

## **DARK FIBER LEASE AND NETWORK OPERATION AGREEMENT**

**THIS DARK FIBER LEASE AND NETWORK OPERATION AGREEMENT** (“Agreement”) is entered into on February 9, 2015 by and between The Mayor and Common Council of the City of Westminster, Maryland, a municipal corporation of the State of Maryland located in Carroll County, Maryland, with its principal offices at 56 West Main St. Westminster, MD 21157 (hereinafter called “City” or “Lessor”) and Ting Fiber Inc., a division of Tucows, Inc., a Delaware corporation located at 96 Mowat Avenue, Toronto, ON M6K 3M1 (hereinafter called “Ting” or “Lessee”).

### **RECITALS**

1. To provide better municipal services to City residents and businesses, and to facilitate economic benefit throughout the City and Carroll County, the City of Westminster desires to deploy a new fiber to the premise (FTTP) network throughout the Westminster area, known as the Westminster Fiber Network (WFN).
2. The City desires to structure the WFN in a manner that effectively enables the provision of high capacity broadband and other services and capabilities in a competitive, open environment.
3. The City has conducted a public procurement process to identify and enter into an agreement with a qualified private-sector entity to activate and operate the WFN on a nondiscriminatory basis and to offer gigabit broadband Internet access service and other services to City residents and businesses.
4. The City has identified and selected Ting as the best candidate to provide such services, and to that end the City has negotiated this Agreement with Ting.
5. To effect the purposes set forth above, the City desires to lease to Ting certain WFN-related assets, including dark fiber and access to associated outside plant equipment.
6. Ting desires to accept such lease, to activate and operate the WFN on a nondiscriminatory basis, and to provide advanced communication services and capabilities to City residents and businesses, as further set forth in, and subject to the provisions of, this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Lessor and Lessee agree as follows:

#### **1.0 Table of Exhibits Made Part of This Agreement**

- Exhibit A: Listed Assets
- Exhibit B: Lease Fee
- Exhibit C: Initial Phase
- Exhibit D: Performance Metrics
- Exhibit E: City Maintenance of Assets

## 2.0 Definitions

- 2.1 “Access Agreement” means the written agreement between an owner of Premises and the City pertaining to the connection of the Premises to the WFN, and granting a right of access and occupation to the City and/or Ting sufficient to enable the installation and maintenance of WFN and/or Ting facilities on the Premises.
- 2.2 “Agreement” means this Agreement, any and all Exhibits and Attachments thereto, and any Addenda or written amendments to which the Parties may agree from time to time.
- 2.3 “Assets” means the dark fiber strands and Outside Plant associated with the WFN and leased to Ting under this Agreement, as specified in Exhibit A.
- 2.4 “Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.
- 2.5 “Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind relating to a Party’s execution of its obligations under this Agreement, whether imposed by a governmental authority or a private entity.
- 2.6 “Customer Premises Equipment” (“CPE”) means terminal and associated equipment and inside wiring located at a Premises that is necessary for the receipt of Services, and which is provided and installed by Ting.
- 2.7 “Dark Fiber” means fiber optic cable strands without electronic and/or optronic equipment and which is not "lit" or activated.
- 2.8 “Effective Date” means the date upon which this Agreement has been executed by the Parties and is approved by the City, per the signature of the Mayor of the City of Westminster and a vote of approval of the Common Council of the City of Westminster.
- 2.9 “FTTP” means fiber to the premises.
- 2.10 “Initial Deployment Phase” (“IDP”) means the limited time period following the Effective Date (for the initial IDP) and the activation of the first customer connected to the WFN within a defined phase (for subsequent phases), during which Ting shall have the exclusive right to provide broadband Internet access service, and during which Ting shall arrange for the provision of Voice and Video Services.

- 2.11 “Maintenance” means work that must be performed upon or to the WFN, including Assets, to ensure the continuity of an acceptable signal transmitted through the fibers (in conformance with the manufacturer’s specifications), and capable of enabling Ting to meet the Performance Metrics, or to ensure the safety and reliability of the Assets.
- 2.12 “Network Operator” means Ting’s role in (i) configuring and activating a community fiber network utilizing the WFN, and (ii) providing data/ IP transport services to unrelated Service Providers on a nondiscriminatory basis, as further articulated in Section 7.1.2.
- 2.13 “Optical Network Terminal” / “ONT” means a device that performs interface functions, such as code conversion, protocol conversion, and buffering, required for communications to and from an optical fiber network.
- 2.14 “Outside Plant” means equipment and structure owned by the City that is used to house or support WFN fiber optic cable, to which Ting is granted a nonexclusive right to use under this Agreement.
- 2.15 “Premise” means a residence, commercial building, multi-dwelling unit (MDU), or buildable lot that can be feasibly and reasonably served by the WFN. In cases where a single structure may require multiple connections to serve separate customers within the structure, each connection to an Optical Network Terminal (ONT) will count as an individual Premise.
- 2.16 “Route” means the physical path traversed by the fiber strands that are specified as Assets in Exhibit A, as set forth in applicable maps and related documents that are made a part of this Agreement.
- 2.17 “Service” means any retail communications service offered and provided using the WFN and the Assets, whether by Ting or another Service Provider, including but not limited to broadband Internet access service, Voice Service, and Video Service.
- 2.18 “Service Provider” means a provider of retail Services, to which Ting provides data transport services using Assets.
- 2.19 “Subscriber” means a business or residential customer of retail Services provided by a Service Provider.
- 2.20 “Video Service” means a multichannel video programming delivery service, as such term is defined under federal law and interpreted by the Federal Communications Commission, or its substantial equivalent.
- 2.21 “Voice Service” means interconnected VoIP service, as such term is interpreted by the Federal Communications Commission, or its substantial equivalent.

2.22 “Westminster Fiber Network” / “WFN” means the fiber-to-the-premises network owned and installed by the City of Westminster.

### **3.0 Term and Termination**

#### **3.1 Term**

This Agreement, and the lease granted hereunder, shall continue for a term of ten (10) years from the Effective Date, (“Term”), unless terminated sooner under the provisions of this Agreement, in accordance with Section 11. Upon mutual written agreement no less than six (6) months prior to expiration, the Parties may renew this Agreement for two (2) consecutive ten (10) year extensions (each, a “Renewal Term”). If a written notice of intent to renew from Ting is received by the City no less than six (6) months prior to the expiration of the initial Term, the City shall agree to renew this Agreement if City revenues under this Agreement for the immediately preceding fiscal quarter exceed an amount equal to the City’s debt service for the WFN plus ten percent (10%).

#### **3.2 Termination**

**3.2.1 Material Breach.** Either Party may terminate this Agreement in the event of a material breach of this Agreement by the other Party, consistent with and subject to the procedures and remedies for breach set forth in Section 11.

**3.2.2 Termination for Convenience.** In the event the City determines in its sole discretion that this Agreement or the operation of the WFN is causing significant economic hardship or commercial impracticability relating to the subject matter of this Agreement, the City may terminate this Agreement at any time upon six (6) months’ written notice. If the City terminates under this Section 3.2.2, within 180 days the City must either (a) purchase equipment installed on the WFN that is owned by Ting, at fair market value, or (b) permit Ting to remove the installed equipment.

**3.2.3 Effect of Termination.** In the event of termination of this Agreement, Ting shall immediately relinquish and quit all claims of right to use the Assets as set forth in this Agreement. All other rights and obligations of the Parties set forth under this Agreement shall cease immediately, except for rights and obligations specifically designated to survive termination, as set forth herein.

### **4.0 Agreement Contingency**

In the event this Agreement is not made effective by February 28<sup>th</sup>, 2015, including execution by the Parties and approval by the City (i.e., the Effective Date, as defined in Section 2.0), Ting may elect to cancel this Agreement and the Lease without penalty or liability to the City.

### **5.0 City’s Obligations**

## **5.1 FTTP Network Construction and Maintenance**

The City will arrange financing, develop engineering plans, contract for construction, implement, and maintain the physical plant of a FTTP network passing every feasible Premise in the area of the City of Westminster (the “Westminster Fiber Network” or “WFN”), of which the Assets leased to Ting under this Agreement shall be a part. The City will connect to the WFN every Premise that executes an Access Agreement with the City. The City shall be responsible for acquiring and maintaining throughout the Term, at its expense, all applicable Authorizations relating to the construction and Maintenance of the Assets.

## **5.2 Lease of Assets**

Upon the Effective Date, the City grants to Ting for the Term the exclusive right to use the Assets specified in Exhibit A, as it may be amended from time to time, for the purposes set forth in this Agreement (“Lease”).

### **5.2.1 Title**

Legal title in the Assets and the WFN is, and shall continue to be, held by the City, and nothing in this Agreement shall convey any legal title to real or personal property, nor shall it create any security interest for Ting’s or any other person’s benefit.

### **5.2.2 Sale or Abandonment of Assets**

In the event the City sells, assigns, otherwise transfers title in, or abandons the Assets prior to the expiration of the Term, Ting’s right to use the Assets during the Term shall not be affected, and any such sale shall explicitly be made subject to and conditioned upon the continuation of the Lease granted by this Agreement (including associated payment obligations of Ting).

## **6.0 WFN Construction**

### **6.1 Determination of Scope**

The WFN shall be constructed in phases. The scope and timing of each phase of WFN construction shall be determined by the City, in cooperation with Ting. The Parties shall work together to develop criteria for identifying areas that may have strongest demand, highest revenue potential, highest density, greatest potential for expeditious buildout, or other indicia of likely success. The City shall endeavor to build out first to areas that rank highest on these or other criteria to which the parties may agree.

### **6.2 Initial Phase**

The initial phase is described in Exhibit C.

### **6.3 Subsequent Phases**

The Parties will share market data and financial performance metrics on a regular basis, no less frequently than quarterly, and shall coordinate marketing efforts according to the scope and pace of subsequent phases of construction of the WFN. Ting shall engage in initial research and other activities with regard to marketing and providing service in such areas, including contacting and aggregating likely business and residential customers. Ting will provide the City candidate lists of locations for which fiber connections to Premises are desirable, consistent with the City's objectives as set forth in the Recitals to this Agreement. The City will arrange for construction of those fiber connections to Premises that the City and Ting find mutually agreeable based upon considerations including, but not limited to: (1) demand for service, (2) cost of construction, (3) density of Premises, (3) feasibility of construction, and (4) economic development. In all circumstances, the City will have final discretion as to construction of fiber, including whether to construct and the timeframe for construction.

The City will make best efforts to commence construction of phase 2 and subsequent phases as soon as possible following construction of the initial/previous phase of construction. In general, and subject to adjustment in the sole discretion of the City, the threshold for initiating the next phase of financing and construction will be when the overall subscriber take rate of the project – including all phases and areas constructed to date – exceeds 20 percent.

#### **6.4 Construction Responsibility Demarcation**

Upon the execution of an Access Agreement with a Premises owner, the City's responsibility for construction at business locations extends to the telecommunications room or similar demarcation point within the business Premises, terminating on a connection panel affixed to an interior wall. At residential Premises, the City's construction responsibility extends to the outside of the home's closest corner or side location the shortest distance from the public road. As described more fully in Section 7.1.3, Ting shall be responsible for all cabling and procurement, installation, and configuration of equipment on the Premises side of such point. Ting shall be responsible for connecting and/or splicing of WFN fiber to Premises fiber / cabling.

#### **6.5 Maintenance and Repair**

The City shall be responsible for physical Maintenance relating to the WFN, including Assets, as described in Exhibit E.

#### **6.6 Access to WFN by Ting**

The City shall provide Ting with access to WFN plant and enclosure facilities for installation, maintenance and troubleshooting of Ting services and equipment, and for splicing purposes. The City shall allow Ting personnel or its agents reasonable direct ingress and egress to City property within which Assets have been placed, including fiber plant and enclosure facilities, and shall permit Ting personnel or its agents to access such property at such times as may be required to install, test and repair Ting's equipment. Ting personnel and its agents shall, while on such property, comply with all industry standard rules, regulations, and procedures, and other

requirements communicated to Ting by the City including security requirements and, where required by government regulations as disclosed by the City, receipt of satisfactory governmental clearances.

## **7.0 Ting Operational and Service Obligations**

Throughout the Term of this Agreement, and as described more specifically in this Section, Ting will operate in two roles:

- 1) as Network Operator of WFN, using Assets to:
  - (i) configure and activate a community fiber network, and
  - (ii) provide data/ IP transport services to unrelated Service Providers on a nondiscriminatory basis; and
- 2) as a Service Provider, providing retail Services to residences and businesses connected to the WFN.

## **7.1 Network Operator**

### **7.1.1 Generally**

As Network Operator of the WFN, and as may be more fully described elsewhere in this Agreement, Ting shall, at its expense:

- A. Procure, install, configure, operate, monitor, maintain, and upgrade, excluding the City's maintenance and repair obligations as outlined in Exhibit E, as needed all equipment necessary to activate or "light" the WFN and to operate an open access community broadband network; and procure, install, configure, operate, monitor, maintain, and upgrade as needed all Premises equipment necessary to provide data transport services, enabling delivery of Services to customers by unaffiliated Service Providers (subject to conditions relating to the Initial Deployment Phase ("IDP"), set forth in Section 8);
- B. Offer and provide data transport services to qualified Service Providers following the conclusion of any IDP;
- C. Maintain, repair and upgrade as needed all of Ting's equipment, including cabling to and between such equipment inside enclosures;
- D. For business and residential connections to the WFN, be responsible for and maintain cabling Ting installs to provide Service to Subscribers inside the Premises from the City connection panel inward;
- E. Execute any and all necessary splicing tasks between equipment and cabling owned by Ting, and the WFN;
- F. Provide technical support to Service Providers relating to data transport services provided by Ting;
- G. Acquire and maintain, at its expense, all applicable Authorizations relating to the installation and use of Assets as set forth in this subsection.

### **7.1.2 Open Access / Nondiscrimination**

To facilitate the City's objectives as stated in the Recitals to this Agreement, following the conclusion of the Initial Deployment Phase (as set forth in Section 8, Ting shall offer and provide data transport services using the Assets, based upon a software platform operated by Ting, to any qualified unaffiliated Service Provider for the provision of retail Services. Ting shall negotiate with each such Service Provider on a good faith basis, and shall not discriminate among similarly situated Service Providers, or in favor of a Ting-affiliated Service Provider, for the purpose of effecting a competitive advantage of one Service Provider over another.

Ting shall not be required to execute substantively identical agreements with all Service Providers. Ting may negotiate agreements with Service Providers on an individual basis, with varying terms and conditions based upon bona fide distinctions among such Service Providers as to scale and volume, the nature of Services to be provided, and other similar factors.

Ting may, but shall not be required to, provide Service Providers access to unactivated fiber optic strands that are part of Assets.

### **7.1.3 Premises Construction, Installation, and Equipment**

As Network Operator, Ting shall procure, install, configure, monitor, maintain, and upgrade as needed any and all Customer Premises Equipment (such as cabling and an ONT) as necessary to connect the Premises to the WFN and deliver data transport services, enabling the provision of retail Services by Ting or an unaffiliated Service Provider. Ting may pass on such cost to the customer or to a Service Provider.

**7.1.3.1 Business locations.** Ting will be responsible for any and all wiring and construction necessary to connect units from the connection panel in the telecommunications room or demarcation point within the business premises.

**7.1.3.2 Residential locations.** Ting will be responsible for any and all wiring necessary to install an outdoor Optical Network Terminal (ONT) from the City's demarcation point through to other Customer Premises Equipment and will assume any cost as part of this process. (Ting may pass on such cost to the customer or to a Service Provider).

**7.1.3.3 Authorization.** Ting shall acquire from the Premises owner all necessary licenses, permits, permission to enter, occupy and perform work on Premises. Ting, and not the City, accepts all risks associated with such activity, including but not limited to the risks of unanticipated costs or delays.

**7.1.3.4 Ownership.** Any Customer Premises Equipment used to receive, route, or process a Service (such as a set-top box or in-home router) leased or sold by Ting remains the property of



Ting or the purchasing customer, as applicable under Ting's contract with Customer.

#### **7.1.4 Network Equipment**

Ting shall procure, install, configure, operate, monitor, maintain, and upgrade as needed all equipment necessary to activate or "light" the WFN and to operate an open access community broadband network, subject to the City's maintenance and repair obligations as outlined in Exhibit E. All such equipment shall remain the property of Ting, provided, however, that Ting shall not remove or deactivate any such equipment for a period of 180 days following termination of this Agreement for any reason, and during such period, the City shall have the option to purchase such equipment from Ting at fair market value, subject to Section 3.2.2.

#### **7.1.5 Authorizations**

In addition to the Authorizations referred to in Section 7.1.3.3, Ting shall also obtain and maintain at its expense throughout the Term, and make copies available to the City upon request, all necessary Authorizations relating to its activities under this Agreement.

### **7.2 FTTP Service Provider**

#### **7.2.1 Retail Gigabit Broadband Internet Access Service**

Ting shall offer and provide residential and business broadband Internet access Service (BIAS) via the WFN, including a speed tier of up to 1 gigabit per second ("Gbps"), to all businesses and residences passed by the WFN.

#### **7.2.2 Voice and Video Services**

Ting shall make Voice and Video Services available, either through its own efforts or those of its affiliates, unrelated Service Providers, or partnerships. Ting shall cause Voice and Video Services to be made available prior to termination of any IDP, and a failure to do so shall be a material breach of this Agreement.

#### **7.2.3 Service Authorizations**

Ting shall obtain and maintain throughout the Term at its expense all necessary Authorizations relating to the provision of BIAS, Voice, Video and any other Services offered by Ting, and shall comply with all applicable laws and regulations relating to the provision of such Services.

#### **7.2.4 Relation to Other Agreements**

Any agreements or Authorizations necessary for provision of additional Services, in particular including any Video Service franchise agreement, shall be executed separately from and shall in no way encumber this Lease Agreement.

### **7.3 Structural Separation**

Ting will enact appropriate business practices and processes to create structural and operational separation between the Network Operator and Service Provider functions. At a minimum:

- A. Ting shall establish separate operating entities for Network Operator and Service Provider functions, respectively;
- B. As Network Operator, Ting shall provide data transport services on an open access, nondiscriminatory basis, as set forth in Section 7.1.2 of this Agreement;
- C. As Network Operator, Ting shall not share confidential or proprietary Service Provider information with any other Service Provider, including a separate Ting Service Provider business unit.

### **7.4 Performance Metrics and Standards**

Ting shall meet the performance metrics and standards set forth in Exhibit D.

### **7.5 Ting Service Fees**

Fees charged by Ting for data transport and retail Services shall be determined by Ting according to industry standard practices. Fees for data transport services may be individually negotiated by Ting.

### **7.6 Customer Service Obligations**

#### **7.6.1 Subscriber Relationship**

As a Service Provider, Ting, or a contracted service provider, and not the City, shall be responsible for all aspects of the customer relationship involving Subscribers to retail Services provided by Ting or a contracted service provider, as set forth in this subsection.

**7.6.1.1 Subscriber Customer Support.** Ting, or a contracted service provider and not the City, shall be responsible for receiving, servicing, and resolving directly all requests for support from Ting's or a contracted service provider's Subscribers, including but not limited to technical, billing, and sales and marketing inquiries. Under no circumstances shall Ting or a contracted service provider direct any Subscriber to contact the City for customer support.

**7.6.1.2 Billing/Collections.** Ting or a contracted service provider shall be responsible for all invoicing, billing and collection activities relating to its Subscribers.

**7.6.1.3 Sales/Marketing.** Except as otherwise provided in this Agreement, Ting or a contracted service provider shall be responsible for any and all sales and marketing activities relating to Ting or a contracted service provider 's Services, including but not limited to pricing of services, description of services, and promotional activities.

**7.6.1.4 Bad Debts.** Ting or a contracted service provider shall be responsible for any and all bad debts associated with its Subscribers.

## **7.6.2 Service Provider Relationship**

As Network Operator, Ting, and not the City, shall be responsible for all aspects of the customer relationship involving the provision of services by Ting to Service Providers, as set forth in this subsection.

**7.6.2.1 Service Provider Support.** Ting, and not the City, shall be responsible for receiving, servicing, and resolving directly all requests for support from Service Providers, including but not limited to technical, billing and sales and marketing inquiries. Under no circumstances shall Ting direct any Service Provider to contact the City for customer support, unless Ting has first notified and obtained the City's consent for such contact.

**7.6.2.2 Billing / Collections.** Ting shall be responsible for all invoicing, billing and collection activities relating to Service Providers.

**7.6.2.3 Sales / Marketing.** Except as otherwise provided in this Agreement, Ting shall be responsible for any and all sales and marketing activities relating to Ting services for Service Providers, including but not limited to pricing of services, description of services, and promotional activities.

**7.6.2.4 Bad Debts.** Ting shall be responsible for any and all bad debts associated with Service Providers.

## **8.0 Initial Deployment Phase (IDP)**

Each buildout phase of construction shall have an Initial Deployment Phase ("IDP") wherein Ting will have absolute discretion as to the timing and terms of additional Service Providers operating on the Westminster Fiber Network, and Ting will operate as the exclusive provider

of retail broadband Internet access service. Following the conclusion of the IDP, Ting will use commercially reasonable efforts to begin the addition of other Service Providers, offering data transport service using leased Assets and based upon its software platform, as described in this Agreement.

## 8.1 **Duration.**

- 8.1.1 **Initial Phase.** The initial IDP shall apply to the initial phase of construction only (as described in Exhibit C), beginning upon the Effective Date and ending upon mutual agreement between Ting and the City, but no longer than two (2) years after the first customer in the first phase of construction is “lit,” *i.e.*, activated and added to the network.
- 8.1.2 **Subsequent Phases.** The IDP for each subsequent phase shall begin upon commencement of construction within that phase (as defined by Ting and the City, and publicized as set forth in Section 10.1, “Pre-Sales Status Website”) and end upon: a) mutual agreement between Ting and the City, but no longer than two (2) years after the first “lit” customer is added; or b) once subscriber penetration (number of activated drops compared to number of premises passed in phase area) reaches 20 percent or c) Ting reaches 3,000 total retail subscribers to its Services, at which point any existing and future IDPs will be discontinued.
- 8.1.3 **Voice and Video Service Contingency.** Ting shall cause voice and video services to be made available in a particular phase area no later than the termination date of the IDP for that phase.
- 8.1.4 **Modification.** The duration of any IDP may be reassessed and extended or shortened by mutual agreement in writing of both the City and Ting.

## 9.0 **Lease Fees**

As consideration for the Lease described in this Agreement, Ting shall pay the City compensation as described in this Section and as specifically set forth in Exhibit B. Lease fees shall be invoiced by the City on a quarterly basis, and payment shall be due within thirty (30) days of Ting’s receipt of such invoice. The Lease fee will be comprised of three elements:

A. Monthly fee for each Premise passed as defined in Exhibit B by WFN fiber optic cable placed in conduit by the City in a street passing the Premise (“Premise Fee”);

B. Monthly fee for each activated Subscriber connected to the WFN (“Subscriber Fee”); and

C. Debt service guarantee, as described in the following Subsection.

### **9.1 Subscriber Fee Increases Based Upon ARPU Benchmark**

As described in Exhibit B, the Subscriber Fee shall be subject to adjustment based on incremental increases of Average Revenue Per User (ARPU) as compared to an ARPU benchmark.

### **9.2 Debt Service Guarantee**

In the event of a shortfall between the City’s revenue received from Ting under this Agreement (City Fiber Revenue) and the City’s debt service requirements relating to its construction of the WFN (City Debt Service), a debt service guarantee shall be triggered according to the following:

1. The City shall be responsible for the first \$50,000 of any difference between City Fiber Revenue in that quarter and total City Debt Service in that quarter.
2. If the difference between City Fiber Revenue and City Debt Service in any quarter is greater than \$50,000, Ting shall be responsible for any debt service deficit amount greater than \$50,000, up to \$150,000.
3. The City shall be responsible for all amounts of City Debt Service greater than \$150,000 in any quarter.
4. Any amounts paid by Ting for debt service deficit guarantee under this Subsection shall result in a credit against subsequent payments owing by Ting during any subsequent periods when City Fiber Revenue in that period exceeds City Debt Service, to the extent that the credit does not reduce City Fiber Revenue below City Debt Service in that time period.
5. In the event this Lease Agreement is terminated by the City for convenience pursuant to Section 3.2.2 prior to the end of the Term, the City shall reimburse Ting within 60 days for any City Debt Service amount paid by Ting which has not already been credited.

### **9.3 Video Franchise Fee Offset**

Any fees Ting is required to pay to the City under the terms of a video franchise agreement involving the City shall offset amounts due the City under this Agreement. Ting shall itemize on a dollar-for-dollar basis any such offset in quarterly Lease fee statements provided to the City. A failure by Ting to claim any such offset within the next four (4) quarterly statements following the accrual of the

video franchise fee obligation related to the offset shall amount to a waiver of such offset. The City shall have no responsibility for calculating or including such offset unless Ting specifically claims an offset in writing.

#### **9.4 Quarterly Report**

On a quarterly basis, Ting shall provide to City a written report including at least the following information:

- (1) a list of Subscribers activated by Ting or a contracted Service Provider during the previous quarter, by month, including physical address;
- (2) a list of Subscribers deactivated by Ting or a contracted Service Provider during the previous quarter, by month, including physical address;
- (3) a net Subscriber count, as of the last day of each month in the reported quarter, and cumulatively, as of the last day of the reported quarter;
- (4) the locations of passed premises, by month;
- (5) the number of passed premises, by month;
- (6) the net number of passed premises, as of the last day of the reported quarter; and
- (7) any other information that the City may reasonably require.

#### **10.0 Community Engagement**

In furtherance of the mission of expanding fiber optic deployment and use in Westminster, the Parties agree to undertake certain activities designed to engage and educate the public as to construction timelines and phases, and the benefits and capabilities of the WFN. Such activities shall include, but shall not be limited to, the following:

##### **10.1 Pre-Sales Status Website**

To provide residents and businesses in Westminster information regarding the status of pre-sales construction thresholds for particular neighborhoods or phases, Ting will promptly make available complete and up-to-date information concerning pre-sales levels, by neighborhood and/or phase, as may be appropriate, on a public website.

##### **10.2 Education**

In furtherance of its mission to expand fiber optic deployment and use in Westminster, the City will work with Ting to educate residents and businesses about construction phases and pre-sale threshold for construction.

##### **10.3 “Hackerspace” / Broadband Incubator**

Both Parties agree to support financially and operationally the creation and operation of a “hackerspace” and/or broadband incubator venue, in conjunction with other

community partners to be recruited by both Parties. The City will identify and assist in securing space for the initiative, and will coordinate with community partners to provide and manage equipment (which may include, but shall not be limited to, 3D printers, Raspberry PI computers and Arduinos). Ting shall source and fund the purchase of all appropriate equipment, as jointly identified by the City and Ting.

## **11.0 Default and Remedies**

### **11.1 Default**

A Default under this Agreement shall occur if (a) a Party materially breaches this Agreement, (b) such breach is not excused by any provision of this Agreement, and (c) such breach continues un-remedied for a period of sixty (60) days following receipt of written notice from the non-breaching Party. If the breach by its nature cannot be cured within sixty (60) days and the breaching Party within that time has commenced its cure, there shall be no Default as long as the Party diligently continues such cure to completion.

### **11.2 Remedies**

Upon the occurrence of a Default, the non-breaching Party shall have the right, subject to the express limitations contained in this Agreement, to terminate this Agreement, including the Lease for which it provides. Nothing in this Agreement shall preclude either Party from also pursuing other available remedies, including damages, injunctive relief, and costs (including reasonable attorney's fees), subject to the provisions of sections 11.2.1 and 18.1. The following Section 11.2.1 shall not be construed as prohibiting Ting from obtaining injunctive relief.

#### **11.2.1 Equitable Relief**

In the event of a breach or threatened breach by Ting of any provision of the Agreement, Ting recognizes the substantial and immediate harm that a breach or threatened breach will impose upon the City, and further recognizes that in such event monetary damages will be inadequate to fully protect the City. Accordingly, in the event of a breach or threatened breach of this Agreement, Ting consents to the City's entitlement to such ex parte, preliminary, interlocutory, temporary or permanent injunctive, or any other equitable relief, protecting and enforcing the City's rights hereunder and preventing Ting from further breaching any of its obligations set forth herein. Ting expressly waives any requirement based on a state, rule of procedure, or other source, that the City post a bond as a condition of obtaining any of the above-described remedies. Nothing herein shall be construed as prohibiting the City from pursuing any other remedies available to the City at law or in equity for such breach or threatened breach, including the recovery of damages from Ting, subject to Section 18.1.

### **11.3 Arbitration and Mediation**

Upon the mutual consent of the Parties, any dispute concerning performance under this Agreement may be submitted for resolution via binding arbitration conducted

under the applicable rules and processes of the American Arbitration Association. Upon the mutual consent of the Parties, any dispute concerning performance under this Agreement may be submitted for resolution through nonbinding mediation, in a forum and according to procedures jointly agreed by the Parties.

## **12.0 Performance Bond or Letter of Credit**

Within 30 days following the Effective Date, Ting shall cause the issuance of, and make available for redemption by the City, as described in this subsection, a performance bond or irrevocable letter of credit, to the satisfaction of the City, in the amount of two million dollars (\$2,000,000), which shall remain effective and updated throughout the Term. Ting shall immediately provide a copy of all related documents, and any updates to such documents made during the Term, to the City. The City shall have the right to redeem and collect on all or a portion of the bond or letter of credit in the event of a Default by Ting, upon presentation to the issuing bank or surety of a demand for payment accompanied by a certificate of default. The bond or letter of credit may be drawn upon to the extent necessary to effect a cure of Ting's breach and/or to mitigate or offset damages caused thereby.

## **13.0 Confidentiality**

### **13.1 Non-Disclosure of this Agreement.**

Neither Party may disclose the existence of or terms of this Agreement to the public until both Parties agree upon a time and manner for a formal publicity statement. All sharing of information concerning this Agreement shall be only with those individuals deemed necessary to carry out the terms of this Agreement, except as required for disclosures required by law, or to incorporate requirements of this agreement into its own agreements with Customers and/or Service Providers.

### **13.2 Confidential Information.**

If either Party provides or has provided confidential or proprietary information ("Confidential Information") designated as such to the other Party, the receiving Party shall hold such information in confidence and shall afford it the same care and protection that it affords to its own confidential and proprietary information (which in any case shall be not less than reasonable care) to avoid disclosure to or unauthorized use by any third party, except as otherwise provided below. Except as provided in the preceding subsection, this Agreement and its terms shall not be deemed the Confidential Information of both Parties. All Confidential Information, unless otherwise specified in writing, shall remain the property of the disclosing Party and shall be used by the receiving Party only for the intended purposes set forth in this Agreement. Except as otherwise required by law, after the receiving Party's need for Confidential Information has expired, or upon the reasonable request of the disclosing Party, or promptly following the termination or expiration of this Agreement, the receiving Party shall destroy or return to the disclosing Party all Confidential Information, including all copies of such information, and all notes, summaries, or other writings reflecting Confidential Information. The receiving Party shall not reproduce Confidential Information, except to the extent reasonably



necessary to perform under this Agreement, or as otherwise may be permitted in writing by the disclosing Party.

### **13.3 Exceptions**

The foregoing provisions of this section shall not apply to (i) any required disclosures to any government authority, (ii) disclosures required under the Freedom of Information Act and applicable state or local government open records laws, (iii) any Confidential Information or any provisions of this Agreement which becomes publicly available, other than through the Party claiming this exception, or is required to be disclosed by law, (iv) Confidential Information that is independently developed by the receiving Party without breach of any obligation of confidentiality; (v) Confidential Information that becomes available to the Party claiming this exception without restriction from an unrelated third party, or becomes relevant to the settlement of any dispute or enforcement or defense of either Party's rights under this Agreement, provided that appropriate protective measures shall be taken to preserve the confidentiality of such Confidential Information to the extent permissible in accordance with such settlement or enforcement process; (vi) disclosures of this Agreement to any proposed permitted assignee provided that each such proposed assignee agrees to be bound by confidentiality obligations no less stringent than those set forth herein; or (vii) disclosures by either Party of the general physical route of the WFN or Assets for marketing and sales-related purposes.

### **13.4 Survival**

The confidentiality provisions in this section shall survive expiration or termination of this Agreement.

## **14.0 Intellectual Property**

Nothing in this Agreement shall be construed as a grant of any right or license under any copyrights, inventions, patents, trade secrets or other intellectual property now or later owned or controlled by Ting or the City, and nothing in this Agreement shall be construed as granting any right, title or interest in the other Party's trademarks, trade names, service marks or other intellectual property rights. The Parties agree not to use the trademarks, trade names, or service marks of the other party without prior written permission.

## **15.0 Taxes**

Each Party shall be responsible for paying its own federal, state or local sales, use, excise, value-added, personal property, income or other taxes or charges assessed on or levied against any transaction or event arising from the performance of this Agreement.

## **16.0 Insurance**

During the term of this Agreement, each Party shall maintain a policy of comprehensive liability insurance, including public liability, bodily injury, and property damage, written by a company licensed to do business in the State of Maryland, covering use and activity contemplated by this Agreement with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate,

with Five Million Dollars (\$5,000,000.00) umbrella coverage. Each Party shall maintain motor vehicle insurance meeting the requirements of Maryland law and covering every vehicle and driver involved in providing the services, in the following amounts: (1) bodily injury liability with limits of \$500,000.00 each person and \$1,000,000.00 each accident; (2) property damage liability with a limit of \$100,000 each accident. Each Party shall name the other Party, including its officers, employees, and agents, as Additional Insureds for the said purpose and use of this Agreement. Each Party shall also maintain Workers' Compensation insurance to meet the requirements of the Workers' Compensation laws of Maryland where applicable. Certificates of Insurance evidencing such insurance coverage shall be provided to either Party upon the other Party's request.

## **17.0 Doing Business in Maryland**

Ting warrants and represents that (1) if it is a corporate entity, it is either (a) incorporated in Maryland or (b) registered or qualified by the Maryland State Department of Assessments and Taxation (SDAT) as required by the Maryland Annotated Code, Corps. & Assocs. Article, to do business in Maryland and (2) it is in good standing with SDAT and has paid all taxes (including but not limited to income, real property, and personal property taxes due the State of Maryland or any other governmental entity.

## **18.0 Warranties and Disclaimers**

### **18.1 LIMITATION OF LIABILITY**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION AS APPLICABLE, ECONOMIC LOSS OR LOST BUSINESS OR PROFITS, INTERRUPTIONS OF SERVICE, OR ANY DELAY, ERROR OR LOSS OF DATA OR INFORMATION, ARISING IN ANY MANNER OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT AND A PARTY'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY), ALL CLAIMS FOR WHICH ARE HEREBY SPECIFICALLY WAIVED.

### **18.2 Representations and Warranties; Disclaimers**

By execution of this Agreement, each Party represents and warrants to the other that: (a) the Party is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization; (b) the Party has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and thereof; (c) the Party's execution, delivery, and performance of this Agreement will not conflict with, violate or result in a breach of (i) any law, regulation, order, writ, injunction, decree, determination or award of any governmental authority or any arbitrator, applicable to such Party, (ii) any of the terms, conditions or provisions of its charter, bylaws, or other governing documents of such Party, (iii) any material agreement to which it is a party, or (iv) any instrument to which such Party is or may be bound or to which any of its material properties or assets is subject; (d) the Party's execution,

delivery and performance of this Agreement has been duly authorized by all requisite corporate action; (e) that the signatories for such Party are authorized to sign this Agreement; (f) there are no actions, suits, proceedings or investigations pending, or to the knowledge of the Party, threatened against or affecting the Party of any of its properties, assets or businesses in any court or before or by any governmental authority that could, if adversely determined, reasonably be expected to have a material adverse effect on the Party's ability to perform its obligations under this Agreement; (g) the Party has not received any currently effective notice of any material default; and (h) the Party has not previously been and is not currently, debarred, suspended, or proposed for debarment, declared ineligible, voluntarily excluded from transactions by any federal or state department or agency, or subject to any inquiry, investigation, or proceeding regarding the foregoing

### **18.3 General Disclaimer**

GENERAL DISCLAIMER. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE CITY AND TING MAKE NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF ITS FIBERS OR ASSETS, OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

### **19.0 Assignment**

Except as otherwise provided herein, neither Party may assign, sell, transfer, delegate or in any other manner dispose of any of its rights, privileges or obligations under this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Any attempt to make any such assignment, sale, transfer, delegation or disposition without any such prior written consent of the other Party shall be null and void. Notwithstanding the foregoing, either Party may assign, sell, transfer, delegate or in any other manner dispose of, any of its rights, privileges or obligations under this Agreement without consent of the other Party to an affiliate of such Party, so long as the assignor remains liable for all of its obligations under this Agreement prior to the assignment date and assignee is liable for all of its obligations under this Agreement from and after the assignment date.

#### **19.1 Agreement Binding; Assignees**

This Agreement shall be binding on and inure to the benefit of the Parties and their respective permitted successors and assigns. In the case of any assignment, sale, transfer or disposition requiring the other Party's consent or as permitted under this Agreement, the assignee, purchaser or transferee shall execute and deliver a written agreement reasonably acceptable to the non-assigning Party in which the assignee, purchaser or transferee agrees to be bound by all of the terms and conditions of this Agreement to the extent of the rights and obligations assigned, sold or transferred.

### **20.0 Relationship of the Parties**

This Agreement is not intended to create, nor shall it be construed to create, any partnership, joint venture, or employment relationship between the City and Ting, and neither party shall be liable for the payment or performance of any debt, obligations, or liabilities of the other party, unless expressly assumed in writing. Each party covenants that it shall not act in a manner that may be construed to be inconsistent with the foregoing nor otherwise act or purport to act on behalf of the other Party except as may be expressly authorized in writing by the other party. The City and Ting, in performing any of their obligations hereunder, shall be independent contractors or independent Parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

## **21.0 Indemnification**

To the extent permitted by law, and specifically, subject to the provisions of the Maryland Local Government Tort Claims Act, Maryland Code Annotated, Courts and Judicial Proceedings Article, Section 5-301 *et seq.*, provided that funds have been appropriated, each Party, on behalf of itself and its affiliates, directors, officers, employees, agents, successors, and assigns (“Indemnitor”) agrees to indemnify, defend, protect and hold the other Party and its directors, officers, directors, employees, agents, successors, and assigns (“Indemnified Persons”) harmless from and against any claims, suits, actions or damages brought or asserted by a third party of any kind or character (collectively “Claims”) and from and against any liability, losses, fines, judgments, costs and expenses (including reasonable attorney, accountant and expert fees) arising out of any claims incurred by any Indemnified Persons (a) because of the death of any person, or any injuries or damage received or sustained by any persons or property, which in whole or in part arise on account of the negligent acts or omissions or willful misconduct of the Indemnitor in the performance or non-performance of its obligations or exercise of its rights under this Agreement, including any material violation by Indemnitor of any law or permit applicable thereto; (b) under the Workers’ Compensation laws asserted by any other person providing goods or services for or on behalf of any of the foregoing in connection with this Agreement; or (c) arising out of, caused by, related to, or based upon, a contractual or other relationship between such claiming party and the Indemnitor, as it relates to the use of Assets.

### **21.1 Exceptions**

An Indemnitor’s obligations under this section shall not apply to any Claims to the extent caused by negligent acts or omissions or willful misconduct by a person claiming indemnification.

## **22.0 Severability**

Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail; provided, however, that in such event, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect, except to the extent the affected provision is a material provision which negates the contemplated benefits of the transaction, in which event the parties shall negotiate in good faith for alternatives to achieve the contemplated

consideration, or the adversely impacted Party shall have the right to terminate this Agreement on one hundred eighty (180) day's notice.

## **23.0 Force Majeure**

### **23.1 Force Majeure Events**

Notwithstanding any other provision of this Agreement, neither Grantor nor Grantee shall be liable for any failure or delay in performing its obligations, or for any loss or damage, resulting from any event or circumstance beyond the reasonable control of the Party, including but not limited to an earthquake, hurricane, fire, flood, lightning, sinkhole or other forces of nature, acts of war, terrorism (including cyberterrorism), or civil unrest, strikes, lockouts or other labor unrest, or legal order, government action or application of laws, regulations or codes ("Force Majeure Event").

### **23.2 Response to Force Majeure Events**

A Party whose performance is impacted by a Force Majeure Event shall provide reasonable notice to the other Party and shall make commercially reasonable efforts to minimize the impact of the Force Majeure Event on its performance.

### **23.3 Suspension Pending Force Majeure**

The deadline by when a Party must perform an obligation under this Agreement, other than payment of money, shall be postponed by the period of time by which the Party's ability to perform that obligation is materially prevented or interfered with by a Force Majeure Event.

## **24.0 Eminent Domain**

Should any portion of the Assets or any other interest belonging to the City or to Ting with respect to this Agreement be acquired by condemnation, eminent domain, nationalization or expropriation (each of which, a "Taking") by any government authority or other person possessing such power, then each Party will be excused from performance of its obligations to the extent of the taking, as provided in this Section. In the proceeding for any Taking or an involuntary discontinuance of the use of the Assets in anticipation of an imminent Taking, the interests of City and Ting in the affected portion will be severed. The City and Ting each may claim and receive the portion of the total award attributable to its interest in the Assets, and the City and Ting each may claim damages payable on account of the Taking and the relocation or re-routing expenses relating to the Assets.

## **25.0 Notices**

All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by facsimile transmission with confirmation of delivery, electronic mail with confirmation of delivery receipt, or sent by overnight commercial delivery service or certified mail, return receipt requested. Notice shall be deemed to have been given on the date of the transmission and receipt of facsimile or electronic mail transmissions, or the delivery date set forth in the records of the delivery service or on the return receipt when addressed as follows:

If to the City of Westminster:

The Mayor and Common Council of Westminster

56 West Main St.  
Westminster, MD 21157

With a copy to:

[office of City Attorney]

If to Ting:

Adam Eisner  
96 Mowat Ave.  
Toronto, ON M6K 3M1

With a copy to:

## **26.0 Choice of Law**

This Agreement shall be governed and construed in accordance with the laws of the State of Maryland, without regard to any conflicts of law provision that would affix jurisdiction in another State, and any dispute arising out of this Agreement shall be filed in a court of competent jurisdiction in Carroll County, Maryland.

## **27.0 Headings**

Headings and captions of this Agreement's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Agreement's terms or be used to interpret or assist in the construction of this Agreement.

## **28.0 Waiver**

Any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken or failure to take action in the exercise of any right or remedy be deemed a waiver of any other rights or remedies at the time

## **29.0 Counterparts**

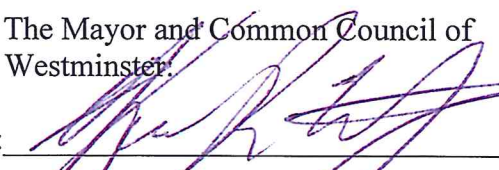
This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same document. This Agreement also may be executed via counterpart facsimiles on (a) the telecopy or facsimile by each Party of a signed signature page thereof to the other Party, with return receipt by telecopy or facsimile requested and received, and (b) the Parties' agreement that they will each concurrently post, by next business day courier, a fully executed original counterpart of the Agreement to the other Party.

**30.0 Entire Agreement; Amendments**

This Agreement and the Exhibits constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersede all previous understandings, commitments or representations, whether oral or written, concerning the subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified in any way except by a writing signed by the authorized representatives of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

The Mayor and Common Council of  
Westminster.

By: 

Name: Kevin R. Utz

Title: Mayor

Date: 2/9/15

*approved as to form &  
legal sufficiency  
Feb. 9, 2015*



*Eissa Levan  
City Attorney*

Ting Fiber, Inc.:

By: 

Name: Adam Eisner

Title: Director of Networks

Date: Feb. 9 2015

## **EXHIBIT A**

### **LISTED ASSETS**

The particular Assets in which Ting shall have a right of use under the Lease set forth in this Agreement shall be as described in this Exhibit A. This Exhibit may be amended by the Parties from time to time in a writing signed by both Parties and referencing this Exhibit A.

As of the Effective Date, Assets include the following:

- *One pad mounted enclosure for network equipment adjacent to Carroll Lutheran Village at intersection of Luther Drive and Old New Windsor Pike*
- *4 Equipment racks in the City equipment enclosure at the Airport*
- *An unspecified\* number of fiber optic strands serving the CLV and Fairway Drive neighborhoods*
- *An unspecified number of fiber optic strands serving the Airport region.*

\* The exact number and identification of specific fiber optic strands and other unspecified quantities shall be determined by the Parties in due course, and shall include a quantity sufficient to enable the Parties to execute their obligations under this Agreement.



## **EXHIBIT B**

### **LEASE FEES**

In consideration of the lease of Assets by the City to Ting, and other good and valuable consideration, Ting agrees to pay the City during the Term a quarterly Lease Fee, comprised of the following elements:

#### **1. Per-Premises Fee**

Ting shall pay the City \$6.00 per Premises passed by the WFN, per month.

A Premises is “passed” if it is feasible to connect the Premises to the WFN, to execute an Access Agreement with the Premises owner, and otherwise to promptly activate a Subscriber occupying the Premises. In general, a Premise will be “passed” if the WFN is present in or near the public right of way abutting the Premises property.

#### **2. Per-Subscriber Fee**

Ting shall pay the City \$17.00 per activated business and residential Subscriber, per month. A Subscriber is “activated” if the Premises is connected to the WFN and the Subscriber has agreed to receive Services (whether provided by Ting or another retail Service Provider) for the applicable month. Such fee will be pro-rated for partial activated months.

##### **2.1. ARPU Benchmark Adjustment**

The Subscriber fee shall be subject to annual adjustment, as described in this subsection.

As of the date upon which 1,500 total Subscribers are activated, a baseline ARPU will be calculated by dividing Ting’s gross revenue from the provision of voice, video and broadband Internet access service during the previous calendar year by the number of Subscribers to Services provided by Ting.

One year from that date, and annually thereafter, the Subscriber fee will be adjusted as follows:

- Total ARPU will be calculated and reported for all Services by or through Ting on the WFN, including retail Services from other Service Providers.
- For every 10 percent increase in ARPU above the ARPU benchmark, the Subscriber fee will increase by \$1.00.
- Fee adjustment in subsequent years will utilize the previous year’s total ARPU calculation as the benchmark from which to calculate increase.
- Subscriber fees shall not be reduced, in the event of a decline in ARPU.

### **3. Payment Terms**

Payment of lease fees described in this Exhibit, and of any other fees or charges under the Agreement, shall be due within 30 days of Ting's receipt of a City invoice. In the event that any payment required by this Agreement is not actually received by the City on or before such date, interest on such payment shall accrue from such date at a rate equal to the prevailing prime rate of interest for commercial loans as published in the "Money Rates" section of the *Wall Street Journal* or as published by a comparable rate source to be determined by the City should rate not be published by the *Wall Street Journal*. Such interest shall be compounded daily.

All payments to the City shall be directed as follows:

Attn: Finance Department  
City of Westminster  
56 W Main St.  
Westminster, MD 21157

## EXHIBIT C

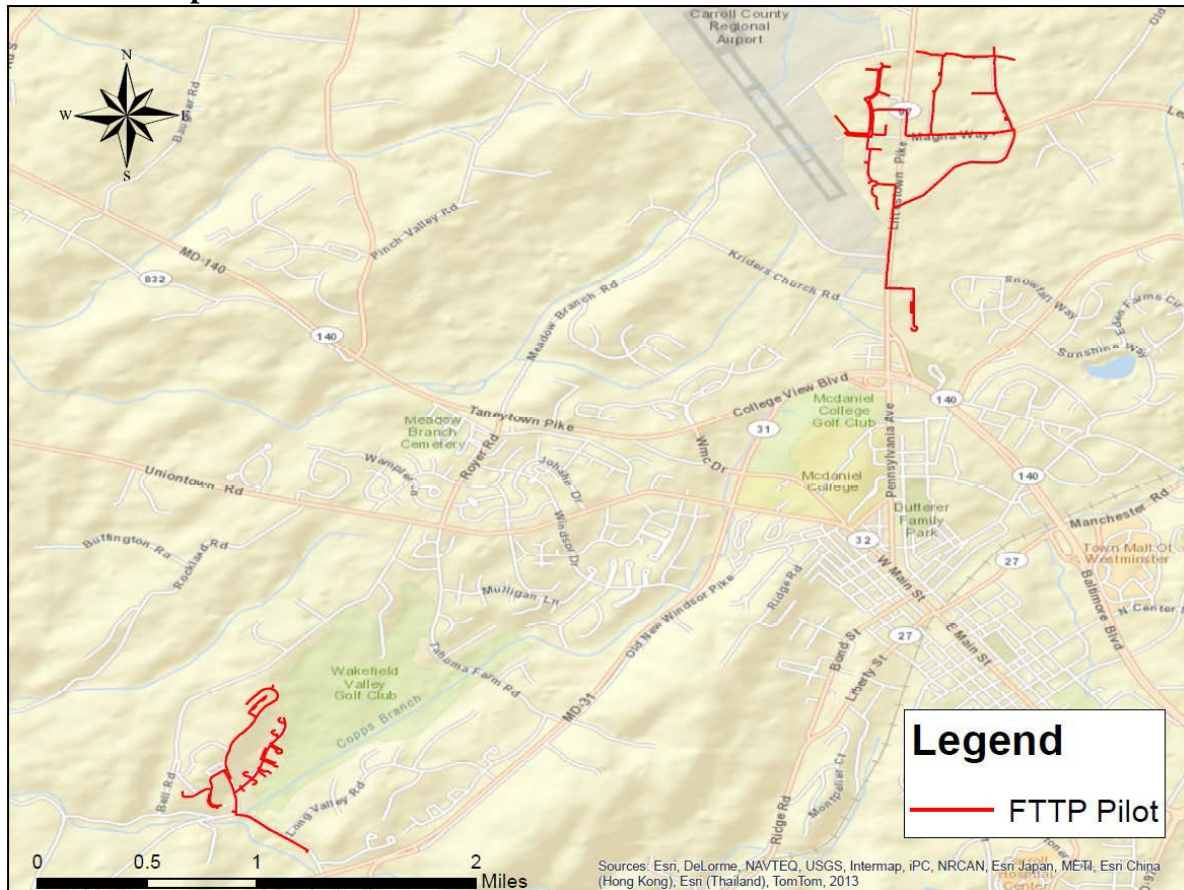
### INITIAL PHASE

The initial phase of the WFN, previously described in some contexts as the “FTTP Pilot,” consists of approximately 10.0 Route miles of new underground fiber construction within two distinct service areas, as described below and as shown on the following maps:

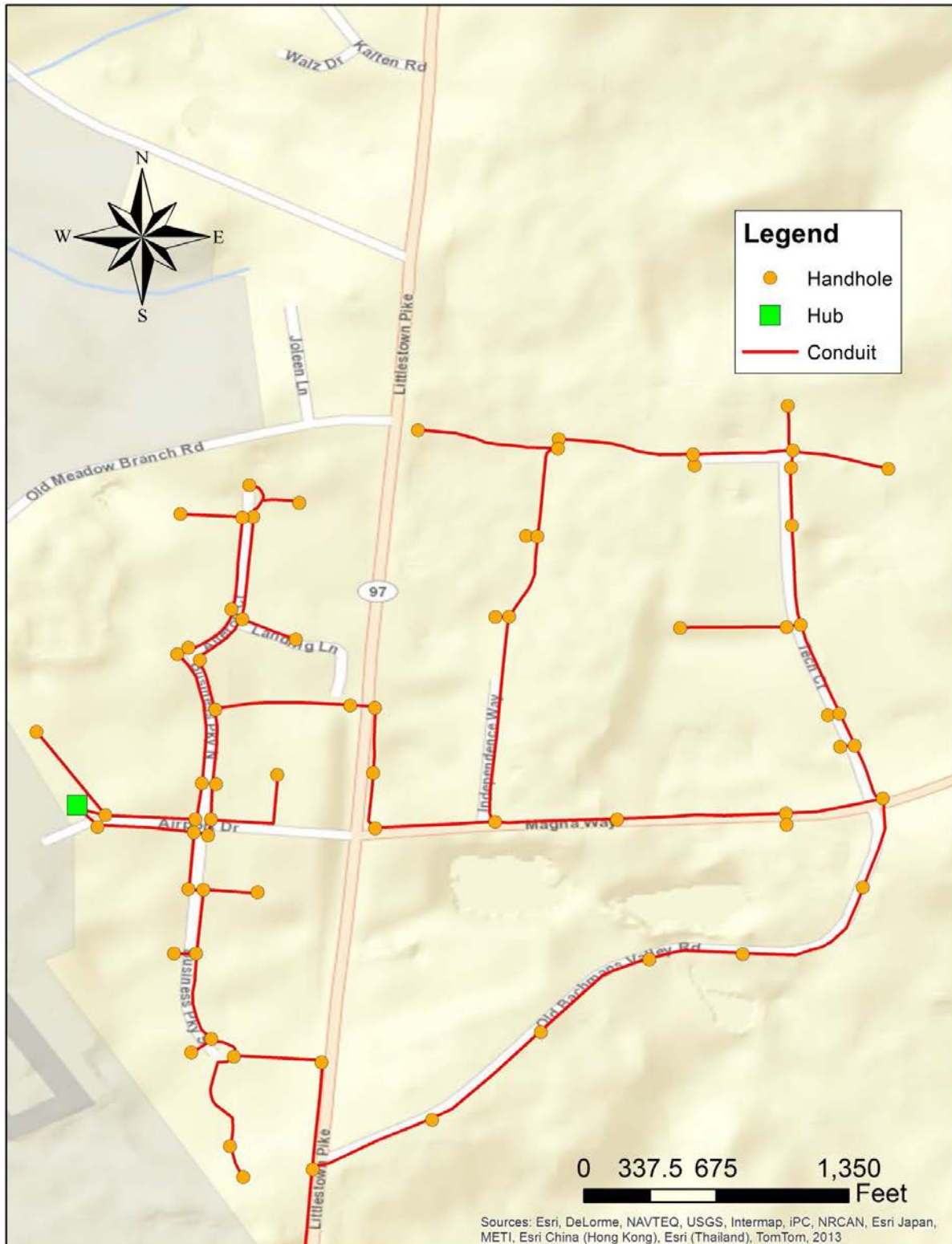
**Service Area A:** business and industrial zone, comprised of approximately 250 business units in the Carroll County Air Business Center, West Branch Trade Center, and Westminster Technology Park; and

**Service Area B:** the Carroll Lutheran Village and surrounding residential area, comprised of more than 200 single-family and attached homes, approximately 300 apartment residences, and 150 assisted living / nursing home residences.

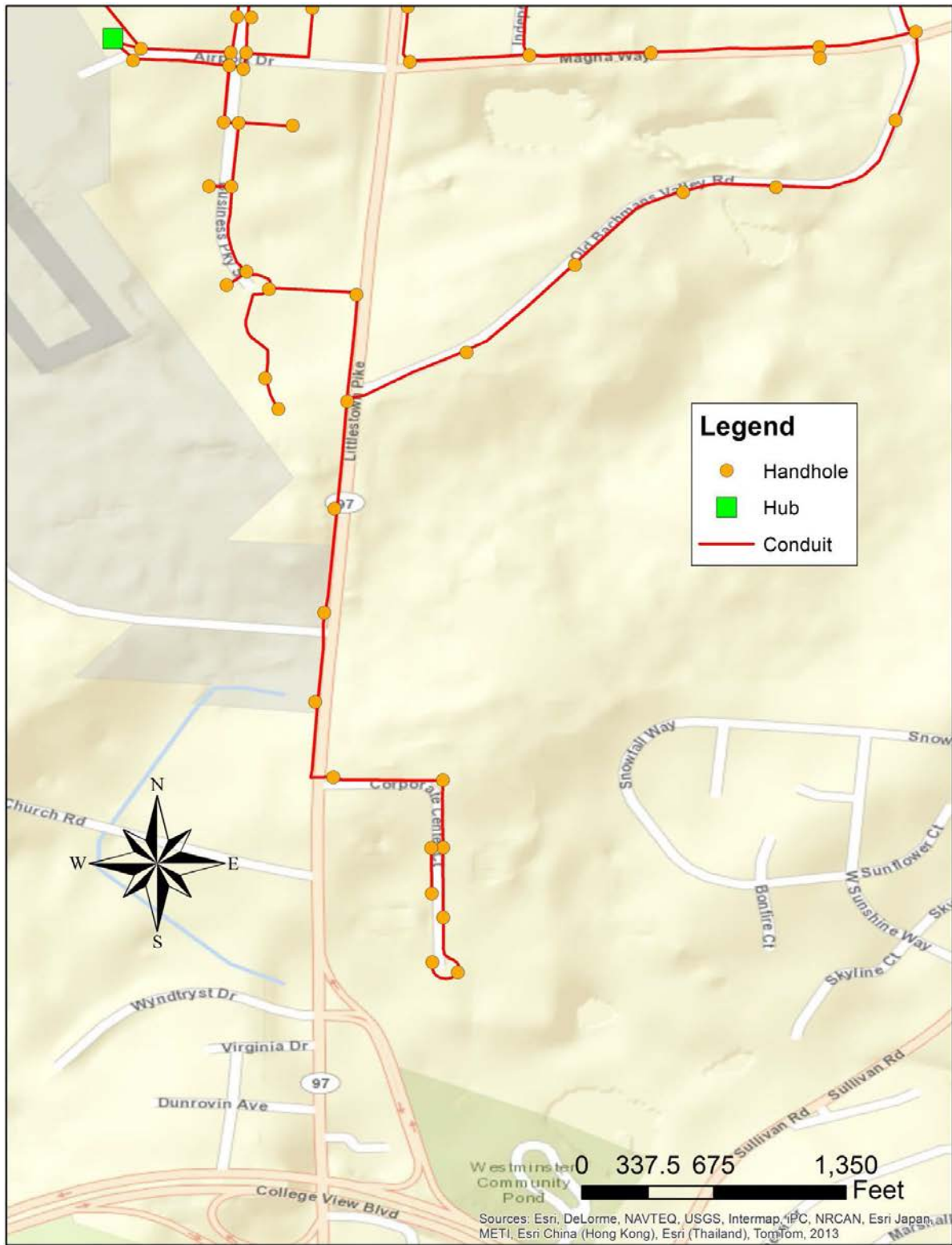
#### Overview Map:



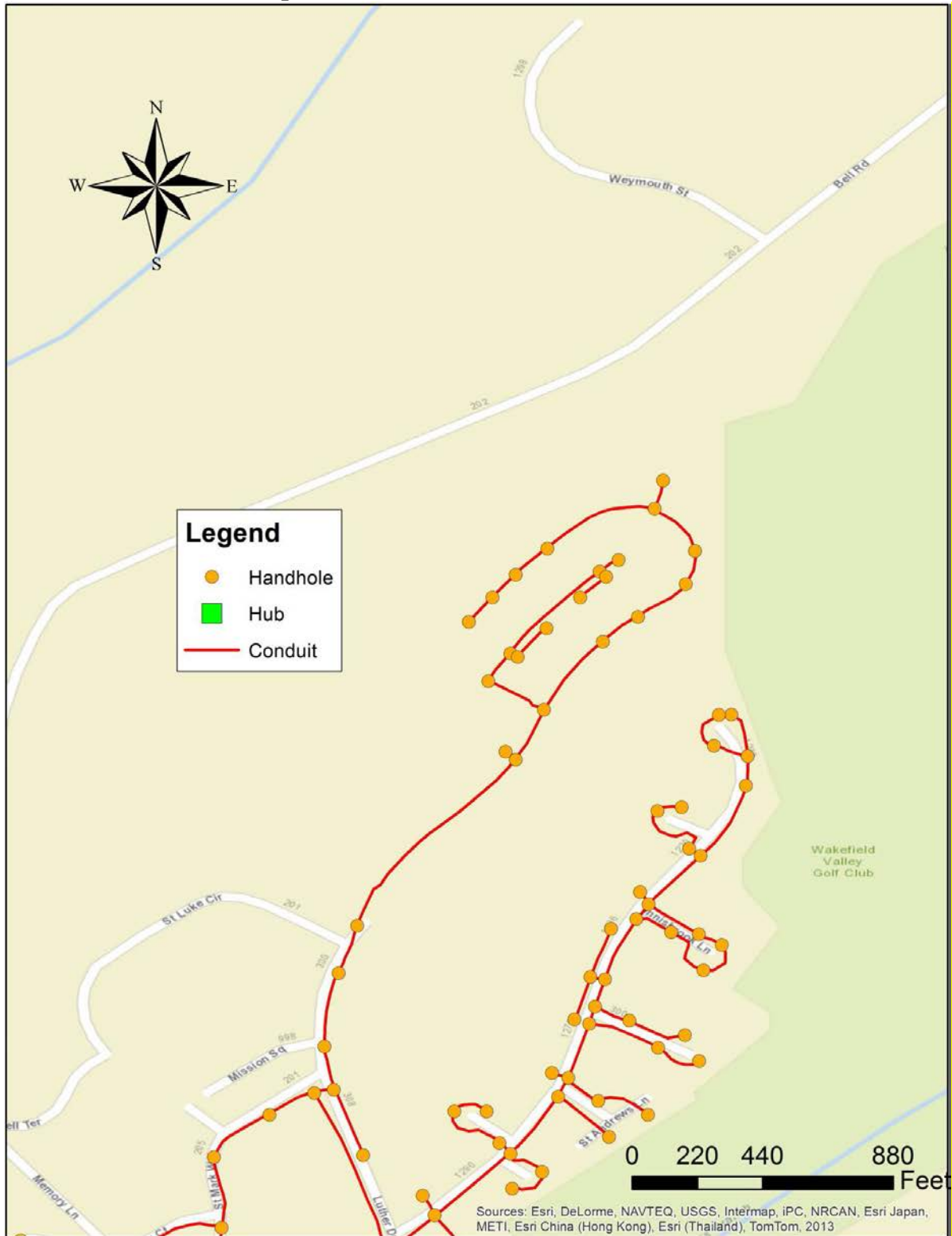
### Service Area A Detail Map 1:



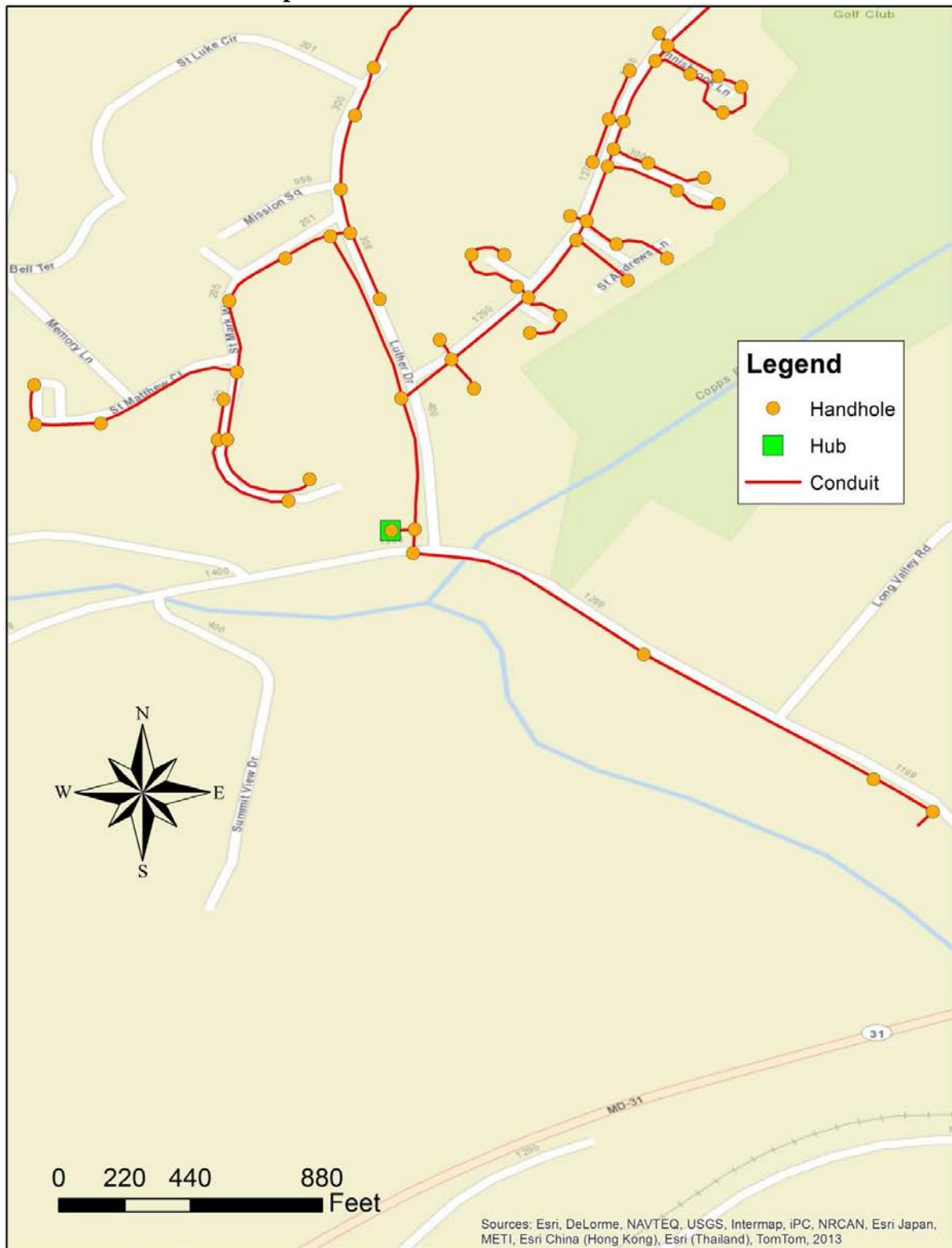
### Service Area A Detail Map 2:



Service Area B Detail Map 1:



### Service Area B Detail Map 2:



## EXHIBIT D

### PERFORMANCE METRICS

Performance metrics for Ting:

- A. Ting network performance: Upon successful testing of network by the City, in the event Ting, as either a service provider or network operator, suffers a network outage outside of events defined as Force Majeure, or scheduled network maintenance, or resulting from the City's non-performance of its obligations under this Agreement, then Ting will adhere to the following credit schedule:

98.0% to 98.9% uptime: 15% of monthly fees paid returned to customers

97.0% to 97.9% uptime: 30% of monthly fees paid returned to customers

96.0% to 96.9% uptime: 40% of monthly fees paid returned to customers

Below 96%: 50% of monthly fees paid returned to customers

- B. Ting support performance: Ting will strive to answer all inbound customer phone calls within 90 seconds, and all inbound emails within 24 hours. Telephone support will be "no-hold", meaning all connected customers will reach an agent immediately, without encountering a phone tree.



## EXHIBIT E

### CITY MAINTENANCE OF ASSETS

1. Maintenance.

(a) Scheduled Maintenance. Routine maintenance and repair of the Assets (“**Scheduled Maintenance**”) will be performed by or under the direction of the City as necessary to keep the Assets in good operating condition, at Ting’s reasonable request or at the City’s reasonable discretion, all at City’s expense. Scheduled Maintenance will commence upon the Effective Date, and includes: (i) inspection of the WFN and other Assets on a regularly scheduled basis, which shall be no less than once each calendar quarter; (ii) appropriate routine preventative maintenance on the Assets, minimally in accordance with industry standards; (iii) performance of all required cable locates and membership in a state or regional one-call (call-before-you-dig) center for all locations along the Route; (iv) maintenance of an inventory of spare cable and other equipment, together with maintenance equipment, at strategic locations to facilitate timely restoration along the Route; and (v) non-routine maintenance, repair and replacement of the WFN and other Assets arising out of City’s or City’s agent(s)’s fault, negligence, or misconduct.

(b) Unscheduled Maintenance. Non-routine maintenance and repair of the WFN and other Assets which is not included as Scheduled Maintenance (“**Unscheduled Maintenance**”) will be performed by or under the direction of City and at the City’s expense. Unscheduled Maintenance will commence upon the Effective Date, as provided in the Agreement. Unscheduled Maintenance shall consist of Unscheduled Maintenance in response to: (i) notification by Ting or any third party of any failure, interruption or impairment in the operation of the Assets, or any event imminently likely to cause the failure, interruption or impairment in the operation of the Assets; or (ii) any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the Assets, each to the extent same is not included in the definition of Scheduled Maintenance.

If known to Ting, Ting shall promptly report the need for Unscheduled Maintenance to the City in accordance with escalation procedures provided in Section 3 below. The City will log the time of Ting’s report, verify the problem and dispatch personnel to take corrective action.

2. Response. The City’s maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. The City will have its first maintenance employee (or contracted agent) at the site requiring emergency Unscheduled Maintenance activity within four (4) hours after the time the City becomes aware of an event requiring Unscheduled Maintenance due to an emergency situation.

3. Cooperation and Coordination.

(a) The Parties each shall use the escalation list of the other Party, as updated from time to time by the applicable Party pursuant to the escalation list or other notice provision, to report and seek immediate initial redress of exceptions noted in the performance of a Party in meeting maintenance service objectives and regarding all other aspects applicable to WFN operations. The notice list numbers are 24 hour, 7 day per week emergency notification numbers.

(b) In performing its services under this Exhibit, the City will take workmanlike care to prevent impairment to the signal continuity and performance of the Assets. The precautions to be taken by City will include notifications to Ting. In addition, the City will reasonably cooperate with Ting in sharing information and analyzing the disturbances regarding the Assets. In the event that any Scheduled Maintenance or Unscheduled Maintenance requires a traffic roll or reconfiguration involving Assets, then Ting shall, at City's request, make such personnel of Ting available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with the City in performing such maintenance as required of the City hereunder.

(c) The City will use commercially reasonable efforts to notify Ting at least ten (10) days prior to the date of any Scheduled Maintenance that may result in an outage or degradation in the use of Assets, and as soon as possible, but in no event later than eight (8) hours after becoming aware of the need for Unscheduled Maintenance. Ting may be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this right or the exercise thereof does not interfere with the City's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, the City will use commercially reasonable efforts to notify Ting at the City's earliest opportunity, but in no event less than forty-eight (48) hours after cancellation, and will comply with the above-provisions for any re-scheduled activity.

#### 4. Facilities.

(a) The City will maintain the WFN Assets in a manner which will permit Ting's use and operation, in accordance with the terms and conditions of the Agreement, including the Performance Metrics

(b) The City will maintain sufficient capability to teleconference with Ting during Unscheduled Maintenance in emergency situations in order to provide regular communications during the repair process.

(c) It is the City's intention, and the City represents and warrants, that maintenance work performed by City on the Assets will not normally result in interruptions or defects. Scheduled Maintenance which is reasonably expected to produce any signal discontinuity or jeopardize Ting's use of the WFN and other Assets in any material respect generally will be scheduled after midnight and before 5:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for Scheduled Maintenance weekends as mutually agreed by Ting and the City. A calendar showing City-approved Scheduled Maintenance for the following year will be available to Ting during the last quarter of each calendar year during the Term for Ting's approval. The City's intent is to avoid major system work on the first and last weekends of the month and high-traffic holidays.

#### 5. Restoration.

(a) The City will respond to any interruption of service or a failure of the Assets as quickly as possible, but in no event later than four (4) hours after the City became actually aware of the failure or interruption, in accordance with the procedures set forth herein. The City shall address the problem by working diligently to enable restored service as soon as technically practical and commercially reasonable, in accordance with the procedures set forth herein. In order to accomplish such objective, Ting acknowledges that such repairs may be temporary in nature. In such event, within twenty-four (24) hours after completion of any

such Unscheduled Maintenance, the City will commence its planning for permanent repair, and thereafter promptly shall notify Ting of such plans, and shall use commercially reasonable efforts to implement such permanent repair as soon as possible thereafter.

6. Escalation List – To be determined later.