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement.

6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. Within thirty (30) days after receiving a request for consent, the City shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within ninety (90) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume the obligations of the Grantee under this Agreement.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. **Insurance.** Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, at their request, provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. **Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident.** Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. A certificate establishing compliance with this Section shall be provided to the City prior to the start of any work and the insurance shall be primary and not contributory.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "**Indemnitees**") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "**Indemnification Events**"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "**timely**" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. **Limitation of Liability.** In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence),

strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice (or, if such default cannot be cured within such sixty (60) day period, if the Grantee does not commence and diligently continue actions to cure such default), the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving a second written notice to take effect within thirty (30) days after such initial cure notice period unless Grantee shall cure such default within said thirty (30) days. This second notice time period does not apply to the relocation of facilities.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4. Ordinance 6.18 pertaining to Public Properties - CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY. This agreement is subject to the City of Harvard ordinance that implements policies and procedures for constructing facilities on rights of way within the City's jurisdiction.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return

receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the City:

City of Harvard
201 Diggins Street
Harvard, IL 60033
ATTN: Mayor

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: CEO

With copy to:

ZRFM
50 N. Virginia
Crystal Lake, IL 60098
ATTN: Timothy J. Clifton

With copy to:

Rowland & Moore LLP
1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McHenry County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an

instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

CITY OF HARVARD,
an Illinois municipal corporation

SURF AIR WIRELESS, LLC,
a Delaware limited liability company

By _____
Mayor

By _____
Its _____

ATTEST:

City Clerk

**RIGHT OF WAY USE AGREEMENT
BY AND BETWEEN
THE
CITY OF HARVARD, IL
AND
SURF AIR WIRELESS, LLC**

This Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the City of Harvard, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “City”) and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (including its operational affiliates, and lawful assignee, hereinafter, “Grantee”) this 14th day of February, 2024 (the “Effective Date”). City and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

STATEMENT OF INTENT

WHEREAS, the City intends, by adoption of this agreement, to bring about further development and operation of a city-wide Fiber Optic Network to provide Internet Access Service. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public in general. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a city-wide Fiber Optic Network.

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1.

“BIAS” means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service and any service that the FCC determines, from time to time, to be functionally equivalent, but not other service.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to only provide BIAS to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be

considered a Fiber Optic Network to the extent such facility is also used in the transmission of BIAS directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Fiber Optic Network in the Franchise Area. For the avoidance of doubt, this Agreement qualifies under the above.

“Franchise Area” means the legal boundaries of the City and shall also include any additions or subtractions thereto by annexation or other legal means.

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Fiber Optic Network as of the Effective Date of this Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Way” shall mean **the surface of, and the space above (generally our clients prefer to limit, where possible, to this stuff going below ground so that we are not dealing with a punch of poles being erected)** and below, any public street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The City hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Franchise Area and, for that purpose, to **erect**, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, **pedestals, amplifiers**, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation of, the Fiber Optic Network, and to provide such services over the Fiber Optic Network as may be lawfully allowed. Grantee shall not be required to pay franchise fees to the City under this Agreement. **Same comment as above re: the network being installed below ground being preferred.**

2.2. Permit and License Fees. Grantee shall not be required to pay any additional permit or license fees to the City under this Agreement, including any site specific permits for

the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. In the event Grantee installs facilities that shall not provide “Telecommunications” as defined under the TIMFA, Grantee shall so inform the City and be subject to the City’s permit and license fees for such installation. **We do not want to charge a license fee at all? Just confirming.**

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City’s Application for High-Speed Fiber Optic **(do we have such a thing?)** Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain in the locations mentioned in the Application. The permit must be obtained prior to any work commencing. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. If there are any conflicts between the Permit’s conditions and restrictions and this Agreement, this Agreement will control.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). Grantee shall apply for renewal for up to four (4) additional terms of five (5) years each thereafter (each a “Renewal Term”), for which the renewal will not be unreasonably withheld unless Grantee notifies City of its intent to not renew. Grantee must provide written notice of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways. If requested by the City, Grantee will relocate the facilities at Grantee’s sole cost to accommodate any public works project in the City.

2.7. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

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from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. **Do we want a time limitation for this exemption of parking restrictions so they aren't leaving vehicles at night, etc.**

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a fiber optic network.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. **Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions applicable in Ordinance 6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY and all other applicable ordinances of the Code of Ordinances of the City of Harvard, as may be amended from time to time.**

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aurally or underground. Grantee shall consult and cooperate in good faith with the City about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment. In the event there is a conflict with any other provision herein, this provision shall control.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Director of Public Works or his designee and the City Engineer prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way during the construction and installation of the network, the Grantee will be responsible for the costs and expenses to return the Public Way to the condition it was in prior to the commencement of the construction.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way or the rights of abutting and adjoining landowners, whether the construction and installation is aerial or underground.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City. Grantee accepts the Public Way in its current condition.

3.6. Grantee understands and agrees the City, public utilities and/or cable television companies and their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights and rights granted in the future by the City.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7 .

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number that the City can contact to request Grantee's coordination pursuant to this Section.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way as a result of the repair or maintenance being performed, Grantee will be responsible for the costs and expenses to return to Public Way to the condition it was in prior to the commencement of the maintenance or repairs.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where

the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation upon the benefitted subscriber. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement. City shall make good faith effort to comply with this section, but in the event this Section is breached, there shall be no damages recoverable.

Why take this on?

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the City.

4.6.1 Grantee shall provide BIAS to the following locations, at the highest speed for ongoing services:

805 W Brinks – Wastewater plant

900 W Brink – Public Works

607 Galvin Pkwy – Pool

807 E W McKinley – Lion’s Park

900 E McKinley – Library

1204 8th St – Northfield Park

250 W Park St – Mary’s Park

201 W Diggins – City Office

203 W Diggins - Police

4.6.2 Grantee will provide BIAS as described in in section 4.6.1 at no charge to the City.

SECTION 5: Oversight and Regulation by City.

5.1. Proprietary Information. The City agrees to treat any confidential or proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement.

6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. Within thirty (30) days after receiving a request for consent, the City shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within ninety (90) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume the obligations of the Grantee under this Agreement.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. **Insurance.** Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, at their request, provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. **Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident.** Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. A certificate establishing compliance with this Section shall be provided to the City prior to the start of any work and the insurance shall be primary and not contributory.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "**Indemnitees**") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "**Indemnification Events**"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "**timely**" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. **Limitation of Liability.** In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence),

strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice (or, if such default cannot be cured within such sixty (60) day period, if the Grantee does not commence and diligently continue actions to cure such default), the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving a second written notice to take effect within thirty (30) days after such initial cure notice period unless Grantee shall cure such default within said thirty (30) days. This second notice time period does not apply to the relocation of facilities.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4. Ordinance 6.18 pertaining to Public Properties - CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY. This agreement is subject to the City of Harvard ordinance that implements policies and procedures for constructing facilities on rights of way within the City's jurisdiction.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return

receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the City:

City of Harvard
201 Diggins Street
Harvard, IL 60033
ATTN: Mayor

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: CEO

With copy to:

ZRFM
50 N. Virginia
Crystal Lake, IL 60098
ATTN: Timothy J. Clifton

With copy to:

Rowland & Moore LLP
1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McHenry County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an

instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

CITY OF HARVARD,
an Illinois municipal corporation

SURF AIR WIRELESS, LLC,
a Delaware limited liability company

By _____
Mayor

By _____
Its _____

ATTEST:

City Clerk

**RIGHT OF WAY USE AGREEMENT
BY AND BETWEEN
THE
CITY OF HARVARD, IL
AND
SURF AIR WIRELESS, LLC**

This Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the City of Harvard, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “City”) and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (including its operational affiliates, and lawful assignee, hereinafter, “Grantee”) this 14th day of February, 2024 (the “Effective Date”). City and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

STATEMENT OF INTENT

WHEREAS, the City intends, by adoption of this agreement, to bring about further development and operation of a city-wide Fiber Optic Network to provide Internet Access Service. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public in general. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a city-wide Fiber Optic Network.

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1.

“BIAS” means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service and any service that the FCC determines, from time to time, to be functionally equivalent, but not other service.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to only provide BIAS to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be

considered a Fiber Optic Network to the extent such facility is also used in the transmission of BIAS directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Fiber Optic Network in the Franchise Area. For the avoidance of doubt, this Agreement qualifies under the above.

“Franchise Area” means the legal boundaries of the City and shall also include any additions or subtractions thereto by annexation or other legal means.

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Fiber Optic Network as of the Effective Date of this Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Way” shall mean **the surface of, and the space above (generally our clients prefer to limit, where possible, to this stuff going below ground so that we are not dealing with a punch of poles being erected)** and below, any public street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The City hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Franchise Area and, for that purpose, to **erect**, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, **pedestals, amplifiers**, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation of, the Fiber Optic Network, and to provide such services over the Fiber Optic Network as may be lawfully allowed. Grantee shall not be required to pay franchise fees to the City under this Agreement. **Same comment as above re: the network being installed below ground being preferred.**

2.2. Permit and License Fees. Grantee shall not be required to pay any additional permit or license fees to the City under this Agreement, including any site specific permits for

the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. In the event Grantee installs facilities that shall not provide “Telecommunications” as defined under the TIMFA, Grantee shall so inform the City and be subject to the City’s permit and license fees for such installation. **We do not want to charge a license fee at all? Just confirming.**

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City’s Application for High-Speed Fiber Optic **(do we have such a thing?)** Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain in the locations mentioned in the Application. The permit must be obtained prior to any work commencing. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. If there are any conflicts between the Permit’s conditions and restrictions and this Agreement, this Agreement will control.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). Grantee shall apply for renewal for up to four (4) additional terms of five (5) years each thereafter (each a “Renewal Term”), for which the renewal will not be unreasonably withheld unless Grantee notifies City of its intent to not renew. Grantee must provide written notice of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways. If requested by the City, Grantee will relocate the facilities at Grantee’s sole cost to accommodate any public works project in the City.

2.7. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

2.8. Parking. Notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt

from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. **Do we want a time limitation for this exemption of parking restrictions so they aren't leaving vehicles at night, etc.**

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a fiber optic network.

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3.1. Public Way Regulation. **Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions applicable in Ordinance 6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY and all other applicable ordinances of the Code of Ordinances of the City of Harvard, as may be amended from time to time.**

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aurally or underground. Grantee shall consult and cooperate in good faith with the City about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment. In the event there is a conflict with any other provision herein, this provision shall control.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Director of Public Works or his designee and the City Engineer prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way during the construction and installation of the network, the Grantee will be responsible for the costs and expenses to return the Public Way to the condition it was in prior to the commencement of the construction.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way or the rights of abutting and adjoining landowners, whether the construction and installation is aerial or underground.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City. Grantee accepts the Public Way in its current condition.

3.6. Grantee understands and agrees the City, public utilities and/or cable television companies and their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights and rights granted in the future by the City.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7 .

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number that the City can contact to request Grantee's coordination pursuant to this Section.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way as a result of the repair or maintenance being performed, Grantee will be responsible for the costs and expenses to return to Public Way to the condition it was in prior to the commencement of the maintenance or repairs.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where

the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation upon the benefitted subscriber. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement. City shall make good faith effort to comply with this section, but in the event this Section is breached, there shall be no damages recoverable.

Why take this on?

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the City.

4.6.1 Grantee shall provide BIAS to the following locations, at the highest speed for ongoing services:

805 W Brinks – Wastewater plant

900 W Brink – Public Works

607 Galvin Pkwy – Pool

807 E W McKinley – Lion’s Park

900 E McKinley – Library

1204 8th St – Northfield Park

250 W Park St – Mary’s Park

201 W Diggins – City Office

203 W Diggins - Police

4.6.2 Grantee will provide BIAS as described in in section 4.6.1 at no charge to the City.

SECTION 5: Oversight and Regulation by City.

5.1. Proprietary Information. The City agrees to treat any confidential or proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement.

6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. Within thirty (30) days after receiving a request for consent, the City shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within ninety (90) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume the obligations of the Grantee under this Agreement.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. **Insurance.** Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, at their request, provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. **Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident.** Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. A certificate establishing compliance with this Section shall be provided to the City prior to the start of any work and the insurance shall be primary and not contributory.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "**Indemnitees**") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "**Indemnification Events**"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "**timely**" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. **Limitation of Liability.** In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence),

strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice (or, if such default cannot be cured within such sixty (60) day period, if the Grantee does not commence and diligently continue actions to cure such default), the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving a second written notice to take effect within thirty (30) days after such initial cure notice period unless Grantee shall cure such default within said thirty (30) days. This second notice time period does not apply to the relocation of facilities.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4. Ordinance 6.18 pertaining to Public Properties - CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY. This agreement is subject to the City of Harvard ordinance that implements policies and procedures for constructing facilities on rights of way within the City's jurisdiction.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return

receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the City:

City of Harvard
201 Diggins Street
Harvard, IL 60033
ATTN: Mayor

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: CEO

With copy to:

ZRFM
50 N. Virginia
Crystal Lake, IL 60098
ATTN: Timothy J. Clifton

With copy to:

Rowland & Moore LLP
1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McHenry County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an

instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

CITY OF HARVARD,
an Illinois municipal corporation

SURF AIR WIRELESS, LLC,
a Delaware limited liability company

By _____
Mayor

By _____
Its _____

ATTEST:

City Clerk

**RIGHT OF WAY USE AGREEMENT
BY AND BETWEEN
THE
CITY OF HARVARD, IL
AND
SURF AIR WIRELESS, LLC**

This Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the City of Harvard, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “City”) and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (including its operational affiliates, and lawful assignee, hereinafter, “Grantee”) this 14th day of February, 2024 (the “Effective Date”). City and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

STATEMENT OF INTENT

WHEREAS, the City intends, by adoption of this agreement, to bring about further development and operation of a city-wide Fiber Optic Network to provide Internet Access Service. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public in general. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a city-wide Fiber Optic Network.

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1.

“BIAS” means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service and any service that the FCC determines, from time to time, to be functionally equivalent, but not other service.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to only provide BIAS to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be

considered a Fiber Optic Network to the extent such facility is also used in the transmission of BIAS directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Fiber Optic Network in the Franchise Area. For the avoidance of doubt, this Agreement qualifies under the above.

“Franchise Area” means the legal boundaries of the City and shall also include any additions or subtractions thereto by annexation or other legal means.

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Fiber Optic Network as of the Effective Date of this Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Way” shall mean **the surface of, and the space above (generally our clients prefer to limit, where possible, to this stuff going below ground so that we are not dealing with a punch of poles being erected)** and below, any public street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The City hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Franchise Area and, for that purpose, to **erect**, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, **pedestals, amplifiers**, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation of, the Fiber Optic Network, and to provide such services over the Fiber Optic Network as may be lawfully allowed. Grantee shall not be required to pay franchise fees to the City under this Agreement. **Same comment as above re: the network being installed below ground being preferred.**

2.2. Permit and License Fees. Grantee shall not be required to pay any additional permit or license fees to the City under this Agreement, including any site specific permits for

the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. In the event Grantee installs facilities that shall not provide “Telecommunications” as defined under the TIMFA, Grantee shall so inform the City and be subject to the City’s permit and license fees for such installation. **We do not want to charge a license fee at all? Just confirming.**

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City’s Application for High-Speed Fiber Optic **(do we have such a thing?)** Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain in the locations mentioned in the Application. The permit must be obtained prior to any work commencing. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. If there are any conflicts between the Permit’s conditions and restrictions and this Agreement, this Agreement will control.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). Grantee shall apply for renewal for up to four (4) additional terms of five (5) years each thereafter (each a “Renewal Term”), for which the renewal will not be unreasonably withheld unless Grantee notifies City of its intent to not renew. Grantee must provide written notice of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways. If requested by the City, Grantee will relocate the facilities at Grantee’s sole cost to accommodate any public works project in the City.

2.7. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

2.8. Parking. Notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt

from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. **Do we want a time limitation for this exemption of parking restrictions so they aren't leaving vehicles at night, etc.**

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a fiber optic network.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. **Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions applicable in Ordinance 6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY and all other applicable ordinances of the Code of Ordinances of the City of Harvard, as may be amended from time to time.**

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aurally or underground. Grantee shall consult and cooperate in good faith with the City about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment. In the event there is a conflict with any other provision herein, this provision shall control.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Director of Public Works or his designee and the City Engineer prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way during the construction and installation of the network, the Grantee will be responsible for the costs and expenses to return the Public Way to the condition it was in prior to the commencement of the construction.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way or the rights of abutting and adjoining landowners, whether the construction and installation is aerial or underground.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City. Grantee accepts the Public Way in its current condition.

3.6. Grantee understands and agrees the City, public utilities and/or cable television companies and their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights and rights granted in the future by the City.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7 .

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number that the City can contact to request Grantee's coordination pursuant to this Section.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way as a result of the repair or maintenance being performed, Grantee will be responsible for the costs and expenses to return to Public Way to the condition it was in prior to the commencement of the maintenance or repairs.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where

the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation upon the benefitted subscriber. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement. City shall make good faith effort to comply with this section, but in the event this Section is breached, there shall be no damages recoverable.

Why take this on?

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the City.

4.6.1 Grantee shall provide BIAS to the following locations, at the highest speed for ongoing services:

805 W Brinks – Wastewater plant

900 W Brink – Public Works

607 Galvin Pkwy – Pool

807 E W McKinley – Lion’s Park

900 E McKinley – Library

1204 8th St – Northfield Park

250 W Park St – Mary’s Park

201 W Diggins – City Office

203 W Diggins - Police

4.6.2 Grantee will provide BIAS as described in in section 4.6.1 at no charge to the City.

SECTION 5: Oversight and Regulation by City.

5.1. Proprietary Information. The City agrees to treat any confidential or proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement.

6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. Within thirty (30) days after receiving a request for consent, the City shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within ninety (90) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume the obligations of the Grantee under this Agreement.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. **Insurance.** Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, at their request, provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. **Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident.** Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. A certificate establishing compliance with this Section shall be provided to the City prior to the start of any work and the insurance shall be primary and not contributory.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "**Indemnitees**") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "**Indemnification Events**"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "**timely**" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. **Limitation of Liability.** In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence),

strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice (or, if such default cannot be cured within such sixty (60) day period, if the Grantee does not commence and diligently continue actions to cure such default), the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving a second written notice to take effect within thirty (30) days after such initial cure notice period unless Grantee shall cure such default within said thirty (30) days. This second notice time period does not apply to the relocation of facilities.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4. Ordinance 6.18 pertaining to Public Properties - CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY. This agreement is subject to the City of Harvard ordinance that implements policies and procedures for constructing facilities on rights of way within the City's jurisdiction.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return

receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the City:

City of Harvard
201 Diggins Street
Harvard, IL 60033
ATTN: Mayor

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: CEO

With copy to:

ZRFM
50 N. Virginia
Crystal Lake, IL 60098
ATTN: Timothy J. Clifton

With copy to:

Rowland & Moore LLP
1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McHenry County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an

instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

CITY OF HARVARD,
an Illinois municipal corporation

SURF AIR WIRELESS, LLC,
a Delaware limited liability company

By _____
Mayor

By _____
Its _____

ATTEST:

City Clerk

**RIGHT OF WAY USE AGREEMENT
BY AND BETWEEN
THE
CITY OF HARVARD, IL
AND
SURF AIR WIRELESS, LLC**

This Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the City of Harvard, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “City”) and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (including its operational affiliates, and lawful assignee, hereinafter, “Grantee”) this 14th day of February, 2024 (the “Effective Date”). City and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

STATEMENT OF INTENT

WHEREAS, the City intends, by adoption of this agreement, to bring about further development and operation of a city-wide Fiber Optic Network to provide Internet Access Service. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public in general. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a city-wide Fiber Optic Network.

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1.

“BIAS” means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service and any service that the FCC determines, from time to time, to be functionally equivalent, but not other service.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to only provide BIAS to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be

considered a Fiber Optic Network to the extent such facility is also used in the transmission of BIAS directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Fiber Optic Network in the Franchise Area. For the avoidance of doubt, this Agreement qualifies under the above.

“Franchise Area” means the legal boundaries of the City and shall also include any additions or subtractions thereto by annexation or other legal means.

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Fiber Optic Network as of the Effective Date of this Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Way” shall mean **the surface of, and the space above (generally our clients prefer to limit, where possible, to this stuff going below ground so that we are not dealing with a punch of poles being erected)** and below, any public street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The City hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Franchise Area and, for that purpose, to **erect**, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, **pedestals, amplifiers**, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation of, the Fiber Optic Network, and to provide such services over the Fiber Optic Network as may be lawfully allowed. Grantee shall not be required to pay franchise fees to the City under this Agreement. **Same comment as above re: the network being installed below ground being preferred.**

2.2. Permit and License Fees. Grantee shall not be required to pay any additional permit or license fees to the City under this Agreement, including any site specific permits for

the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. In the event Grantee installs facilities that shall not provide “Telecommunications” as defined under the TIMFA, Grantee shall so inform the City and be subject to the City’s permit and license fees for such installation. **We do not want to charge a license fee at all? Just confirming.**

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City’s Application for High-Speed Fiber Optic **(do we have such a thing?)** Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain in the locations mentioned in the Application. The permit must be obtained prior to any work commencing. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. If there are any conflicts between the Permit’s conditions and restrictions and this Agreement, this Agreement will control.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). Grantee shall apply for renewal for up to four (4) additional terms of five (5) years each thereafter (each a “Renewal Term”), for which the renewal will not be unreasonably withheld unless Grantee notifies City of its intent to not renew. Grantee must provide written notice of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways. If requested by the City, Grantee will relocate the facilities at Grantee’s sole cost to accommodate any public works project in the City.

2.7. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

2.8. Parking. Notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt

from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. **Do we want a time limitation for this exemption of parking restrictions so they aren't leaving vehicles at night, etc.**

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a fiber optic network.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. **Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions applicable in Ordinance 6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY and all other applicable ordinances of the Code of Ordinances of the City of Harvard, as may be amended from time to time.**

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aurally or underground. Grantee shall consult and cooperate in good faith with the City about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment. In the event there is a conflict with any other provision herein, this provision shall control.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Director of Public Works or his designee and the City Engineer prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way during the construction and installation of the network, the Grantee will be responsible for the costs and expenses to return the Public Way to the condition it was in prior to the commencement of the construction.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way or the rights of abutting and adjoining landowners, whether the construction and installation is aerial or underground.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City. Grantee accepts the Public Way in its current condition.

3.6. Grantee understands and agrees the City, public utilities and/or cable television companies and their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights and rights granted in the future by the City.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7 .

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number that the City can contact to request Grantee's coordination pursuant to this Section.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way as a result of the repair or maintenance being performed, Grantee will be responsible for the costs and expenses to return to Public Way to the condition it was in prior to the commencement of the maintenance or repairs.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where

the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation upon the benefitted subscriber. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement. City shall make good faith effort to comply with this section, but in the event this Section is breached, there shall be no damages recoverable.

Why take this on?

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the City.

4.6.1 Grantee shall provide BIAS to the following locations, at the highest speed for ongoing services:

805 W Brinks – Wastewater plant

900 W Brink – Public Works

607 Galvin Pkwy – Pool

807 E W McKinley – Lion’s Park

900 E McKinley – Library

1204 8th St – Northfield Park

250 W Park St – Mary’s Park

201 W Diggins – City Office

203 W Diggins - Police

4.6.2 Grantee will provide BIAS as described in in section 4.6.1 at no charge to the City.

SECTION 5: Oversight and Regulation by City.

5.1. Proprietary Information. The City agrees to treat any confidential or proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement.

6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. Within thirty (30) days after receiving a request for consent, the City shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within ninety (90) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume the obligations of the Grantee under this Agreement.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. **Insurance.** Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, at their request, provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. **Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident.** Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. A certificate establishing compliance with this Section shall be provided to the City prior to the start of any work and the insurance shall be primary and not contributory.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "**Indemnitees**") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "**Indemnification Events**"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "**timely**" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. **Limitation of Liability.** In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence),

strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice (or, if such default cannot be cured within such sixty (60) day period, if the Grantee does not commence and diligently continue actions to cure such default), the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving a second written notice to take effect within thirty (30) days after such initial cure notice period unless Grantee shall cure such default within said thirty (30) days. This second notice time period does not apply to the relocation of facilities.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4. Ordinance 6.18 pertaining to Public Properties - CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY. This agreement is subject to the City of Harvard ordinance that implements policies and procedures for constructing facilities on rights of way within the City's jurisdiction.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return

receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the City:

City of Harvard
201 Diggins Street
Harvard, IL 60033
ATTN: Mayor

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: CEO

With copy to:

ZRFM
50 N. Virginia
Crystal Lake, IL 60098
ATTN: Timothy J. Clifton

With copy to:

Rowland & Moore LLP
1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McHenry County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an

instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

CITY OF HARVARD,
an Illinois municipal corporation

SURF AIR WIRELESS, LLC,
a Delaware limited liability company

By _____
Mayor

By _____
Its _____

ATTEST:

City Clerk

**RIGHT OF WAY USE AGREEMENT
BY AND BETWEEN
THE
CITY OF HARVARD, IL
AND
SURF AIR WIRELESS, LLC**

This Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the City of Harvard, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “City”) and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (including its operational affiliates, and lawful assignee, hereinafter, “Grantee”) this 14th day of February, 2024 (the “Effective Date”). City and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

STATEMENT OF INTENT

WHEREAS, the City intends, by adoption of this agreement, to bring about further development and operation of a city-wide Fiber Optic Network to provide Internet Access Service. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public in general. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a city-wide Fiber Optic Network.

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1.

“BIAS” means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service and any service that the FCC determines, from time to time, to be functionally equivalent, but not other service.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to only provide BIAS to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be

considered a Fiber Optic Network to the extent such facility is also used in the transmission of BIAS directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Fiber Optic Network in the Franchise Area. For the avoidance of doubt, this Agreement qualifies under the above.

“Franchise Area” means the legal boundaries of the City and shall also include any additions or subtractions thereto by annexation or other legal means.

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Fiber Optic Network as of the Effective Date of this Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Way” shall mean **the surface of, and the space above (generally our clients prefer to limit, where possible, to this stuff going below ground so that we are not dealing with a punch of poles being erected)** and below, any public street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The City hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Franchise Area and, for that purpose, to **erect**, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, **pedestals, amplifiers**, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation of, the Fiber Optic Network, and to provide such services over the Fiber Optic Network as may be lawfully allowed. Grantee shall not be required to pay franchise fees to the City under this Agreement. **Same comment as above re: the network being installed below ground being preferred.**

2.2. Permit and License Fees. Grantee shall not be required to pay any additional permit or license fees to the City under this Agreement, including any site specific permits for

the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. In the event Grantee installs facilities that shall not provide “Telecommunications” as defined under the TIMFA, Grantee shall so inform the City and be subject to the City’s permit and license fees for such installation. **We do not want to charge a license fee at all? Just confirming.**

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City’s Application for High-Speed Fiber Optic **(do we have such a thing?)** Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain in the locations mentioned in the Application. The permit must be obtained prior to any work commencing. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. If there are any conflicts between the Permit’s conditions and restrictions and this Agreement, this Agreement will control.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). Grantee shall apply for renewal for up to four (4) additional terms of five (5) years each thereafter (each a “Renewal Term”), for which the renewal will not be unreasonably withheld unless Grantee notifies City of its intent to not renew. Grantee must provide written notice of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways. If requested by the City, Grantee will relocate the facilities at Grantee’s sole cost to accommodate any public works project in the City.

2.7. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

2.8. Parking. Notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt

from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. **Do we want a time limitation for this exemption of parking restrictions so they aren't leaving vehicles at night, etc.**

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a fiber optic network.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. **Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions applicable in Ordinance 6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY and all other applicable ordinances of the Code of Ordinances of the City of Harvard, as may be amended from time to time.**

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Grantee shall consult and cooperate in good faith with the City about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment. In the event there is a conflict with any other provision herein, this provision shall control.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Director of Public Works or his designee and the City Engineer prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way during the construction and installation of the network, the Grantee will be responsible for the costs and expenses to return the Public Way to the condition it was in prior to the commencement of the construction.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way or the rights of abutting and adjoining landowners, whether the construction and installation is aerial or underground.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City. Grantee accepts the Public Way in its current condition.

3.6. Grantee understands and agrees the City, public utilities and/or cable television companies and their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights and rights granted in the future by the City.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7 .

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number that the City can contact to request Grantee's coordination pursuant to this Section.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way as a result of the repair or maintenance being performed, Grantee will be responsible for the costs and expenses to return to Public Way to the condition it was in prior to the commencement of the maintenance or repairs.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where

the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation upon the benefitted subscriber. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement. City shall make good faith effort to comply with this section, but in the event this Section is breached, there shall be no damages recoverable.

Why take this on?

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the City.

4.6.1 Grantee shall provide BIAS to the following locations, at the highest speed for ongoing services:

805 W Brinks – Wastewater plant

900 W Brink – Public Works

607 Galvin Pkwy – Pool

807 E W McKinley – Lion’s Park

900 E McKinley – Library

1204 8th St – Northfield Park

250 W Park St – Mary’s Park

201 W Diggins – City Office

203 W Diggins - Police

4.6.2 Grantee will provide BIAS as described in in section 4.6.1 at no charge to the City.

SECTION 5: Oversight and Regulation by City.

5.1. Proprietary Information. The City agrees to treat any confidential or proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

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6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. Within thirty (30) days after receiving a request for consent, the City shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within ninety (90) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume the obligations of the Grantee under this Agreement.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. **Insurance.** Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, at their request, provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. **Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident.** Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. A certificate establishing compliance with this Section shall be provided to the City prior to the start of any work and the insurance shall be primary and not contributory.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "**Indemnitees**") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "**Indemnification Events**"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "**timely**" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. **Limitation of Liability.** In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence),

strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice (or, if such default cannot be cured within such sixty (60) day period, if the Grantee does not commence and diligently continue actions to cure such default), the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving a second written notice to take effect within thirty (30) days after such initial cure notice period unless Grantee shall cure such default within said thirty (30) days. This second notice time period does not apply to the relocation of facilities.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4. Ordinance 6.18 pertaining to Public Properties - CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY. This agreement is subject to the City of Harvard ordinance that implements policies and procedures for constructing facilities on rights of way within the City's jurisdiction.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return

receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the City:

City of Harvard
201 Diggins Street
Harvard, IL 60033
ATTN: Mayor

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: CEO

With copy to:

ZRFM
50 N. Virginia
Crystal Lake, IL 60098
ATTN: Timothy J. Clifton

With copy to:

Rowland & Moore LLP
1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McHenry County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an

instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

CITY OF HARVARD,
an Illinois municipal corporation

SURF AIR WIRELESS, LLC,
a Delaware limited liability company

By _____
Mayor

By _____
Its _____

ATTEST:

City Clerk

**RIGHT OF WAY USE AGREEMENT
BY AND BETWEEN
THE
CITY OF HARVARD, IL
AND
SURF AIR WIRELESS, LLC**

This Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the City of Harvard, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “City”) and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (including its operational affiliates, and lawful assignee, hereinafter, “Grantee”) this 14th day of February, 2024 (the “Effective Date”). City and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

STATEMENT OF INTENT

WHEREAS, the City intends, by adoption of this agreement, to bring about further development and operation of a city-wide Fiber Optic Network to provide Internet Access Service. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public in general. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a city-wide Fiber Optic Network.

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1.

“BIAS” means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service and any service that the FCC determines, from time to time, to be functionally equivalent, but not other service.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to only provide BIAS to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be

considered a Fiber Optic Network to the extent such facility is also used in the transmission of BIAS directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Fiber Optic Network in the Franchise Area. For the avoidance of doubt, this Agreement qualifies under the above.

“Franchise Area” means the legal boundaries of the City and shall also include any additions or subtractions thereto by annexation or other legal means.

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Fiber Optic Network as of the Effective Date of this Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Way” shall mean **the surface of, and the space above (generally our clients prefer to limit, where possible, to this stuff going below ground so that we are not dealing with a punch of poles being erected)** and below, any public street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The City hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Franchise Area and, for that purpose, to **erect**, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, **pedestals, amplifiers**, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation of, the Fiber Optic Network, and to provide such services over the Fiber Optic Network as may be lawfully allowed. Grantee shall not be required to pay franchise fees to the City under this Agreement. **Same comment as above re: the network being installed below ground being preferred.**

2.2. Permit and License Fees. Grantee shall not be required to pay any additional permit or license fees to the City under this Agreement, including any site specific permits for

the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. In the event Grantee installs facilities that shall not provide “Telecommunications” as defined under the TIMFA, Grantee shall so inform the City and be subject to the City’s permit and license fees for such installation. **We do not want to charge a license fee at all? Just confirming.**

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City’s Application for High-Speed Fiber Optic **(do we have such a thing?)** Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain in the locations mentioned in the Application. The permit must be obtained prior to any work commencing. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. If there are any conflicts between the Permit’s conditions and restrictions and this Agreement, this Agreement will control.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). Grantee shall apply for renewal for up to four (4) additional terms of five (5) years each thereafter (each a “Renewal Term”), for which the renewal will not be unreasonably withheld unless Grantee notifies City of its intent to not renew. Grantee must provide written notice of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways. If requested by the City, Grantee will relocate the facilities at Grantee’s sole cost to accommodate any public works project in the City.

2.7. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

2.8. Parking. Notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt

from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. **Do we want a time limitation for this exemption of parking restrictions so they aren't leaving vehicles at night, etc.**

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a fiber optic network.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. **Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions applicable in Ordinance 6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY and all other applicable ordinances of the Code of Ordinances of the City of Harvard, as may be amended from time to time.**

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aurally or underground. Grantee shall consult and cooperate in good faith with the City about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment. In the event there is a conflict with any other provision herein, this provision shall control.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Director of Public Works or his designee and the City Engineer prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way during the construction and installation of the network, the Grantee will be responsible for the costs and expenses to return the Public Way to the condition it was in prior to the commencement of the construction.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way or the rights of abutting and adjoining landowners, whether the construction and installation is aerial or underground.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City. Grantee accepts the Public Way in its current condition.

3.6. Grantee understands and agrees the City, public utilities and/or cable television companies and their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights and rights granted in the future by the City.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7 .

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number that the City can contact to request Grantee's coordination pursuant to this Section.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way as a result of the repair or maintenance being performed, Grantee will be responsible for the costs and expenses to return to Public Way to the condition it was in prior to the commencement of the maintenance or repairs.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where

the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation upon the benefitted subscriber. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement. City shall make good faith effort to comply with this section, but in the event this Section is breached, there shall be no damages recoverable.

Why take this on?

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the City.

4.6.1 Grantee shall provide BIAS to the following locations, at the highest speed for ongoing services:

805 W Brinks – Wastewater plant

900 W Brink – Public Works

607 Galvin Pkwy – Pool

807 E W McKinley – Lion’s Park

900 E McKinley – Library

1204 8th St – Northfield Park

250 W Park St – Mary’s Park

201 W Diggins – City Office

203 W Diggins - Police

4.6.2 Grantee will provide BIAS as described in in section 4.6.1 at no charge to the City.

SECTION 5: Oversight and Regulation by City.

5.1. Proprietary Information. The City agrees to treat any confidential or proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement.

6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. Within thirty (30) days after receiving a request for consent, the City shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within ninety (90) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume the obligations of the Grantee under this Agreement.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. **Insurance.** Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, at their request, provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. **Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident.** Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. A certificate establishing compliance with this Section shall be provided to the City prior to the start of any work and the insurance shall be primary and not contributory.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "**Indemnitees**") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "**Indemnification Events**"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "**timely**" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. **Limitation of Liability.** In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence),

strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice (or, if such default cannot be cured within such sixty (60) day period, if the Grantee does not commence and diligently continue actions to cure such default), the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving a second written notice to take effect within thirty (30) days after such initial cure notice period unless Grantee shall cure such default within said thirty (30) days. This second notice time period does not apply to the relocation of facilities.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4. Ordinance 6.18 pertaining to Public Properties - CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY. This agreement is subject to the City of Harvard ordinance that implements policies and procedures for constructing facilities on rights of way within the City's jurisdiction.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return

receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the City:

City of Harvard
201 Diggins Street
Harvard, IL 60033
ATTN: Mayor

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: CEO

With copy to:

ZRFM
50 N. Virginia
Crystal Lake, IL 60098
ATTN: Timothy J. Clifton

With copy to:

Rowland & Moore LLP
1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McHenry County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an

instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

CITY OF HARVARD,
an Illinois municipal corporation

SURF AIR WIRELESS, LLC,
a Delaware limited liability company

By _____
Mayor

By _____
Its _____

ATTEST:

City Clerk

**RIGHT OF WAY USE AGREEMENT
BY AND BETWEEN
THE
CITY OF HARVARD, IL
AND
SURF AIR WIRELESS, LLC**

This Right of Way Use Agreement (hereinafter, the “Agreement”) is made between the City of Harvard, an Illinois municipal corporation (including the lawful successor, transferee, designee, or assignee thereof, hereinafter, the “City”) and Surf Air Wireless, LLC, a Delaware limited liability company d/b/a Surf Internet (including its operational affiliates, and lawful assignee, hereinafter, “Grantee”) this 14th day of February, 2024 (the “Effective Date”). City and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

STATEMENT OF INTENT

WHEREAS, the City intends, by adoption of this agreement, to bring about further development and operation of a city-wide Fiber Optic Network to provide Internet Access Service. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public in general. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a city-wide Fiber Optic Network.

WHEREAS, the Parties desire to enter into this Agreement to provide for such rights and obligations, all upon the terms and conditions as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

SECTION 1: Definition of Terms.

For purposes of this Agreement, all capitalized terms, phrases, words, and abbreviations used herein shall have the meanings as are ascribed to them in this Section 1.

“BIAS” means broadband internet access service, which is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service and any service that the FCC determines, from time to time, to be functionally equivalent, but not other service.

“FCC” means the Federal Communications Commission of the United States of America.

“Fiber Optic Network” means Grantee’s facilities and equipment that comprise the network, consisting of a set of signal generation, reception and control equipment and fiber routes that are collectively designed to only provide BIAS to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves Subscribers without using any Public Ways, (ii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, as amended, except that such a facility shall be

considered a Fiber Optic Network to the extent such facility is also used in the transmission of BIAS directly to Subscribers; or (iii) any facilities of any electric utility used solely for operating its electric utility systems.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Fiber Optic Network in the Franchise Area. For the avoidance of doubt, this Agreement qualifies under the above.

“Franchise Area” means the legal boundaries of the City and shall also include any additions or subtractions thereto by annexation or other legal means.

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Fiber Optic Network as of the Effective Date of this Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Way” shall mean **the surface of, and the space above (generally our clients prefer to limit, where possible, to this stuff going below ground so that we are not dealing with a punch of poles being erected)** and below, any public street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City along such surface or space.

“Subscriber” means a Person who lawfully receives with the Grantee’s express permission, and pays Grantee for, the provision of BIAS over the Fiber Optic Network.

SECTION 2: Grant of Authority.

2.1. Grant. The City hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Fiber Optic Network in the Public Ways within the Franchise Area and, for that purpose, to **erect**, install, construct, micro-trench, repair, replace, reconstruct, maintain, or retain in any Public Way such wires, lines, cables, conductors, ducts, conduits, vaults, manholes, **pedestals, amplifiers**, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to, or useful in the operation of, the Fiber Optic Network, and to provide such services over the Fiber Optic Network as may be lawfully allowed. Grantee shall not be required to pay franchise fees to the City under this Agreement. **Same comment as above re: the network being installed below ground being preferred.**

2.2. Permit and License Fees. Grantee shall not be required to pay any additional permit or license fees to the City under this Agreement, including any site specific permits for

the installation of facilities that shall be used for the Sale of Telecommunications at Retail, as defined under the Telecommunications Municipal Infrastructure Maintenance Fee Act (“TIMFA”) (35 ILCS 635/10), so long as (i) Grantee maintains its status as a Telecommunications Retailer under TIMFA and (ii) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5) to the State of Illinois. In the event Grantee installs facilities that shall not provide “Telecommunications” as defined under the TIMFA, Grantee shall so inform the City and be subject to the City’s permit and license fees for such installation. **We do not want to charge a license fee at all? Just confirming.**

2.3. Application and Permit. That as part of this Grant of Authority, Grantee and its contractors and/or installers must complete the City’s Application for High-Speed Fiber Optic **(do we have such a thing?)** Cable Utility Installations and receive approval of a permit to locate, construct, operate, and maintain in the locations mentioned in the Application. The permit must be obtained prior to any work commencing. Upon issuance of the Permit, Grantee agrees to abide by all the conditions and restrictions listed on the Permit and Grantee will ensure any and all contractors and/or installers abide by the conditions and restrictions of the permit. If there are any conflicts between the Permit’s conditions and restrictions and this Agreement, this Agreement will control.

2.4. Term and Renewal. The initial term of this Agreement shall be for a period of ten (10) years from the Effective Date, unless earlier terminated in accordance with the terms herein and/or applicable law (the “Initial Term”). Grantee shall apply for renewal for up to four (4) additional terms of five (5) years each thereafter (each a “Renewal Term”), for which the renewal will not be unreasonably withheld unless Grantee notifies City of its intent to not renew. Grantee must provide written notice of its intent not to renew at least one hundred and twenty (120) days prior to the end of the Initial Term or the then current Renewal Term.

2.5. Police Powers. Nothing in this Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power. City’s obligations to police the use of the Public Way shall be limited solely to those areas located within the territorial limits of the City.

2.6. Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Public Ways. If requested by the City, Grantee will relocate the facilities at Grantee’s sole cost to accommodate any public works project in the City.

2.7. Competitive Equity. In the event an application for a new BIAS Franchise or other similar request is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application or similar request.

2.8. Parking. Notwithstanding anything to the contrary herein, and provided that appropriate vehicle safety markings have been deployed, Grantee’s vehicles shall be exempt

from parking restrictions of the City while used in the course of installation, repair, and maintenance work on the Fiber Optic Network. **Do we want a time limitation for this exemption of parking restrictions so they aren't leaving vehicles at night, etc.**

2.9. Compliance. Grantee agrees to abide by all federal, state, and local laws, rules, and regulations applicable to BIAS providers and to the construction, installation, operation, maintenance, repair, and removal of a fiber optic network.

SECTION 3: Construction and Maintenance of the Fiber Optic Network.

3.1. Public Way Regulation. **Except as may be otherwise provided in this Agreement, Grantee shall comply with all provisions applicable in Ordinance 6.18 CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY and all other applicable ordinances of the Code of Ordinances of the City of Harvard, as may be amended from time to time.**

3.2. Aerial and Underground Construction. At the time of Fiber Optic Network construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Fiber Optic Networks' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's fiber and other equipment without technical degradation of the Fiber Optic Network's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Grantee shall consult and cooperate in good faith with the City about whether to locate newly deployed transmission or distribution facilities underground prior to their deployment. In the event there is a conflict with any other provision herein, this provision shall control.

3.3. Construction. All plans and specifications for construction and installation of the Fiber Optic Network shall be submitted and approved by the Director of Public Works or his designee and the City Engineer prior to the commencement of any construction or installation. Grantee understands and agrees all work done hereunder will be performed in a good and workman-like manner and all of the cost and expenses of the installation and construction will be paid for by Grantee. If any damage or harm is done to the Public Way during the construction and installation of the network, the Grantee will be responsible for the costs and expenses to return the Public Way to the condition it was in prior to the commencement of the construction.

3.4. Interference. The Fiber Optic Network will be constructed, installed, maintained, and removed by Grantee as not to interfere with the City's rights to the Public Way, the City's use of the Public Way, the City's public utilities in the Public Way or the rights of abutting and adjoining landowners, whether the construction and installation is aerial or underground.

3.5. No Representations. Grantee understands no representations as to the condition and repair of the Public Way have been made by the City. Grantee accepts the Public Way in its current condition.

3.6. Grantee understands and agrees the City, public utilities and/or cable television companies and their successors and assigns, may also have certain rights in, over, under, upon, or across the Public Way and this Agreement is subject to any previously granted rights and rights granted in the future by the City.

3.7. Relocation. Grantee acknowledges that the City may require, from time to time, that Grantee's facilities placed in the Public Way pursuant to this Agreement be relocated if deemed reasonably necessary for the public health, safety and welfare by the City, in its sole discretion, for any public projects or improvement.

3.7.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall, and shall be provided an opportunity to, participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for such relocation to the same extent as such funds are made available to other users of the Public Way, if any.

3.7.2. Upon receipt of such notification by City to Grantee that the facilities will need to be relocated, the Parties will, within thirty (30) days, mutually agree upon the length of time it will take for Grantee to accommodate such request, and upon and in accordance with the terms of such agreement, Grantee shall proceed with such relocation. City agrees that it shall use reasonable efforts to assist Grantee with any relocation required under this Section 3.7 .

3.8. Non-Interference. The City shall not physically interfere with or cause harmful interference to the Fiber Optics Network installed by Grantee pursuant to this Agreement. The Parties shall coordinate with each other on any maintenance of the Public Way and the Fiber Optic Network so as not to obstruct or impede each other's performance of such maintenance. Grantee shall provide the City with a telephone number that the City can contact to request Grantee's coordination pursuant to this Section.

3.9. Maintenance. Grantee will be solely responsible for the cost and expenses of any and all repairs or maintenance to the Fiber Optic Network. All maintenance and repairs must be done in a good and workman-like manner. If during the repairs or maintenance any harm or damage is done to the Public Way as a result of the repair or maintenance being performed, Grantee will be responsible for the costs and expenses to return to Public Way to the condition it was in prior to the commencement of the maintenance or repairs.

SECTION 4: Service Obligations.

4.1. Initial Service Obligations. Grantee shall design the Fiber Optic Network to provide BIAS to Subscribers upon their request throughout the Initial Franchise Service Area. The Grantee shall continue to make BIAS available in the Initial Franchise Service Area throughout the term of this Agreement, and Grantee shall extend its Fiber Optic Network and provide service consistent with the provisions of this Agreement.

4.2. General Service Obligation. The Grantee shall make BIAS available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where

the minimum density is at least fifty (50) dwelling units per linear mile of the Fiber Optic Network as measured from the Fiber Optic System's closest commercially reasonable and technically feasible connection point ("Access Point"). Subject to this density requirement, Grantee shall offer BIAS to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the nearest Access Point along the Fiber Optic Network (hereinafter, a "Standard Installation").

4.2.1. Long Drops. The Grantee may elect to provide BIAS to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation upon the benefitted subscriber. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable industry technical standards mutually agreed by the Parties from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City.

4.4. Annexations and New/Planned Developments. In cases of annexation to the Franchise Area, the City shall provide the Grantee written notice of such annexation meeting the density standards of Section 4.2. In cases of new construction, planned developments or property development where undergrounding or extension of the Fiber Optic Network is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Agreement. City shall make good faith effort to comply with this section, but in the event this Section is breached, there shall be no damages recoverable.

Why take this on?

4.5. Subscriber Service Obligations. The City and Grantee acknowledge that Section 8.1(a) of the FCC's rules, 47 C.F.R. § 8.1(a), requires BIAS providers to publicly disclose accurate information to their Subscribers regarding the providers' network management practices, performance characteristics, and commercial terms of its BIAS. Grantee shall comply with this disclosure obligation and all other consumer disclosure and information protection requirements under applicable law.

4.6 Services to the City.

4.6.1 Grantee shall provide BIAS to the following locations, at the highest speed for ongoing services:

805 W Brinks – Wastewater plant

900 W Brink – Public Works

607 Galvin Pkwy – Pool

807 E W McKinley – Lion’s Park

900 E McKinley – Library

1204 8th St – Northfield Park

250 W Park St – Mary’s Park

201 W Diggins – City Office

203 W Diggins - Police

4.6.2 Grantee will provide BIAS as described in in section 4.6.1 at no charge to the City.

SECTION 5: Oversight and Regulation by City.

5.1. Proprietary Information. The City agrees to treat any confidential or proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Fiber Optic Network design, Subscriber lists, marketing plans, financial information, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Assignment of Agreement.

6.1. The Grantee may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2. The Grantee, and any proposed assignee for which City consent is required under this Section 6, shall submit a written application to the City containing or accompanied by such information as is reasonably required by the City. Within thirty (30) days after receiving a request for consent, the City shall notify the Grantee in writing of any additional information, if any, it requires to determine the legal, financial and technical qualifications of the assignee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within ninety (90) days after receiving such Grantee request, consent shall be deemed granted. No consent shall be given unless the assignee agrees in writing to assume the obligations of the Grantee under this Agreement.

SECTION 7: Insurance, Indemnity, and Limitation of Liability

7.1. **Insurance.** Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, at their request, provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. **Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident.** Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Agreement. A certificate establishing compliance with this Section shall be provided to the City prior to the start of any work and the insurance shall be primary and not contributory.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "**Indemnitees**") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "**Indemnification Events**"), arising in the course of the Grantee constructing, operating or maintaining its Fiber Optic Network within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events, which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "**timely**" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City. The indemnification provided for herein shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from gross negligence or willful misconduct or any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

7.3. **Limitation of Liability.** In connection with the subject matter of this Agreement, neither Party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence),

strict liability, or otherwise. This limitation shall survive the expiration or earlier termination of this Agreement.

SECTION 8: Breach of Agreement; Default.

8.1. Notice of Violation or Default. Upon a failure by Grantee to comply with any material term of this Agreement, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default and demand that Grantee promptly remedy or cure such default.

8.2. Right to Cure; Termination. If such default is not cured within sixty (60) days after the receipt of such notice (or, if such default cannot be cured within such sixty (60) day period, if the Grantee does not commence and diligently continue actions to cure such default), the City shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement, in addition to any other remedies available to it by law or in equity, to terminate this Agreement by giving a second written notice to take effect within thirty (30) days after such initial cure notice period unless Grantee shall cure such default within said thirty (30) days. This second notice time period does not apply to the relocation of facilities.

8.3. Specific Performance. Nothing in this Agreement shall preclude the Parties from seeking immediate equitable and/or injunctive relief from a court of proper jurisdiction with regard to any breach of this Agreement, including, but not limited to, specific performance, a temporary restraining order, or an injunction related to the purposes of this Agreement.

8.4. Ordinance 6.18 pertaining to Public Properties - CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS OF WAY. This agreement is subject to the City of Harvard ordinance that implements policies and procedures for constructing facilities on rights of way within the City's jurisdiction.

SECTION 9: Miscellaneous Provisions.

9.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snowstorm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Fiber Optic Network, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's fiber or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

9.2. Notice. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return

receipt requested, by overnight courier, or by delivering the same in person to such Party, addressed as follows:

To the City:

City of Harvard
201 Diggins Street
Harvard, IL 60033
ATTN: Mayor

To the Grantee:

Surf Air Wireless, LLC
P.O. Box 1401
La Porte, IN 46352
ATTN: CEO

With copy to:

ZRFM
50 N. Virginia
Crystal Lake, IL 60098
ATTN: Timothy J. Clifton

With copy to:

Rowland & Moore LLP
1603 Orrington Ave., Suite 600
Evanston, IL 60201
ATTN: Tom Rowland

9.3. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral.

9.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either Party may notify the other in writing that the Agreement has been materially altered by the change and of the election to begin negotiations to amend the Agreement in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the Parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

9.5. Governing Law. This Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

9.6. Venue. Except as to any matter within the jurisdiction of the Federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, McHenry County, Illinois. Any matter brought pursuant to the jurisdiction of the Federal court shall be brought in the United States District Court of the Northern District of Illinois – Western Division.

9.7. Modification. Except as otherwise specifically provided herein, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an

instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

9.8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

9.9. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under State or Federal law unless such waiver is expressly stated herein. No delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later. No waiver of any single breach or default shall be deemed a waiver of any other breach or default occurring before or after that waiver.

9.10. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

9.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Agreement in the name of the Grantee.

9.12. Counterparts. This Agreement may be executed in two or more original or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile transmission (or other form of electronic communication, such as .pdf) of a counterpart hereto shall constitute an original hereof.

(signatures of the Parties to appear on the following page)

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the Parties as set forth below, as of the Effective Date.

CITY OF HARVARD,
an Illinois municipal corporation

SURF AIR WIRELESS, LLC,
a Delaware limited liability company

By _____
Mayor

By _____
Its _____

ATTEST:

City Clerk