



SHADY SHORES INVESTMENT COMMITTEE
OCTOBER 14, 2024; 5:30 PM
SHADY SHORES COMMUNITY CENTER
101 S. SHADY SHORES ROAD
SHADY SHORES, TX 76208

AGENDA

1. CALL TO ORDER
2. ROLL CALL
 Establish a quorum
3. MINUTES
 1. Minutes- Consider and act on approval of the July 8, 2024 Investment Committee Meeting.
4. QUARTERLY REPORTS
 1. Quarterly Report- Consider and act on the 4th Quarter 23/24 Investment Committee Report.
5. NEW BUSINESS
 Discuss any new projects to be considered at the next monthly meeting.
 1. Resolution Establishing a Broadband Renewal and Repair Fund-Consider and act on approval of a resolution establishing a Broadband Renewal and Repair Fund.
6. ADJOURN

I, Wendy Withers, Town Administrator of the Town of Shady Shores do hereby certify that the above notice of the Investment Committee Meeting was posted on the bulletin board at the Community Center, 101 S. Shady Shores Road, Shady Shores, Texas on 7th Day of October, 2024, at 8:42 A.M.

Wendy Withers

Wendy Withers, Town Secretary



SHADY SHORES INVESTMENT COMMITTEE
JULY 8, 2024; 5:30 PM
SHADY SHORES COMMUNITY CENTER
101 S. SHADY SHORES ROAD
SHADY SHORES, TX 76208

MINUTES

1. CALL TO ORDER

Mayor Aughinbaugh called the meeting to order at 5:30 pm.

2. ROLL CALL

Establish a quorum

MEMBERS PRESENT

Mayor Cindy Aughinbaugh, Councilmember, Place 5 Charles Grimes, Mayor Pro Tem (3) Tom Newell, Town Administrator Wendy Withers, Councilmember, Place 2 Mike Nowels

MEMBERS ABSENT: Mike Nowels, Councilmember

STAFF PRESENT:

Katie Klein, Community Relations Admin; Amber Schuler, Deputy Town Secretary

3. MINUTES

1. Consider and act on approval of the April 8, 2024 Investment Committee Meeting Minutes

A motion was made by Mayor Pro Tem (3) Tom Newell, seconded by Councilmember, Place 5 Charles Grimes, to approve the April 8, 2024 Investment Committee Meeting Minutes. The motion carried.

Yes: 2 - Charles Grimes, Tom Newell

No: 0 - None

Recused: 0 - None

4. QUARTERLY REPORTS

1. Consider and act on approval of the 3rd Quarter 2024 Investment Committee Report

Mayor Pro Tem Tom Newell made a motion to approve the investment committee report with the addition of the \$250,000 Certificate of Deposit at Texas Bank that was omitted from the report. Charles Grimes seconded the motion. The motion carried.

Yes: 2 - Newell, Grimes

No: 0 - None

Recused: 0 - None

5. NEW BUSINESS

Discuss any new projects to be considered at the next monthly meeting.

There was no new business to discuss.

6. ADJOURN

Tom Newell motion to adjourn, Charles Grimes, and the meeting was adjourned at 5:34 pm.

PASSED AND APPROVED THIS THE _____ DAY OF _____, 2024.

APPROVED:

Cindy Auginbaugh, Mayor

Attest:

Wendy Withers, Town Administrator/Secretary



AGENDA MEMORANDUM

DATE: October 14, 2024
TO: Investment Committee
FROM: Wendy withers, Town Administrator
SUBJECT: Quarterly Report- Consider and act on the 4th Quarter 23/24 Investment Committee Report.

BACKGROUND/INFORMATION:

FINANCIAL IMPLICATIONS:

RECOMMENDATION/ACTION DESIRED:

ATTACHMENTS/SUPPORTING DOCUMENTATION:

None

REVIEWED BY:



AGENDA MEMORANDUM

DATE: October 14, 2024
TO: Town Council
FROM: Wendy withers, Town Administrator
SUBJECT: Resolution Establishing a Broadband Renewal and Repair Fund-Consider and act on approval of a resolution establishing a Broadband Renewal and Repair Fund.

BACKGROUND/INFORMATION:

Per the Pavlov Contract, the Town of Shady Shores is responsible for the following repairs in the future; Upon completion of installation of the Fiber Ring, each Lake City shall make a onetime payment of the following amounts to fund the Cut, Repair, and Relocation Fund to pay costs of both "Repairs" (defined below) and of Un-Scheduled Maintenance: **Shady Shores 7/48 14.583% \$21,875.00.**

The Cut, Repair, and Relocation Fund shall be used solely by Pavlov to reimburse Pavlov for the Lake Cities' Cost Share of: (1) the cost of cuts, repairs and/or relocation collectively "Repairs" on the Fiber Optic Ring only; and (2) the Lake Cities' share of Un-Scheduled Maintenance as provided in Section 8.2, above. Pavlov shall deduct the Lake Cities' Cost Share of such Repairs and/ or Un- Scheduled Maintenance proportionately from the Cut, Repair, and Relocation Fund based upon the costs incurred by Pavlov for the Repairs or Un- Scheduled Maintenance of a Segment. Neither a Lake City nor the Lake Cities will have any liability for Repairs on the Fiber Optic Ring or Un- Scheduled Maintenance beyond the amount of the Cut, Repair, and Relocation Fund.

In addition, the Town of Shady Shores may be responsible for the cost of repairs in the future that are caused by the Town or the Town's agents. The initial contract is in effect for 30 years. On contract renewal, the town will be required to pay \$56,250 for the first 10-year extension and \$56,250 for the second 10-year renewal.

Per the contract, Pavlov pays the Town of Shady Shores a franchise fee which is equal to 5% of the gross revenues collected. Staff recommends that a Broadband Renewal and Repair Fund be established with a total of \$150,000 set aside for repairs and renewal. The fund is to be funded with franchise fees collected until it reaches \$150,000. Funds fees collected above this amount can be used for general fund expenses. To date, franchise fees collected are approximately \$954.89.

FINANCIAL IMPLICATIONS:

Broadband Renewal and Repair Fund-

Cut and Repair Fund	\$ 21,875.00
Unscheduled Maintenance and Repairs	\$15,625
1st 10 year Renewal	\$56,250
2nd 10 year Renewal	\$56,250
Total	\$150,000

RECOMMENDATION/ACTION DESIRED:

ATTACHMENTS/SUPPORTING DOCUMENTATION:

1. BROADBAND RESERVE FUND
2. LakeCitiesExecuted20220812

REVIEWED BY:

RESOLUTION NO.
(Reserve Funds for Broadband Repairs)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SHADY SHORES, DENTON COUNTY, TEXAS, REVISING RESERVE FUNDS FOR BROADBAND REPAIRS

WHEREAS, the Mayor and Town Council of Shady Shores entered into a contract with Pavlov Media Inc on August 8, 2022;

WHEREAS, the approved contract; Exhibit A requires the Town to make certain repairs where responsible and;

WHEREAS, the approved contract will expire in August of 2052 and the Town will have the option to renew the contract for a period of ten years at a price of \$56,250, (First Extension Term), and an option to renew for a second ten year period at the same renewal fee (Second Extension Term)

WHEREAS, the Mayor and Town Council have determined that the appropriate reserve accounts broadband repairs and renewal fees would be \$162,500 and;

WHEREAS, the law requires certain procedures to establish, fund, and expend funds from reserve accounts, and that such funds may be amended as needed;

NOW THEREFORE, BE IT DULY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SHADY SHORES, DENTON COUNTY, TEXAS AS FOLLOWS:

SECTION 1. Broadband Reserve Account. A reserve account has been established within the Fund Balance of the Town titled "Town of Shady Shores, Reserve Account, Broadband," or similar title, for the placement of franchise fees received as a result of the contract until the maximum amount of \$162,500 is reached. The funds shall be used for renewal of the contract after the initial 30-year term and any repairs that the Town may be responsible for per the contract, The initial deposit to this reserve account shall be \$ 9,665.89. The goal for is the balance of this account to be \$ 162,500.

RES. NO. _____
(Reserve Funds for Broadband)

SECTION 4. Addition to the Reserve Account. The broadband reserve account shall continue to be funded by the franchise payments as outlined in the contract (Exhibit A) received until it is fully funded or upon council action.

SECTION 5. Deductions from the Reserve Account. Deductions, payments and expenditures from reserve accounts may be made only in the event the expenditures are a part of the duly authorized budget of the town for the applicable fiscal year. All required notices and public bids for expenditures shall be observed. In the event an expenditure is needed or necessary, which is not within the budget, will require consideration and an amendment of a budget prior to the expenditure.

SECTION 6. Investment of Funds. The foregoing resolution requires reserve accounts to be established at the town's depository bank. In the event the town council finds it fiscally prudent to do so, and so long as the investment made is in strict accordance with the financial policies required by the State of Texas and adopted by the Town of Shady Shores, all or a portion of such funds may be reinvested in lawful alternative accounts bearing higher rates of return than may be available at the depository bank.

SECTION 7. Financial Goal. The Town of Shady Shores' financial goal is to have a sufficient balance in the general fund with sufficient working capital and a margin of safety to address local and regional emergencies without borrowing.

Passed and approved this the _____ day of _____, 2024

APPROVED:

Cindy Aughinbaugh, Mayor

ATTEST:

Wendy Withers, Town Administrator

DARK FIBER LEASE AND NETWORK OPERATION AGREEMENT

This **DARK FIBER LEASE AND NETWORK OPERATION AGREEMENT** (together with all exhibits, schedules and other attachments hereto, the “**Agreement**”) is entered into on the Effective Date by and among **Pavlov Media, Inc.** (“**Pavlov**”), a Delaware corporation with its principal place of business at 601 N. Country Fair Drive, Champaign, Illinois 61821, and each of the following municipalities: the **City of Corinth** (“**Corinth**”), a Texas home rule municipality, the **Town of Shady Shores**, (“**Shady Shores**”), a Texas Type A General Law City, and the **Town of Hickory Creek** (“**Hickory Creek**”), a Texas Type A General Law City. Corinth, Shady Shores, and Hickory Creek are sometimes referred to herein collectively as “**the Lake Cities**” and separately as “**a Lake City**” or “**Lake City**” or by its name and Pavlov and the Lake Cities are sometimes referred to herein collectively, as the “**Parties.**”

RECITALS

WHEREAS, the Lake Cities desire to provide better municipal services to residents and businesses, and to facilitate economic growth within their respective corporate limits; and

WHEREAS, the Lake Cities desire to deploy a new fiber to the premises (FTTP) network throughout the Lake Cities area structured in a manner that effectively enables the provision of high-capacity broadband and other services and capabilities in a competitive, open environment to their residents and businesses (the “**Network**”); and

WHEREAS, the Lake Cities have conducted a public procurement process to identify and enter into an agreement with a qualified private-sector entity to design, construct, activate, operate, and maintain the Network on a nondiscriminatory basis and to offer high speed broadband Internet access service and other services to residents and businesses within the Lake Cities’ corporate limits; and

WHEREAS, the Lake Cities have identified and selected Pavlov as the best candidate to provide such services, and, to that end, have negotiated this Agreement with Pavlov; and

WHEREAS, Pavlov desires to design, construct, activate, operate and maintain the Network on a non-discriminatory basis, and to provide advanced communication services and capabilities to residents and businesses within any of the Lake Cities, as set forth in and subject to the provisions of this Agreement.

WHEREAS, the Lake Cities desire to obtain from Pavlov indefeasible rights to use (“**IRU**”) optical fiber strands as described in **Exhibit B (“Project Summary”)** and on the terms and conditions set forth in 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, Pavlov and the Lake Cities agree as follows:

AGREEMENT

1. Table of Exhibits Made Part of This Agreement

The following Exhibits are attached hereto and incorporated herein for all purposes:

Exhibit A:	Map of Pavlov System
Exhibit B:	Project Summary
Exhibit C:	Initial List of Government Locations
Exhibit D:	Customer Service Standards (SLA)
Exhibit E:	Scheduled and Un-Scheduled Maintenance Specifications
Exhibit F:	Services and Initial Rates
Exhibit G:	Construction Schedule
Exhibit H:	Dark Fiber Specifications

2. Definitions

As used in this Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning. Where not defined in this Section 2, initially capitalized words and phrases shall have the meanings ascribed to them in the body of this Agreement.

"Associated Property" means, the tangible and intangible property necessary for Lake Cities to use the Dark Fiber for the purposes described in this Agreement, including, but not limited to, the associated Conduit, Vaults, Huts, Splice Cans, and Splitters. "Associated Property" does include electronic, optronic, optical, or other necessary equipment to connect the Drops to the Dark Fiber at no cost to the Lake Cities for the first 10 years after installation is complete, and Lit.

"Business Day" means any day that is not a Saturday or Sunday, a federally recognized holiday, the Friday after Thanksgiving, Good Friday, or Christmas Eve.

"Conduit" means any and all conduit within which the Dark Fiber has been placed.

"Consumer Price Index" or "CPI" means the Consumer Price Index (All-Items – Dallas/Fort Worth/Arlington) or a successor index published by the United States Department of Labor, Bureau of Labor Statistics.

"Dark Fiber" means fiber optic cable strands without electronic and/or optronic equipment and which is not "lit" or activated insofar as, with respect to such cable, Pavlov has conveyed IRU rights to the Lake Cities. The Dark Fiber must meet or exceed the specifications listed in **Exhibit H**.

"Drop" means the fiber connection extending from the Dark Fiber to each of the Government Locations identified on **Exhibit C**.

"Fiber Optic Ring" means the portion of the Pavlov System that connects the Government Locations designated by the Lake Cities. This is the portion of the Pavlov System for which Pavlov grants the lease of Dark Fibers to the Lake Cities and on which Pavlov provides Drops to the Government Locations

"Gross Revenues" means the total revenue received by Pavlov or its subsidiaries for data, voice, and any other services delivered and paid for by non-governmental customers of the Pavlov System and Pavlov Extended Network within the city limits of each of the Lake Cities. IPTV services are not included in the definition of Gross Revenues for the purpose of Franchise Fee payments to the Lake Cities.

"Lit Fiber/Lit Fiber Service/Managed Service" a collection of terms that mean Pavlov will provide the equipment, set-up (provisioning) and technical support necessary to provide an end to end fiber terrestrial 5G broadband service to each of the Government Private WAN endpoints depicted on the map in **Exhibit A** and listed in **Exhibit C**.

"NEC" means the latest edition of the National Electrical Code published by the National Fire Protection Agency.

"NESC" means the latest edition of the National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers ("**IEEE**").

"Pavlov System" means Pavlov's approximately 22-mile high-speed broadband network connecting the Government Locations consisting of the Fiber Optic Ring, the Dark Fiber, the Drops, and Associated Property designed, constructed, installed, operated, maintained and upgraded by Pavlov laid out generally as depicted in the Pavlov System Map attached to this Agreement as **Exhibit A**.

"Pavlov Extended Network" means all Conduit, Dark Fiber, Lit Fiber, Drops, and Electronics within the Lake Cities that are not part of the "Pavlov System" as defined above.

"Person" means any individual, corporation, association, partnership, limited liability company, trust or other entity.

"Required Right" means and refers to any agreement, conveyance, easement, license, franchise or permit obtained by Pavlov from a government entity or other third party governing the terms under which Pavlov may access and utilize a public right-of-way, private property, structures and other property in order for Pavlov to use, install, construct, operate, repair, maintain, replace, and remove the Pavlov System.

"Segment" means a defined length of Dark Fiber between end points defined by address or longitude/latitude insofar as the Dark Fiber comprising a Segment is subject to the IRU conveyed by Pavlov to the Lake Cities.

3. Term, Termination, and Franchise Fee

3.1 Term. The term of this Agreement, and the lease granted hereunder, shall begin on the Effective Date and remain in full force and effect for a period of thirty (30) years (the “**Initial Term**”) following the Final Segment Acceptance Date (as defined in Section 7.1) unless terminated prior to expiration of the Initial Term as set forth in Section 3.2. Upon expiration of the Initial Term, the Lake Cities may elect, in their sole and absolute discretion, to extend the Term for an additional period of ten (10) years (the “**First Extension Term**”) by delivering to Pavlov prior to expiration of the Initial Term a written notice of first extension and paying to Pavlov a sum of \$56,250.00 (the “**First Extension Fee**”); and, to extend the Term for a second ten (10) year period (the “**Second Extension Term**”) by delivering to Pavlov, prior to expiration of the First Extension Term, a written notice of extension and payment to Pavlov of a sum of \$56,250.00 (the “**Second Extension Fee**”). The First Extension Term and Second Extension Term are collectively referred to as “**Extension Term**”. Each Lake City shall be responsible only for payment of a portion of the First Extension Fee and Second Extension Fee, as applicable, equal to the same percentages established for the allocation of the IRU Fee attributed to each Lake City as set forth in Section 6.1. If a Lake City elects to not extend the Term with respect to the portion of the Pavlov System serving said Lake City, the First Extension Fee and/or the Second Extension Fee, as applicable, shall be reduced by the same percentage of the allocation of the IRU Fee attributed to said Lake City as set forth in Section 6.1. The Initial Term and any Extension Term(s) are referred to collectively as the “Term.”

3.2 Event of Default. An Event of Default exists under this Agreement upon the occurrence of any one or more of the following events (hereinafter “**Event of Default**” or “**Default**”):

- a. If one or more of the Lake Cities or Pavlov does not perform any material term, provision, covenant, agreement, or obligation under this Agreement, and then does not cure such default on or before the thirtieth (30th) day after receiving written notice of the default from one or more of the Lake Cities and/or Pavlov, as applicable. If any non-monetary default cannot reasonably be cured prior to the end of said 30-day period, an Event of Default does not occur if the defaulting Party commences to cure the default before the end of said 30-day period and diligently completes the cure as soon as reasonably practicable, but in any event not later than sixty (60) days after receiving such default notice. A default by a Lake City shall not constitute a default by the other Lake Cities and shall not affect a termination of this Agreement for the Lake Cities not in default;
- b. If Pavlov becomes a debtor, and any one or more of the Lake Cities becomes a creditor in a bankruptcy proceeding or similar action that is not permanently dismissed or discharged within 60 days (for voluntary proceedings) or 120 days (for involuntary proceedings);
- c. If any of the Parties becomes insolvent; and/or

- d. If, except as a result of a Force Majeure Event (defined in Section 14.8) or damage to the Pavlov System caused by one or more of the Lake Cities, or their respective agents, employees, or contractors, Pavlov fails to meet Customer Service Standards (“**SLA**”) set forth in **Exhibit D** relating to up-time, latency, packet loss or jitter during two (2) or more months in any calendar year, then the provisions of Section 14.4 (b) (prohibiting the Lake Cities from assigning, leasing or otherwise transferring the IRU in the Dark Fiber, or any portion thereof to a third party) will become null and void.

3.3 Remedies. If an Event of Default occurs, the non-defaulting Party may:

- a. Send to the Defaulting Party, which can be Pavlov, or one or more of the Lake Cities, with specific and detailed notice of what the alleged default is; and what the proposed remedy would be. The provisions of Section 6.4 Dispute Resolution, shall apply to all disputes, including defaults which might lead to termination. No unilateral termination of this Agreement as to one or more of the Parties can occur without agreement of all Parties to this Agreement, pursuant to the process in Section 6.4, or court order following the process set forth in Section 6.4; or
- b. After the notice and opportunity to cure; and Dispute Resolution requirements of Section 3.3.a. above have occurred; bring an action against the defaulting Party for damages; or
- c. If this Agreement is terminated by Lake Cities pursuant to Section 3.3.a, prior to its expiration based on an uncured Event of Default by Pavlov, not later than seven (7) days after the termination date, Pavlov shall reimburse Lake Cities a pro-rated amount of the IRU Fee paid by Lake Cities based on the number of days remaining in the Initial Term following the date of termination.

The remedies available to the non-defaulting Party are cumulative, and any remedies stated in this Agreement are in addition to any other rights or remedies provided by law or equity and not in substitution for them. In the event of an Event of Default by Pavlov which affects fewer than all of the Lake Cities, the affected Lake City or Cities may seek such remedies to which the affected Lake City or Cities may be entitled pursuant to this Agreement or by law. If fewer than all of the Lake Cities declares Pavlov to be in Default, the remaining Lake Cities are not required to join in such declaration or subsequent enforcement of this Agreement, and with respect to such remaining Lake Cities, this Agreement will remain in full force and effect.

3.4 No Consequential Damages. In no event shall Pavlov or any of the Lake Cities or any of their respective parents, subsidiaries, affiliates, or related entities be liable to any of the other Parties for any disruption of communication services or any other indirect, special incidental or consequential damages, including, without limitation, lost revenue, lost profits, lost opportunity or, with respect to Pavlov, Pavlov’s failure to secure Customers (as defined in Section 4.9) regardless of whether informed of the same.

3.5 **Effect of Termination.**

- a. Upon the expiration of the Term or of any Extension Term, or earlier termination of this Agreement that is not based on an Event of Default by Pavlov, all IRU rights granted to the Lake Cities shall revert to Pavlov without reimbursement of any of the IRU Fee or other amounts previously paid by the Lake Cities. Notwithstanding the foregoing, default by a Lake City shall not constitute a default by the other non-defaulting Lake Cities subject to termination by Pavlov under this Section, nor shall the decision of a Lake City to not participate in an Extension Term impact or impair the right of any of the other Lake Cities to participate in an Extension Term or result in a termination for such other Lake Cities under this Section.
- b. The notice and opportunity to cure provisions of Sections 3.3 a., b., and c. and Section 6.4 apply to all actions to terminate this Agreement. If the Agreement is terminated based on an Event of Default by fewer than all of the Lake Cities, the IRU rights granted to the defaulting Lake City or Cities shall revert to Pavlov without reimbursement of any of the IRU Fee or other amounts previously paid by the defaulting Lake City or Cities. Services and IRU rights of the non-defaulting cities continue without change.

3.6 Franchise Fee. Pavlov agrees that during the Term and any Extension Term, Pavlov will pay to each Lake City a contractual franchise fee (the "**Franchise Fee**"). With respect to each Lake City, the Franchise Fee will be an amount equal to five percent (5.0%) of the Gross Revenues collected by Pavlov during the preceding 12-month period from all Customers (not including governmental customers) within the corporate boundaries of each such Lake City. The Franchise Fee will be due and payable on the first day of each Agreement Year. The term "Agreement Year" means each 12-month period beginning on the Effective Date.

3.7 Withdrawal from Project. Notwithstanding anything to the contrary herein, a Lake City may, without cause, terminate its participation as a Party to this Agreement (said Lake City called hereafter the "**Terminating City**") prior to the end of the Term or any Extension Term, subject to the following:

- a. Written notice must be provided by the Terminating City to all of the other Parties not later than thirty (30) days prior to the date of withdrawal;
- b. If the withdrawal date occurs prior to the commencement of construction of the Fiber Optic Ring, then:
 - (1) The Terminating City shall not be entitled to any refund of the Initial Payment of the IRU Fee, but shall not be obligated to make any payments for its portion of the remainder of the additional installments of the IRU Fee and shall have no further rights or obligations pursuant to this Agreement; and
 - (2) Pavlov shall not install any portion of the Fiber Optic Ring within the corporate limits of the Terminating City without the consent of the Terminating City except as otherwise authorized by state and/or federal law; and

- c. If the withdrawal date occurs after commencement of construction of the Fiber Optic Ring, the Terminating City shall be obligated to pay in full its portion of the IRU Fee, and shall have no further rights or obligations pursuant to this Agreement.

The provisions of this Section 3.7 apply only if the Terminating City withdraws in the absence of an Event of Default by Pavlov for which notice and time to cure have been provided in accordance with Section 3.3.

4. The Pavlov System

4.1 Plans. Pavlov will obtain each of the Lake City's approval of the plans for the installation, modification, or upgrade of the Pavlov System prior to doing any work on same (the "**Plans**"). Pavlov must obtain approval from each Lake City for the Plans relating to the portion of the Pavlov System that is located within said Lake City's corporate limits. Each Lake City shall approve or reject the Plans as they relate to such Lake City not later than thirty (30) business days following receipt of the Plans, provided that each Lake City shall have the right to extend said deadline by an additional five (5) business days. If the affected Lake City approves, Pavlov may proceed with the work as set forth in the approved Plans for the portion of the Pavlov System within said Lake City. If a Lake City fails to approve its portions of the Plans within the time set forth in this Section 4.1, the Plans with respect to said Lake City shall be deemed to be rejected. If rejected, Pavlov and the affected Lake City shall enter discussions to resolve the basis for the rejection of the Plans. The Plans will accurately depict in electronic format the proposed route and location of all components of the Pavlov System, including the Dark Fiber and the Segments. The Lake Cities' approval of any Plans does not constitute a waiver of any representation, warranty, liability, or other obligation of Pavlov under this Agreement.

4.2 Routing of Pavlov System. Pavlov will design, construct, install, operate, maintain, repair and upgrade as needed the Pavlov System in accordance with the Plans as approved by each of the Lake Cities. The specific route and location of components of the Pavlov System will be substantially as depicted on the Pavlov System Map insofar as the Plans have been approved by the Lake Cities. Each Lake City will provide guidance to Pavlov with regard to any anticipated public works and transportation projects within said Lake City that are likely to affect the route and location of the Pavlov System and its components.

4.3 As-Built Map. Not later than ninety (90) days after the final Segment Acceptance Date (as defined in Section 7.1), Pavlov shall provide to each Lake City in electronic format (such as Map Info, Google Earth, kmz files or ESRI shape files) an as-built map (the "**As-Built Map**") for the portion of Pavlov System that is located within the corporate limits of each Lake City. At a minimum, the As-Built Map will accurately depict the location and route of all portions of the Pavlov System, including, without limitation, the Dark Fiber, the Connection Points, the Drops, manholes, hand-holes and other access points, splice locations, and indication of whether fiber is aerial or buried. Not later than thirty (30) days following any completion of any substantive alteration, extension, or relocation of any portion of the Pavlov System, Pavlov shall provide an updated As-Built Map to the Lake City in which such work occurred.

4.4 Third-Party Property. In some instances, the real property on, over, though, or under which the Pavlov System is installed is owned by a party other than one or more of the Lake Cities ("**Third-Party Property**") and which is not an existing public right-of-way or easement owned by a Lake City. Pavlov has secured, or shall be responsible for securing, including the payment of all costs of acquisition, all of the Required Rights that are necessary for Pavlov to install, operate, maintain, repair, replace, and remove the Pavlov System on the Third-Party Property, including rights secured by Pavlov as a Competitive Local Exchange Carrier. Throughout the Term of this Agreement, Pavlov will use its best efforts to maintain the Required Rights, provided, however:

- a. If Pavlov is unable to maintain some or all of the Required Rights necessary to install and operate the Pavlov System as required by this Agreement, Pavlov will, at its sole expense, reconfigure and/or relocate the Pavlov System so as to secure and maintain such Required Rights and/or obtain such additional Required Rights, as necessary to allow for such reconfiguration or relocation.
- b. Any such reconfiguration or relocation of the Pavlov System must be approved in writing by the Lake City within which the portion of the Pavlov System is to be reconfigured or relocated prior to any work performed by Pavlov in connection therewith;
- c. Any such reconfiguration or relocation of the Pavlov System will be designed and installed at no additional cost to the affected Lake City(ies); and
- d. If Pavlov is unable to reconfigure or relocate the Pavlov System so as to secure any Required Rights, the affected Lake City(ies) may, in its(their) sole discretion, elect to terminate this Agreement: (i) in whole, in which case Pavlov will refund to the Lake Cities all funds paid to Pavlov, in which case the Lake Cities will have no liability other than pro rata IRU Fees or Maintenance Fees that have accrued prior to the termination date; or (ii) partially, as it relates to the reconfigured or relocated portion of the Pavlov System, in which case Pavlov will refund all funds paid to Pavlov for that portion of the Pavlov system terminated, and the affected Lake City(ies) will have no liability other than pro rata IRU Fees or Maintenance Fees for construction or maintenance that have accrued prior to the termination date. Relocation of any portion of the Pavlov System will be performed subject to the provisions of Sections 8.5 and 8.6.

4.5 Required Rights. Pavlov has obtained (or will obtain) the Required Rights needed for installation and operation of the Pavlov System. Pavlov will make available for the Lake Cities' inspection, at the Lake Cities' offices during regular business hours, copies of all Required Rights to the extent that their terms or other restrictions permit disclosure. Pavlov will use best efforts to comply with the terms and conditions of the Required Rights and to keep the Required Rights in full force and effect. Pavlov will take no action, or fail to take a required action, that would constitute a breach of the Required Rights. Upon expiration or other termination of a Required Right, Pavlov will use best efforts to obtain an extension or replacement of the Required Right or an alternative right of way, subject to the terms and conditions described in Section 4.4.

4.6 Drops for Government Locations. Pavlov will provide the Services at no cost to each of the Government Locations identified on **Exhibit C**. With respect to each such Government Location, Pavlov will install one Drop connecting the Dark Fiber to the building(s) comprising such Government Location and terminate the Dark Fiber at a fiber patch panel located within a room designated by the Lake City that owns or leases the Government Location. The costs for installation of the Drops identified in **Exhibit C** and the costs for the purchase and installation of the equipment needed for the Lake Cities to use the Dark Fiber and the Services are included in the IRU.

4.7 Additional Drops. Upon written request from a Lake City, Pavlov will provide additional Drops for which the requesting Lake City will be charged and will pay Pavlov the sum of \$22.00 per linear foot (“**Additional Drop Rate**”) based on the distance between the connection at the Dark Fiber to the location of the nearest fiber patch panel anywhere on the Pavlov System or the Pavlov Extended Network to which the additional Drop will connect. Pavlov and the requesting Lake City will reasonably cooperate to identify the shortest feasible route for the fiber run necessary for the additional Drop. The Additional Drop Rate shall remain the same for the first ten (10) years of the Initial Term of this Agreement. Commencing on the tenth (10th) anniversary of the final Segment Acceptance Date and each anniversary thereafter, Pavlov may adjust the Additional Drop Rate by an amount equal to the lesser of (i) the increase in the CPI Index (as defined herein) published for the most recent month for which the CPI Index was published that is more than sixty (60) days prior to the relevant anniversary of the final Segment Acceptance Date and the CPI Index published for the same month one (1) year later or (ii) the sum of four percent (4%) of the then-current Additional Drop Fee. Pavlov shall notify the Lake Cities of any such increase not later than sixty (60) days prior to the effective date of such increase.

4.8 Use of City-Owned Property. Notwithstanding anything to the contrary herein, Pavlov shall not enter onto any real property owned by a Lake City for purpose of installing and/or constructing any improvements or equipment relating to the Pavlov System or the Pavlov Extended Network, including, but not limited to, a hut, unless and until an agreement in the form of an easement or license agreement reasonably acceptable to Pavlov and the Lake City that owns such property setting forth the terms and conditions relating to Pavlov’s right to occupy and use such real property is executed by Pavlov and the affected Lake City. Pavlov shall be responsible for the cost of any real property survey to be prepared describing the boundaries of the real property to be occupied by the hut and/or other equipment used as part of the Pavlov System or Pavlov Extended Network if the boundaries of such area have not been previously established.

4.9 Pavlov Extended Network

- a. Pavlov intends to use the Pavlov System as a backbone to construct the Pavlov Extended Network. The Pavlov Extended Network may provide high-speed Internet access services, IPTV based content services, and telecommunications services (collectively, the “Services,” as more fully described on **Exhibit F**) to every commercially viable residential and business address (“Customers”) located within the boundaries of the incorporated limits of each Lake Cities Member. As new addresses are added, Pavlov will offer and, if accepted, provide the Services to such new Customers on the same terms and conditions applicable to existing Customers,

provided that the residential and commercial addresses of such new Customers are at commercially viable locations from which to extend the Pavlov System existing network.

- b. Pavlov will have the sole responsibility to pay for the Pavlov Extended Network and will have full ownership of those assets.
- c. Pavlov will complete construction of the Pavlov Extended Network within three (3) years of the Effective Date of this Agreement at its sole cost and expense.

5. Rights in the Pavlov System

5.1 IRU Rights. Pavlov hereby grants to the Lake Cities:

- a. an exclusive indefeasible right of use of forty-eight (48) strands of Dark Fiber, and as described in the Project Summary, said strands to be allocated to the Lake Cities in accordance with Section 5.4, below; and
- b. the associated and non-exclusive indefeasible right to use the Associated Property, all such rights being subject to Applicable Laws, the Required Rights, and to the terms and conditions set forth in this Agreement.

The collection of rights granted by each Lake City to Pavlov are referred to as the “IRU”. Each Lake City may elect to purchase up to twenty-four (24) additional strands (or more, subject to strands being available) at the cost of \$25,000.00 for each strand, including all applicable taxes and fees.

5.2 Ownership of Pavlov System. Legal title to the Pavlov System and all of its components including, without limitation, the Dark Fiber is, and shall continue to be held by Pavlov. Nothing in this Agreement shall convey legal title to any real or personal property owned by Pavlov to Lake Cities, nor shall it create any security interest for the benefit of Lake Cities or any other Person in the Pavlov System. Pavlov represents, warrants, and agrees that, for all purposes, and subject to Section 541(d) of the Bankruptcy Code, that Pavlov has transferred and conveyed, and hereby transfers and conveys, an equitable interest in the Dark Fiber to Lake Cities throughout the Term and applicable Extension Term.

5.3 Sale or Abandonment of Facilities. Subject to the terms and conditions of Section 14.4, if Pavlov sells, assigns, or otherwise transfers title in, or abandons all of or any portion of a Segment prior to the expiration of the Term, the IRU and the IRU Fee with respect to such Segment shall automatically terminate, pending full disclosure by Pavlov of the facts and the effect on the Lake City(ies) of such transfer or abandonment. If there is an abandonment, Pavlov shall reimburse the affected Lake City for the IRU Fee paid in connection with such Segment(s), and for any and all damages resulting from such abandonment or transfer. In the event that Pavlov sells, conveys or otherwise transfers the IRU relating to any Segment, such sale, conveyance or other transfer will explicitly be made subject to and conditioned upon the transferee’s written assumption of this Agreement, and will not interfere with or impair any of the IRU rights granted by Pavlov to other

Lake Cities, including without limitation the IRU Fee associated with the transferred Segment. Pavlov will provide the affected Lake City with a written assumption agreement executed by Pavlov and the transferee within thirty (30) days after the transfer is consummated, and a failure to provide the affected Lake City with such written assumption agreement will nullify the proposed transfer, and Pavlov will remain liable to the full extent of its obligations under this Agreement. If Pavlov abandons the use of any buildings, equipment or other components of the Pavlov System located on, under, or over property owned by a Lake City, not later than sixty (60) days after receipt of written request from said Lake City, Pavlov, at Pavlov's sole cost and expense, shall remove such building, equipment, or component and restore such property substantially to the condition of said property prior to the installation of such building, equipment, or component. Any facilities abandoned and not removed shall become the property of the Lake City where the facilities are located.

5.4 Allocation of Lake Cities' Dark Fiber Strands. The Parties agree that the forty-eight (48) strands of Dark Fiber of the Fiber Ring allocated to the Lake Cities as set forth in Section 5.1 are further allocated to the Lake Cities as follows:

<u>Name of Lake City</u>	<u>No. of Dark Fiber Strands Allocated to Each Lake City</u>
Corinth	30
Hickory Creek	11
Shady Shores	7
Total	48

6. IRU Fee

6.1 IRU Fee Payment Schedule. In consideration of Pavlov's granting of the IRU to the Lake Cities as set forth in Section 5.1 and including (a) thirty (30) years of Dark Fiber Maintenance and (b) ten (10) years of Lit Fiber/Lit Fiber Service/Managed Service to the Government Locations listed in **Exhibit C** to be provided by Pavlov, (including equipment needed to make the Drops fully functional), the Lake Cities agree to pay to Pavlov the sum of **THREE MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$3,250,000.00)** (the "**IRU Fee**") in installments as follows:

- a. 50% of each Lake City's share of the IRU Fee is due not later than five (5) business day after the Effective Date (the "**Initial Payment**"), and
- b. 20% of each Lake City's share of the IRU Fee is due upon completion of 50% of the Fiber Ring footage.
- c. 10% of each Lake City's share of the IRU Fee is due thirty (30) days after the Lake Cities receives written notice from Pavlov that the Pavlov System has been completely installed and successfully tested such that the provision of Services to Customers can commence, and

- d. 20% of each Lake City’s share of the IRU Fee (each a “**Completion Payment**”) is due thirty (30) days after such Lake City receives written notice from Pavlov that the installation of all of the Drops has been completed, the Associated Equipment installed, and the Lake Cities Drops are fully operational with all Services at their respective Government Locations. Each of the Lake Cities may confirm or identify any lack of function or use within the thirty (30) day notice period. If a deficiency is found, the affected Lake City’s payment obligation under this paragraph will be suspended until the problem is corrected, and the Pavlov System and its function is restored.

Each Lake City shall only be liable for the payment of its respective share of the IRU Fee as set forth in this Section 6.1 and shall not be jointly and severally liable for the payment of the full amount of IRU Fee. In the event of non-payment of amounts due in this Section 6.1 by a Lake City, Pavlov shall only look to the non-paying Lake City with respect to the payment of that Lake City’s proportionate share of the IRU Fee in accordance with the following allocation:

	Population		Land Area		Total % Allocation	Total Share
	Per City	% of total	Sq. miles	% of total		
Corinth	22,634	75%	7.9	51%	63%	\$2,047,500
Hickory Creek	4,718	16%	4.5	29%	22.5%	\$731,250
Shady Shores	2,764	9%	2.9	20%	14.5%	\$471,250
Total	30,116	100%	15.3	100	100%	\$3,250,000

Ten (10) years of costs for the Lit Fiber/Lit Fiber Service/Managed Service to the Lake Cities is included in the initial IRU Fee. If the Lake Cities desire to continue the Lit Fiber/Lit Fiber Service/Managed Service to their respective Government Locations after the initial ten (10) years of service, the Lake Cities shall pay the **For Government** rate designated in **Exhibit F**.

6.2 Additional Work. In addition to the amounts payable under Section 6.1, each Lake City shall pay Pavlov directly for, or reimburse Pavlov for, all reasonable costs, fees and expenses incurred by Pavlov to complete any additional work (“**Additional Work**”) that is requested in writing by such Lake City relating to this Agreement, including, but not limited to, handhole placement, Conduit work, and splicing. Prior to initiating any such requested Additional Work, Pavlov will deliver to the Lake City that requested the Additional Work a written description of the proposed scope of work and the estimated cost of such Additional Work (the “**Additional Work Estimate**”). The Lake City that requested the Additional Work shall approve or reject the Additional Work Estimate, in writing, not later than ten (10) days after receipt of the Additional Work Estimate. If the Additional Work Estimate is rejected, the Parties will work together and cooperate with the goal of determining a mutually acceptable Additional Work Estimate. Additional Work does not include requests may by a Lake City to Pavlov to avoid underground utilities, comply with plans for road, drainage or bridge projects, or otherwise comply with normal utility construction standards.

6.3 Disputed Invoices. If a Lake City disputes the amount stated on any Pavlov invoice, such Lake City shall provide Pavlov a written notice of such dispute (“**Dispute Notice**”) no later than one (1) year after the date of the invoice. The Parties will endeavor to Resolve any disputed amounts not later than fifteen (15) days after Pavlov’s receipt of the applicable Dispute Notice (the “**Resolution Period**”). “**Resolve**” means a written affirmation, signed by both Parties, indicating that the Parties have reached final agreement on the disputed amount. The Lake Cities shall pay any Resolved amounts for which they are responsible within ten (10) days after the date such disputed amount is Resolved. If the dispute is Resolved in a Lake City’s favor and the Lake City has previously paid the disputed amount or any portion thereof to Pavlov, then Pavlov shall either credit to such Lake City’s account the total amount of such previous payment(s) within thirty (30) days of the date such disputed amount is Resolved, or if there is no balance due and owing by the Lake City against which to apply such credit, then Pavlov shall reimburse such overpayment to the Lake City within said thirty (30) day period. If the Parties to the dispute are unable to Resolve the payment dispute within the Resolution Period, the Parties shall initiate the dispute resolution procedures for such dispute as contained in this Agreement.

6.4 Dispute Resolution. In the event of any claim, dispute, or controversy under this Agreement as to which claim, dispute or controversy any or all of the Lake Cities or Pavlov would seek to commence litigation in court, before commencing litigation, the Parties involved in the claim, dispute, or controversy shall immediately attempt in good faith to arrive at an amicable solution to the claim, dispute, or controversy. If the claim, dispute, or controversy has not been resolved by such good faith attempts, the Parties involved in the claim, dispute, or controversy shall endeavor to settle the claim, dispute, or controversy by non-binding mediation with a neutral third-party; provided that:

- a. In no event shall the demand for mediation be made after the date when the initiation of legal or equitable proceedings based on such claim, dispute, or controversy would be barred by the applicable statute of limitations that may apply; and
- b. The applicable statute of limitations is tolled until the conclusion of the mediation process; and
- c. Any of the Parties may simultaneously seek equitable or injunctive relief from a court of competent jurisdiction if such Party reasonably believes that any delay in seeking such relief is likely to cause irreparable harm; and
- d. The mediation shall be held in the State of Texas and shall be administered pursuant to the Government Dispute Resolution Act (Chapter 2009, Texas Government Code, as amended). No recording or transcript shall be made of the mediation proceedings. Each Party shall bear its own costs in the mediation. Pavlov shall pay 50% of the fees and expenses of the mediator and the Lake Cities involved in the claim, dispute, or controversy shall pay the other 50% of such fees and expenses. If the Parties to the claim, dispute, or controversy are unable to resolve their claim, dispute, or controversy themselves or by mediation within sixty (60) days after one of the Lake Cities or Pavlov, as applicable, has advised the others involved in the claim, dispute or

controversy of the need for mediation, then anyone involved in said claim, dispute, or controversy may pursue litigation.

7. **Interconnection with Pavlov System.**

7.1 Inspection and Acceptance of Dark Fiber. Pavlov will install the Dark Fiber on a Segment-by-Segment basis, and each of the Lake Cities will inspect and accept or reject each of the Segments located within its corporate boundaries as set forth below. When Pavlov determines that the Segment is ready for use by one or more of the Lake Cities, Pavlov shall cause the Conduits housing such Segment to be measured for length and tested to verify that they (i) conform to the approved Plans; and (ii) are continuous between structures and access points and clear of blockages. For each Segment, Pavlov shall deliver notice of the successful testing, including length measurements, to the appropriate Lake City (the “**Segment Design Delivery Notice**”). Commencing as of the date that the Lake City receives from Pavlov the Segment Design Delivery Notice and continuing for a period of forty-five (45) days thereafter (the “**Segment Inspection Period**”), Pavlov agrees that the appropriate Lake City and/or its agents shall have the right to inspect the applicable Segment, including, without limitation, the Conduits, the manholes, hand-holes and other access points, to verify that the same (i) do not materially deviate from the approved Plans, and (ii) do not contain any obstructions within any Conduit such that the Dark Fiber is blocked from running continuously within said Conduits, which shall be continuous between manholes. If any Segment deviates from the approved Plans, the Lake Cities shall provide written notice to Pavlov, prior to the expiration of the Segment Inspection Period, detailing the specific deficiency(ies), whereupon Pavlov shall have a reasonable period of time to correct such deficiency(ies) such that the Segment does not deviate from the approved Plans. Upon the Lake City’s receipt of written notice from Pavlov that such deficiency(ies) have been corrected, and the appropriate Lake City determines that the test results conform to the approved Plans, the appropriate Lake City shall deliver written notice of acceptance (“**Segment Acceptance**”) to Pavlov and the date of such notice shall be the “**Segment Acceptance Date**” for the applicable Segment. The last Segment Acceptance Date is referred to as the “**Final Segment Acceptance Date**.” If the Lake City continues to find deviations from the approved Plans, or obstructions within any Conduit, then the testing and approval process shall be repeated. Delivery of the Segment Acceptance to Pavlov will constitute the appropriate Lake City’s acceptance of the Segment.

7.2 Interconnection. Pavlov will interconnect the Dark Fiber with the Lake Cities’ Government Locations, including the Drops, at the connecting points (“**Connecting Points**”) identified in the Plans. In addition, Pavlov will install Drops as needed in order to deliver the Services to the Government Locations. The connections between the Lake Cities Government Locations and the Dark Fiber and all other work with respect to the Pavlov System shall be performed by Pavlov. Interconnections at points other than the Connecting Points are prohibited without Pavlov’s written approval. Pavlov may grant or withhold such approval in its sole and absolute discretion. Pavlov will install one Drop for each of the Government Locations listed in **Exhibit C** and terminate the fiber connection for each Government Location at a fiber patch panel within a telecommunications room designated by the designated manager for said Government Location. Pavlov will provide all equipment and Associated Property needed for the Services to be accessed and used by each Lake City.

8. Maintenance and Repair

8.1 Scheduled Maintenance. Pavlov will perform routine maintenance and repair of the Pavlov System (“**Scheduled Maintenance**”), including, without limitation the Dark Fiber and each of the Segments, in accordance with the Pavlov’s Scheduled and Un-Scheduled Maintenance Specifications and procedures set forth in the attached **Exhibit E**. Commencing with the first year of the First Extension Term, the Lake Cities will pay to Pavlov a Maintenance Fee equal to \$300.00 per linear mile of Dark Fiber per year installed within the Pavlov System. The measurement is not per fiber strand, but per miles of Conduit containing the 48 strands of Dark Fiber allocated to each of the Lake Cities. The Maintenance Fee will be paid proportionately by each Lake City in accordance with the allocation set forth in Section 6.1 of this Agreement and shall be due and payable no later than the end of each Lake City’s fiscal year (September 30) of each Extension Term Agreement Year. “**Extension Term Agreement Year**” means every twelve-month period following expiration of the Initial Term. Beginning on the date ten(10) years after the commencement of the First Extension Term, Pavlov may increase the Maintenance Fee by an amount equal to any increase in the Consumer Price Index (for the prior five-year period); subject to a limit of no more than four percent (4.0%) per year. Pavlov shall notify the Lake Cities of any such increase not later than sixty (60) days prior to the effective date of such increase.

8.2 Un-Scheduled Maintenance. Pavlov will perform non-routine maintenance and repair (“**Un-Scheduled Maintenance**”) of the Pavlov System, including, without limitation, the Dark Fiber and each of the Segments, in accordance with Pavlov’s Un-Scheduled Maintenance Specifications and procedures set forth in the attached **Exhibit E**. The maintenance services to be provided by Pavlov include non-routine maintenance and repair of the Dark Fiber in response to an actual or potential failure, interruption, or impairment in the operation of the Pavlov System insofar as such failure, interruption, or impairment affects Lake Cities’ use of the Dark Fiber. Lake Cities will reimburse Pavlov for Lake Cities’ Proportionate Share of the actual reasonable costs incurred by Pavlov in performing any Un-Scheduled Maintenance from the Cut, Repair, and Relocation Fund in accordance with Section 8.7, below. Pavlov will make reasonable efforts to determine the root cause of the need for the Un-Scheduled Maintenance. If the Un-Scheduled Maintenance is the result of the acts of a third-party, Pavlov will seek reimbursement from the responsible third-party before seeking payment by the Lake Cities from the Cut, Repair, and Relocation Fund. For purposes of this Section 8.2, Lake Cities’ “Proportionate Share” of Pavlov’s costs of Un-Scheduled Maintenance is calculated by dividing (i) the number of Dark Fiber strands (48) that are being used by the Lake Cities by (ii) the total number of strands within such Segment (288). For example, with respect to any Segment, if:

- Pavlov’s actual cost of Un-Scheduled Maintenance is \$1,000, and
- The Lake Cities cost is 48/288 (strand count) of \$1,000 or \$166.67.

8.3 Additional Equipment. Pavlov shall maintain the optronic, electrical, optical, or other equipment necessary to connect to the Dark Fiber at the Drops during the entire Term of this Agreement at no cost to the Lake Cities.

8.4 Maintenance of Other Party's Equipment. Neither Party shall alter, remove, relocate, align, or attempt to repair the other Party's equipment except as expressly authorized in advance in writing by the other Party. Each Party will be liable for any loss or damage to the other Party's equipment arising from that Party's negligence, intentional act, and/or unauthorized maintenance.

8.5 Relocation. With respect to any Segment, if, after the applicable Segment Acceptance Date:

- a. Pavlov is required by a third party with legal authority to so require (including, without limitation, the grantor of a Required Right) to relocate the Segment;
- b. Pavlov is required to relocate the Segment as a result of a Force Majeure event;
- c. Pavlov is required to relocate the Segment in order to accommodate changes in street width, street grade, street standards, construction of installation of improvements within public rights-of-way, construction of drainage, or to accommodate utility construction or changes in maintenance procedures established by any Lake City; or
- d. a Lake City requests relocation of the Segment for reasons other than previously described in (c), above,

then Pavlov shall provide to the Lake Cities (if the relocation is for the reasons described in a, b. or c. of the prior sentence) or to the Lake City making the relocation request (as described in (d) of the prior sentence), as applicable, a written notice ("**Relocation Notice**") describing such relocation. Not later than ten (10) days after receipt of the Relocation Notice by the Lake Cities (or, in the case of a specific request for relocation by a Lake City, receipt of the Relocation Notice by the requesting Lake City) will accept or reject in writing the proposed relocation. If the proposed relocation is accepted, Pavlov will perform the relocation, provided that: (i) Pavlov may reasonably determine the extent of, the timing of, and methods to be used for such relocation; provided, however, if such relocation is at the request of a Lake City, Pavlov shall in any case complete such relocation not later than ninety (90) days after the request is made by the Lake City or Cities, and (ii) any such relocation shall incorporate fibers meeting or exceeding agreed-upon specifications of the Dark Fiber. If the Lake Cities do not consent to such relocation, the Lake Cities will notify Pavlov of its objection in writing, and the Parties will work together to resolve all disputes concerning the proposed relocation, provided that if no resolution is reached, the Lake Cities may terminate this Agreement with respect to the Segment or portion of such Segment that requires relocation. In the event of any such relocation, Pavlov shall use best efforts to minimize any service interruptions.

8.6 Costs of Relocation. If Pavlov causes the relocation of the Fiber Optic Ring or portion thereof without the request of a Lake City, then Pavlov is responsible for all costs of relocation. The Lake Cities' pro rata portion of a relocation cost shall come from the Cut, Repair and Relocation Fund defined in Section 8.7, below. As part of its due diligence in fiber route design or planning, Pavlov will research the following types of documents of each of the Lake Cities: the long-range transportation plan (including roads, mass transit, bike trails, etc.) of each of the Lake Cities; the long-range public works plan, the long-range capital improvements and

construction plans, the long range residential and commercial development plans, and other relevant planning documents to avoid potential relocation requirements.

Unless otherwise agreed by the requesting Lake City(ies), the relocation of the Segment or portion of a Segment shall be completed by Pavlov not later than ninety (90) days after acceptance of the Relocation Notice by the requesting Lake City(ies) as provided in Section 8.5.

8.7 Cut, Repair and Relocation Fund. Notwithstanding anything to the contrary set forth in Sections 8.2, 8.5, and 8.6, not later than fifteen (15) business days after the final Segment Acceptance Date, the Lake Cities will pay to Pavlov a one-time payment in the amount of **ONE HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00)** with each of the Lake Cities paying a portion of that payment based upon their pro rata share identified below for cuts, repairs and relocations, said funds being called the “**Cut, Repair, and Relocation Fund.**” The Cut, Repair, and Relocation Fund is funded as follows:

- a. The pro rata division among the Lake Cities and Pavlov is the Lake Cities’ fiber strands as a percentage of the fiber strands: 48/288, or Lake Cities 16.67 % (“**Lake Cities’ Cost Share**”); Pavlov 83.33%. Unless specifically agreed otherwise, cut, repair or relocation expenses will be divided on such basis between the Lake Cities and Pavlov.
- b. The pro rata allocation among the Lake Cities to fund the Cut, Repair, and Relocation Fund (i.e., 16.67%) is determined by dividing the number of fiber strands allocated to each Lake City by the total number of Lake Cities strands, as follows:

Schedule 1

<u>Name of Lake City</u>	<u>No. of Dark Fiber Strands Allocated to Each Lake City</u>
Corinth	30
Hickory Creek	11
Shady Shores	7
Total Strands	48

- c. Where allocation among the Lake Cities is required by this Agreement, the allocation above is to be used. In the event one or more of the Lake Cities acquire additional strands from Pavlov, their allocation of cost increases by the amount Pavlov’s decreases. The allocation used above may not be revised to reduce any Lake City allocation of strands without written amendment to this Agreement.
- d. Upon completion of installation of the Fiber Ring, each Lake City shall make a one-time payment of the following amounts to fund the Cut, Repair, and Relocation Fund to pay costs of both “Repairs” (defined below) and of Un-Scheduled Maintenance:

Corinth	30/48	62.500%	\$93,750.00
Hickory Creek	11/48	22.916%	\$34,375.00
Shady Shores	7/48	14.583%	\$21,875.00
Totals	48/48	100%	\$150,000.00

- e. The Cut, Repair, and Relocation Fund shall be used solely by Pavlov to reimburse Pavlov for the Lake Cities’ Cost Share of: (1) the cost of cuts, repairs and/or relocations (collectively “**Repairs**”) on the Fiber Optic Ring only; and (2) the Lake Cities’ share of Un-Scheduled Maintenance as provided in Section 8.2, above. Pavlov shall deduct the Lake Cities’ Cost Share of such Repairs and/or Un-Scheduled Maintenance proportionately from the Cut, Repair, and Relocation Fund based upon the costs incurred by Pavlov for the Repairs or Un-Scheduled Maintenance of a Segment. Neither a Lake City or the Lake Cities will have any liability for Repairs on the Fiber Optic Ring or Un-Scheduled Maintenance beyond the amount of the Cut, Repair, and Relocation Fund.
- f. Pavlov will deposit the funds provided for the Cut, Repair, and Relocation Fund in a simple interest-bearing account to be held until spent in accordance with the terms of this Agreement. The Lake Cities shall only be liable for the initial one-time funding of the Cut, Repair and Relocation Fund in accordance with Section 8.7(d).
- g. In the event of a cut, repair or relocation of the Dark Fiber or Un-Scheduled Maintenance, Pavlov will notify the Lake Cities in writing describing the event, the total estimated cost associated with the event, the proportionate Lake Cities Cost Share and will request release of all or a portion of the Cut, Repair, and Relocation Fund based upon the Lake Cities Cost Share. The Lake Cities may accept or reject the request for release of funds, provided that, if the request is rejected, the Parties will work together in good faith to resolve any dispute.
- h. If any funds remain in the Cut, Repair, and Relocation Fund upon expiration of the Initial Term, such remaining funds, including interest accrued thereon, will be applied to the Lake Cities’ account for payment of the First Extension Fee as described in Section 3.1. Likewise, any funds that remain in the Cut, Repair and Relocation Fund upon expiration of the First Term Extension, including accrued interest thereon, will be applied to the Lake Cities’ account for payment of the Second Extension Fee as described in Section 3.1. If the Lake Cities fail to exercise the option of an Extension Term or if this Agreement is terminated as otherwise provided herein, the balance remaining in the Cut, Repair, and Relocation Fund, including interest accrued thereon, shall be repaid to the Lake Cities not later than ten (10) business days after the expiration or termination of this Agreement as applicable in the same proportion as the proportion of original funding of the Cut, Repair and Relocation Fund paid by the Lake Cities. The provisions of this Section 8.7(f) shall survive the expiration or other termination of this Agreement.

- i. Pavlov shall be solely liable for the payment of all costs of Repairs, Scheduled Maintenance, or Un-Scheduled Maintenance anywhere on the Pavlov System outside the Fiber Optic Ring, including the Pavlov Extended Network, and the Lake Cities shall have no responsibility for payment of such costs.

8.8 Damages Caused by Pavlov. Pavlov, at its sole cost and expense, shall repair, replace and restore immediately any damage caused by Pavlov or its employees, agents, Contractors, subcontractors or representatives to any property owned or administered by any of the Lake Cities, and/or any other property that is not owned by Pavlov, to a condition substantially equivalent to that which existed prior to such damage. Any repairs, replacement, or restoration required to be performed pursuant to this Section 8.8 by Pavlov to property not owned, leased, or otherwise controlled by Pavlov shall be commenced and completed not later than fifteen (15) calendar days after receipt of written notice from one or more of the Lake Cities or upon actual notice of any damage; provided, however, if the deficiencies are not remedied in a commercially reasonable fashion within such fifteen (15) day period, or in the event of an emergency, the affected Lake Cities shall have the right, but not the obligation, to undertake, without notice to Pavlov, all reasonably necessary repair, replacement or restoration and to recover from Pavlov the fees, costs and expenses actually incurred in connection therewith. All work performed by Pavlov hereunder shall be pursued promptly and in full compliance with the terms and conditions of this Agreement, Applicable Laws, and in full compliance with all applicable health and safety rules and standards, and in a safe, efficient and commercially reasonable manner such that any repair, replacement or restoration work does not unreasonably interfere with the Lake Cities' use of the Dark Fiber nor does it interfere with the use of any property not owned by Pavlov. The Parties shall use their best efforts to exercise special precautions accepted as industry-wide standards to avoid damage to the Pavlov System, including, without limitation, the Conduits, and any property owned or administered by one or more of the Lake Cities', and shall immediately (no later than twenty-four (24) hours after an occurrence) report any damage to the Lake City within whose jurisdiction the damage occurred. Notwithstanding anything contained herein to the contrary, if any utility or communications facilities not owned by Pavlov are damaged by Pavlov, its Contractors, or agents, Pavlov understands, acknowledges, and agrees the affected Lake City or owner of such damaged facilities shall have the exclusive right to repair its own facilities and bill Pavlov for all reasonable costs incurred as a result of such repair.

8.9 Grounding and Electrical Standards. Grounding and bonding of all of elements of the Pavlov System shall be in accordance with NESC, NEC, and all other Applicable Laws. The Pavlov System shall not use or carry voltages or currents in excess of the limits prescribed for Communication Services conductors by the NESC. All parts of any Pavlov System carrying voltages in excess of 50 volts AC (rms) to ground or 135 volts DC to ground, except for momentary signaling or control voltages, shall be enclosed in an effectively grounded sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer sheath shall not exceed 200 micro amperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly. All energized parts of the Pavlov System shall be suitably covered to prevent accidental contact.

8.10 Liens. Pavlov will not permit any lien to be placed upon or attached to the Dark Fiber, the Conduits or any other portion of the Pavlov System that is used or relied upon by the Lake Cities

for the provision of Services. If any such liens are placed against the Dark Fiber, the Conduits or any other portion of the Pavlov System that is used or relied upon by the Lake Cities in connection with the construction, installation, operation, maintenance, repair, restoration or removal of the Pavlov System, then Pavlov shall cause, at its sole expense, such liens to be discharged, released, removed or bonded around no more than thirty (30) days of such lien being placed.

9. Operation and Use of the Pavlov System and Pavlov Extended Network

9.1 Services. Pavlov will use the Pavlov System to provide high-speed Internet access services, IPTV content services, and telecommunications services (collectively, the “**Services**,” as more fully described on **Exhibit F**) to the Lake Cities.

9.2 Rates. The initial Service Rates charged to residential, government, and business Customers by Pavlov are set forth on **Exhibit F**. Pavlov may not increase the initial rates except as described on **Exhibit F**. Pavlov will provide special pricing for low-income residential Customers as set forth on **Exhibit F**. A “**low-income Customer**” is any household that is eligible for the latest version of the Federal Affordable Connectivity Program, as described by the FCC, <https://www.fcc.gov/acp>, and amended from time to time.

9.3 Customer Service Standards (SLA). Pavlov’s Services must at all times comply with the customer service requirements (“**SLA**”) set forth on **Exhibit D**, which includes standards for, among other items, overall up-time, latency, packet loss and jitter, and problem resolution deadlines. As part of the SLA, once every six months, Pavlov will provide Lake Cities with reports (“**SLA Reports**”) accurately recording customer service calls and resolutions during the preceding six month period and describing Pavlov’s compliance or non-compliance with the SLA standards.

9.4 Construction Schedule. Pavlov will use its best efforts to conform its installation schedule for applicable portions of the Pavlov System to the construction schedule (“**Construction Schedule**”) set forth on **Exhibit G**. Pavlov will provide the Lake Cities with a monthly report describing construction progress, any delay or failure to comply with the terms of the Construction Schedule, and a description of any Force Majeure events that resulted in delays in the Construction Schedule including the dates of the Force Majeure events, the duration of the Force Majeure events, and the number of additional days added to the Construction Schedule to accommodate for delays relating to Force Majeure events. All communications between Pavlov and a Lake City will be between Pavlov’s Construction Manager and the city manager/administrator for the applicable Lake City. Pavlov will provide the Lake Cities with contact information for its Construction Manager not later than ten (10) days after the Effective Date. During the construction phase, Pavlov shall deliver to the Lake Cities updated quarterly As-Built Maps for completed Segments to track its construction progress.

9.5 Damage Notices. Each Party shall each promptly (no later than twenty-four (24) hours after an event described herein) notify the other Party of any matters pertaining to, or the occurrence (or impending occurrence) of, any event which has damaged or would be reasonably likely to damage any portion of the Pavlov System, or its functionality, insofar as such matter is known to such Party.

10. Insurance

10.1 Pavlov Insurance. During the Term, Pavlov shall maintain in full force and effect the following insurance coverage:

- a. A policy of comprehensive general liability insurance, including public liability, bodily injury, and property damage covering the construction, installation, operation, and use of the Pavlov System with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, and Five Million Dollars (\$5,000,000.00) aggregate, with Ten Million Dollars (\$10,000,000.00) umbrella coverage;
- b. Motor vehicle insurance meeting the requirements of Texas 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; and
- c. Workers' Compensation insurance to meet the requirements of the Workers' Compensation laws of Texas where applicable.

The above required insurance policies shall (i) be written by companies licensed to do business in the State of Texas and having an AM Best Rating of A-NII, or equivalent from a recognized rating agency, (ii) except for the Worker's Compensation policy, be endorsed to name each Lake City, including their respective officers, employees, and agents, as Additional Insureds under such policies, (iii) be endorsed to waive subrogation against each Lake City, including their respective officers, employees, and agents; and (iv) be endorsed to require insurance policy required to be carried by or on behalf of Pavlov pursuant to this Agreement shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be canceled, non-renewed or coverage thereunder materially reduced unless the Lake Cities shall have received notice of cancellation, non-renewal or material reduction in coverage, in each such case (except for notice of cancellation due to non-payment of premiums) such notice to be sent to the Lake Cities not less than thirty (30) calendar days (or the maximum period of calendar days permitted under applicable law, if less than thirty (30) calendar days) prior to the effective date of such cancellation, non-renewal or material reduction in coverage, as applicable. If any insurance policy required to be carried by or on behalf of Pavlov pursuant to this Agreement is to be canceled due to non-payment of premiums, the requirements of the preceding sentence shall apply except that the notice shall be sent to the Lake Cities on the earliest possible date but, in no event, less than ten (10) calendar days prior to the effective date of such cancellation. Pavlov shall cause Certificates of Insurance evidencing such insurance coverage to be provided to the Lake Cities prior to commencement of installation of the Pavlov System and upon the renewal dates of such policies. Notwithstanding the provisions of this Section 10.1, the coverage limits for the comprehensive general liability insurance and the motor vehicle insurance shall never be less than twice the limits of liability per event applicable to each Lake City pursuant to the Texas Tort Claims Act (Chapter 101, Texas Civil Practices and Remedies Code, as amended).

10.2 Lake Cities Insurance. Following the Final Segment Acceptance Date, and throughout the Term, the Lake Cities shall procure and maintain in force, at its own expense, insurance coverage as required by Applicable Laws.

10.3 Contractor's Insurance. Pavlov shall require its contractors that are engaged in the work relating to construction and installation of the Pavlov System to purchase and maintain in full force and effect while engaged in work relating to installing the Pavlov System the types and limits of insurance described in Section 10.1, inclusive of the same endorsements required by Section 10.1. Such contractors shall be required to provide a certificate of insurance evidencing such required coverage and associated policy(ies) upon written request of one or more of the Lake Cities. Notwithstanding anything hereto to the contrary, nothing herein shall relieve Pavlov or any of Pavlov's contractors from procuring any insurance required by state law or an ordinance enacted by a Lake City while performing work within a public street or right of way or on property owned, leased, or otherwise controlled by a Lake City that is generally applicable to all contractors performing work at said locations.

11. Indemnification

Except as otherwise expressly provided in this Agreement, Pavlov and its employees, agents, Contractors, subcontractors or representatives shall exercise the rights and privileges hereunder at their sole risk and in consideration of this Agreement shall release, indemnify, protect, defend and save harmless the Lake Cities collectively and each Lake City individually, including their respective elected and appointed officials, officers, employees, representatives, and agents from and against any and all claims and demands whatsoever, including court costs and reasonable attorney's fees, by reason of damage to property and injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, which may relate to, arise out of or be caused, in whole or in part, by the acts, omissions or negligence of Pavlov or its employees, Contractors, or agents in connection with (i) the exercise of its rights and privileges hereunder, or (ii) the construction, installation, operation, maintenance, repair, restoration and removal of the Pavlov System. The provisions of this Section 11 shall survive the expiration or other termination of this Agreement.

12. Notice

Unless otherwise stated herein, all notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

If to Corinth:

City of Corinth
Attn: City Manager
3300 Corinth Parkway
Corinth, Texas 76208

If to Hickory Creek:

Town of Hickory Creek
Attn: Town Administrator
1075 Ronald Reagan Ave.
Hickory Creek, Texas 75065

If to Shady Shores:

Town of Shady Shores
Attn: Town Administrator
101 S. Shady Shores Road
Shady Shores, TX 76208

If to Pavlov for Administrative/Payment
Notices:

Pavlov Media
PO Box 25
Champaign, Illinois 61824

If to Pavlov for Legal Notices

Pavlov Media, Inc.
601 N Country Fair Dr
Champaign, IL. 61821
Attn: Legal

Any such notice or other communication shall be deemed to be effective when actually received or refused. Any Party may, upon written notice to the other Parties, change the address to which future notices or other communications shall be sent.

13. Confidentiality

13.1 Generally. Each Party, including its agents and subcontractors, may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this Agreement. Unless clearly marked as confidential or exempt from disclosure under the Texas Public Information Act, Pavlov shall presume to be non-confidential all information received from the Lake Cities or to which it gains access pursuant to this Agreement. Unless clearly marked as confidential, the Lake Cities shall presume to be non-confidential all information received from Pavlov or to which it gains access pursuant to this Agreement. Notwithstanding anything to the contrary herein, no confidential data collected, maintained, or used in the course of performance of the Agreement shall be disseminated except as authorized by law or court order, either during the Term and for a period of five (5) years after expiration or earlier termination of this Agreement. Each Party will return or destroy (providing written certification of destruction) any and all data collected, maintained, created or used in the course of the performance or the Agreement, in whatever form it is maintained, promptly upon expiration or earlier termination of this Agreement or upon request of the disclosing Party. The foregoing confidentiality obligations, including without limitation, the obligation to return or destroy and provide written certificate of destruction of data, shall not apply to confidential data or information that is: (a) lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; (b) received in good faith from a third-party not subject to any confidentiality obligation to the disclosing Party; (c) publicly known through no breach of confidentiality

obligation by the receiving Party; (d) required to be retained by any Lake City pursuant to court order or state law, including without limitation, the Texas Public Information Act or records retention requirements applicable to Lake Cities; or (e) independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information. The provisions of this Section 13 shall survive expiration or other termination of this Agreement.

13.2 Application of Public Information Act.

- a. The Parties understand and acknowledge that information exchanged between or among one or more of the Parties may constitute “public information” as that phrase is defined in the Texas Public Information Act (Texas Government Code §§552.001 et. seq., or “**the Act**”) which may be subject to disclosure subject to a written request delivered to a Party pursuant to the Act.
- b. If a Lake City receives a request for public information pursuant to the Act (the “**PIA Request**”) which includes within its scope information which Pavlov has identified to be confidential in accordance with Section 13.1, the Lake City receiving the PIA Request shall notify Pavlov of such request in accordance with applicable provisions of the Act. Pavlov shall, at Pavlov’s cost, be solely responsible for asserting arguments to the Office of the Attorney General of the State of Texas pursuant to §552.305(b) of the Act regarding the reason(s) Pavlov’s information is exempt from disclosure to the public under the provisions of the Act and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of Pavlov’s information. Other than notifying Pavlov of the request for Pavlov’s confidential information as provided in §552.305(d) of the Act, the Lake City receiving the PIA Request may, but shall be under no obligation to, submit arguments to the Texas Attorney General relating to reasons Pavlov’s confidential information is exempt from required release to the public.
- c. If a Lake City receives a PIA Request which includes within its scope information which one or more of the Lake Cities has identified to be confidential in accordance with Section 13.1, the Lake City receiving the PIA Request shall notify Pavlov and the other Lake Cities of such request in accordance with applicable provisions of the Act. The Lake City that is the owner of such information shall, at said Lake City’s cost, be solely responsible for asserting arguments to the Office of the Attorney General of the State of Texas pursuant to §552.305(b) of the Act regarding the reason(s) the requested information is exempt from disclosure to the public under the provisions of the Act and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of such information. Other than notifying the Lake City that owns the information as provided in §552.305(d) of the Act, the Lake City receiving the PIA Request may, but shall be under no obligation to, submit arguments to the Texas Attorney General relating to reasons the requested information is exempt from required release to the public.
- d. In accordance with applicable provisions of the Act (including, but not limited to Section 551.371, et. seq. of the Act) and 2 CFR Part 200, Pavlov agrees that the Lake

Cities or other authorized representatives of the Lake Cities shall have access to, and the right to audit, examine, or reproduce, any and all records of Pavlov related to the performance under this Agreement. Pavlov shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters of which any one or more of the Lake Cities have brought to the attention of Pavlov are resolved, whichever is longer.

14. Miscellaneous

14.1 Non-waiver. Failure by any Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

14.2 Representations and Warranties. Each of the Parties represents and warrants that it has full authority to negotiate, execute, deliver and perform this Agreement, that this Agreement does not conflict with any other document or agreement to which it is a party or is bound, that the signatory below has been authorized to execute this Agreement, and that this Agreement is fully enforceable in accordance with its terms. Pavlov represents and warrants that it will pay: (a) all taxes and fees arising from its ownership and operation of the Pavlov System and (b) all fees, charges and costs relating to accessing public rights-of-way, railroad facilities, DART facilities, DCTA facilities and related facilities. The Lake Cities have no obligation to pay any of the taxes, fees, charges or costs described in this Section 14.2. A failure of Pavlov to pay applicable taxes and fees constitutes a material breach of this Agreement.

14.3 Contractors. Pavlov may use independent contractors, subcontractors, or other non-employees (each, a "**Contractor**") to perform any of Pavlov's obligations under this Agreement. Pavlov is fully responsible for all acts and omissions of its Contractors when such Contractors are acting on behalf of Pavlov and Pavlov's use of Contractors does not release Pavlov from any of its obligations or liabilities under this Agreement. Pavlov will promptly pay all costs billed by its Contractors. Pavlov assumes full responsibility and liability for all work performed by and any acts or omissions of any of its Contractors in the performance of this Agreement.

14.4 Assignment.

a. By Lake Cities. Subject to Section 14.4.b., none of the Lake Cities may transfer or assign all or any part of its interest under this Agreement, or delegate any duties, burdens, or obligations arising hereunder, without Pavlov's consent which shall not be unreasonably withheld, delayed, or denied. -

b. Upon Termination or Event of Default. Notwithstanding anything to the contrary in this Agreement but subject to the terms and conditions set forth in Section 3.2.d., if this Agreement is terminated based on an Event of Default by Pavlov, then, without Pavlov's consent: (i) title to all of the Segments located within the corporate boundaries of each Lake City will immediately and automatically transfer to the applicable Lake City, free and clear of all liens and other encumbrances, and (ii) the applicable Lake City may sell or lease the fiber constituting such Segments to a service provider other

than Pavlov; and (iii) during any period of time required to consummate the transactions described in subsections (i) and (ii), Pavlov will continue to operate the Pavlov System and deliver the Services to Customers contemplated in this Agreement.

- c. **By Pavlov.** Pavlov shall not have the right to assign or apportion its rights and obligations hereunder to a third-party without the prior written consent of the Lake Cities, which shall not be unreasonably withheld, delayed, or denied. If the Lake Cities consent to an assignment of this Agreement by Pavlov, Pavlov shall cause the assignee, licensee or third-party to agree in writing to comply with the terms of this Agreement applicable to Pavlov, and Pavlov will deliver to the Lake Cities a copy of such written agreement not later than seven (7) days after execution; provided, however, that Pavlov shall not be relieved of any liabilities or obligations hereunder and Pavlov will ensure, and will demonstrate to the Lake Cities' satisfaction, that the assignee, licensee or third-party has sufficient and adequate resources to undertake the obligations, responsibilities and liabilities of Pavlov under this Agreement.

14.5 Successors and Assigns. This Agreement shall extend to and bind the successors and assigns of the Parties hereto and shall run with title to the Pavlov System and each of the Segments.

14.6 Severability. Should any part of any paragraph or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining paragraph or provisions shall not be impaired.

14.7 Applicable Law; Venue. The validity, interpretation and enforcement of this Agreement shall be governed by the laws of Texas without regard to conflict of law applications. Venue for any suit between or among the Parties arising from or related to this Agreement shall be in state court of competent jurisdiction in Denton County, Texas; provided, however, if the nature of the issues in the suit involve a question over which jurisdiction lies solely in federal court, venue for such suit shall be in the United States District Court for the Eastern District of Texas, Sherman Division.

14.8 Force Majeure. Despite anything to the contrary in this Agreement, no Party will be liable or in default under this Agreement for any delay or failure of performance resulting directly from anything not caused by and beyond the reasonable control of the non-performing Party (a "**Force Majeure Event**") including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; severe weather, earthquakes, or floods; fires or explosions; governmental action or regulation (except obligations to obtain and to maintain appropriate approvals as required in this Agreement); epidemics or pandemics; or strikes, lockouts, or other work interruptions or labor shortages; supplier shortages. The time for performance of a Party hereunder shall be extended commensurate with the duration of the Force Majeure Event.

14.9 Neutral Interpretation. Each Party acknowledges and agrees that it has had a full and fair opportunity to read and review all the terms herein; that it has had a full and fair opportunity to have this Agreement reviewed by independent legal counsel, and that no provision of this Agreement is to be construed strictly, narrowly or against any Party on grounds of authorship or draftsmanship.

14.10 Headings. All headings used herein are strictly for the reference and convenience of the Parties and shall be treated or construed as having any effect on the terms or provisions of this Agreement or the interpretation thereof.

14.11 Recitals and Exhibits. All recitals and exhibits are incorporated hereto and made a part hereof.

14.12 Counterparts. This Agreement may be executed by the Parties in one or more identical counterparts, each of which shall be treated for all purposes as an original, and all of which together shall constitute one and the same agreement.

14.13 Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties regarding the subject matter herein and supersedes all prior understandings, negotiations or other agreements, whether verbal or written.

14.14 No Modification or Amendment. This Agreement may not be modified or amended except by separate writing executed by all Parties, said separate writing then becoming part of this Agreement for all purposes.

14.15 Independent Contractor. The relationship between the Parties shall be that of independent contractors, and not as agent or principal, and no act or omission to act shall be construed to alter this relationship. Additionally, notwithstanding any term to the contrary within this Agreement, no act or omission to act on the part of a Lake City or of Pavlov shall be imputed to any other Lake City or to Pavlov. Each Lake City and Pavlov shall be liable for their own actions and omissions when performing obligations under the terms of this Agreement.

14.16 Additional Actions and Documents. Each of the Parties hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed, such further documents and instruments, and to use its best efforts to obtain such consents, as may be necessary or as may be reasonably requested to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

14.17 Time. If the last day permitted for the giving of any notice, or any time period hereunder, or the performance of any act required or permitted hereunder falls on a day that is not a business day, then the time for the giving of such notice, the expiration of the time period, or the performance of such act will be extended to the next succeeding business day.

14.18 Attorneys' Fees. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising hereunder, the Parties to such dispute shall be responsible for their respective costs and attorneys' fees.

14.19 Applicable Laws. This Agreement shall be subject to, and, in the performance of their respective obligations hereunder, each Party shall comply with, all applicable federal, state and local laws, rules, regulations, permits, licenses, approvals, consents, agreements, orders or other

requirements mandated by or entered into with any governmental authority (including, without limitation, any applicable rules and regulations of quasi-governmental and regulatory authorities with appropriate jurisdiction, the most current edition of the NESC, the most current edition of the NEC, and all additional requirements of the Texas Public Utilities Commission and of any applicable federal, state, county or municipal code in conjunction with the use and maintenance of manholes) (collectively, the “**Applicable Laws**”).

14.20 Prohibition on Boycotting Israel and Energy Companies; Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations. Pavlov verifies that:

- a. Pavlov does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended;
- b. Pavlov does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended; and
- c. Pavlov does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

14.21 Effective Date. This Agreement will be effective on the date (the “**Effective Date**”) (i) it bears the signatures of authorized representatives of Pavlov and every Lake City, whether on the same document or identical counterparts as authorized by Section 14.12 and (ii) Pavlov has prepared and signed a Form 1295 with the Texas Ethics Commission with respect to each Lake City, and such Form 1295 has been received and acknowledged by each Lake City, respectively.

14.22 Non-Appropriations. The Parties recognize that this Agreement shall commence upon the Effective Date and continue in full force and effect until termination in accordance with its provisions. The Parties further understand, acknowledge, and agree that the continuation of the Agreement with respect to each Lake City is dependent on the annual appropriation of funds by its governing body. If the governing body of a Lake City does not approve the appropriation of funds to pay any obligations pursuant to this Agreement for a future fiscal year, the Agreement as to that Lake City shall terminate at the end of the fiscal year for which funds were appropriated. That Lake City shall still be liable for all financial obligations the Lake City was responsible for under the terms of this Agreement through the end of the Term, and to perform such obligations that are otherwise required pursuant to termination of this Agreement.

14.23 Use of Current Funds. The Lake Cities Acknowledge the funds each will use for its financial obligations in this Agreement will primarily be sourced from federal funds authorized for broadband projects in the American Rescue Plan Act. Accounting and authorization for use of such funds will be done per applicable law and regulations. To the extent federal funds are not used or available; and this Agreement can be construed as an Interlocal Agreement by and among the Lake Cities, each Lake City paying for the performance of governmental functions or services pursuant

to this Agreement shall make those payments from current revenues available to the paying Lake City. The Lake Cities represent and agree that the payments required by this Agreement by the paying Lake City will fairly compensate the performing Party for the services or functions performed under this Agreement.

In confirmation of their consent and agreement to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the Parties have executed this Agreement as of the dates set forth on the following pages.

(Signatures on following page)

City of Corinth Signature Page

CITY OF CORINTH, TEXAS

By: _____
Bill Heidemann, Mayor

Date

By: _____
Lee Ann Bunselmeyer, Interim City Manager

Date

ATTEST:

Lana Wylie, City Secretary

APPROVED AS TO FORM:

Patricia A. Adams, City Attorney

Town of Shady Shores Signature Page

TOWN OF SHADY SHORES

By: _____
Cindy Aughinbaugh, Mayor

Date

By: _____
Wendy Withers, Town Administrator

Date

ATTEST:

Wendy Withers, Town Secretary

APPROVED AS TO FORM:

James E. Shepherd, Town Attorney

Town of Hickory Creek Signature Page

TOWN OF HICKORY CREEK, TEXAS:

By: _____
Lynn Clark, Mayor

Date

By: _____
John Smith, Town Manager

Date

ATTEST:

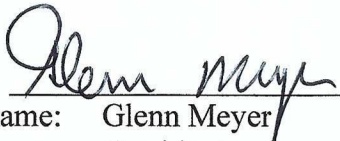
Kristi Rogers, Town Secretary

APPROVED AS TO FORM:

Trey Sargent, Town Attorney

Pavlov Signature Page

Pavlov Media, Inc.

By: 
Print name: Glenn Meyer
Title: President

8-11-22
Date

EXHIBIT B
Project Summary

1. Pavlov will construct a fiber ring of approximately 22 miles through and around the Lake Cities.
2. Pavlov will install three huts housing network electronics. The huts shall be approximately 150 square feet and be located on land of approximately 16 feet x 20 feet. The huts will be located at the Corinth Public Works building, the Shady Shores Municipal Center, and a location within Hickory Creek and mutually agreeable to Pavlov and the Town of Hickory Creek.
3. The routes between the three huts are Segments.
4. The northern Segment from the Corinth Public Works building to the Shady Shores Municipal Center is approximately 6.9 miles.
5. The length and specific location of the eastern Segment from the Shady Shores Municipal Center to the Hickory Creek hut location will be determined once the Hickory Creek hut location is identified..
6. The length and specific location of the southern and western Segment from the Hickory Creek hut location to the Corinth Public Works building will be determined once the Hickory Creek hut location is identified.
7. Conduit will extend throughout the entire length of the ring, connecting all huts and vaults.
8. A fiber optic cable with 288 strands will extend throughout the length of the ring.
9. 48 strands of the fiber optic cable will be reserved for the Lake Cities for use as detailed in this Agreement. The strands will be in four buffer tubes of 12 strands each.
10. All Lake Cities Government Locations in **Exhibit C** will have redundant and diverse sources of bandwidth so that any interruption of service in one part of the ring will result in rerouting traffic so as to not cause interruption of service to the Lake Cities Government Locations.
11. All strands leased under this Agreement will terminate in each of the huts and be readily available for service.
12. No fewer than 200 vaults will be located along the ring to provide additional access to the fiber strands leased to the Lake Cities for additional purposes as provided for under this Agreement.
13. The ring will be constructed so as to facilitate the building of a fiber to the home network throughout the Lake Cities.

14. The ring will be constructed to have the capacity for expansion as the Lake Cities grows.

EXHIBIT C
Initial List of Government Locations

Location	Address	Municipality
Corinth City Hall	3300 Corinth Parkway	Corinth
Corinth Community Park	3700 Corinth Parkway	Corinth
Corinth Lake Sharon Pump Station	1100 Lake Sharon Drive	Corinth
Corinth Lift Station	Barrell Strap Road	Corinth
Corinth Police Department	3501 FM 2181	Corinth
Corinth The Woods Pump Station	1200 Postwood Drive	Corinth
Lake Cities Fire Administration	3501 FM 2181	Corinth
Corinth Public Works	1200 N Corinth Parkway	Corinth
Lake Cities Fire Station #2	2700 Shady Shores Road	Corinth
Lake Cities Fire Station #3	3750 Cliff Oaks Drive	Corinth
Hickory Creek Public Works and Animal Shelter	970 Main Street	Hickory Creek
Hickory Creek Town Hall	1075 Ronald Reagan	Hickory Creek
Shady Shores Community Center	101 S. Shady Shores Drive	Shady Shores

Pavlov will install one Drop for each of the locations listed above, and Pavlov will terminate the fiber connection for each location at a fiber patch panel within a telecommunications room designated by a designated manager for each Government Location.

For each Government Location, each Lake City shall enter into a standard commercial Lit Services agreement with Pavlov detailing the services provided.

EXHIBIT D

Customer Service Standards (SLA)

- 99.9% uptime. Uptime shall not include periods of Scheduled Maintenance as identified in **Exhibit E** hereto.
- Latency: Connections to Pavlov's colocation facility in Dallas will be in the 4-8 millisecond range.
- Individual service disruptions will be responded to within four hours and fixed within 48 hours.
- System wide disruptions will be fixed within 4 hours.
- Within the Fiber Optic Ring, latency will be under 1 millisecond. Pavlov's oversubscription for the network will be no more than 32:1.

EXHIBIT E

Scheduled and Un-Scheduled Maintenance Specifications

A. Scheduled Maintenance shall include the following activities:

- (1) Patrol of Pavlov System route on a reasonable routine basis;
- (2) Maintenance of a "Call-Before-You-Dig" program and all required and related cable locates;
- (3) Maintenance and repair of signposts, interconnect cabinets and huts, regeneration facilities, and handholes (including handhole covers) along public rights-of-way;
- (4) Assignment of fiber maintenance employees or subcontractors to locations occupied by the Dark Fiber at intervals dependent upon terrain, accessibility, locate ticket volume, etc.
- (5) In the event that any Person is engaged in construction activities or otherwise conducting excavation within five (5) feet of any element of Pavlov System, Pavlov shall have qualified technicians on-site to monitor such activities; if any technician has reason to believe that such construction or excavation activity has damaged or will likely damage the Pavlov System, the technician will immediately report to the relevant Lake City describing the damage or risk of damage.

B. Unscheduled Maintenance shall include the following activities:

- (1) "Emergency Unscheduled Maintenance" in response to: alarm identification received from Pavlov's Communications Management Center ("**CMC**"); notification received from Lake Cities, any individual Lake City, or notification from any Person concerning an actual or potential failure, interruption or impairment of the operation of the Pavlov System, or actual or constructive knowledge of any event that is imminently likely to cause the failure, interruption or impairment in the operation of the Pavlov System;
- (2) "Non-Emergency Unscheduled Maintenance" in response to any event, condition or situation that is affecting or likely to affect operation of the Pavlov System. Promptly upon becoming aware of any such event, condition or situation, Lake Cities shall immediately report the same to Pavlov, whereupon Pavlov will log the time of the report, verify the problem and dispatch personnel immediately to take corrective action;
- (3) Operations Center. Pavlov shall operate and maintain a Communications Management Center ("**CMC**") capable of receiving Pavlov System alarms twenty-four (24) hours a day, seven (7) days a week. Pavlov's maintenance employees or subcontractors will be qualified technicians and will be available for dispatch twenty-four (24) hours a day, seven (7) days a week. With respect to any event or condition requiring Emergency

Unscheduled Maintenance, a Pavlov technician will be on-site within four (4) hours after the time Pavlov becomes aware of the event or condition, unless delayed by circumstances beyond Pavlov's reasonable control. Pavlov shall maintain a toll-free telephone number to contact personnel at the CMC. Pavlov personnel shall dispatch maintenance and repair personnel to handle and repair problems detected in the Pavlov System;

(4) Cooperation and coordination.

The Lake Cities shall utilize an Escalation List, as updated from time to time, to report and seek immediate action on exceptions noted in the performance of Pavlov in meeting maintenance service objectives.

The Lake Cities will, as necessary, arrange for Pavlov technicians to have escorted access to the Government Locations listed in **Exhibit C**, subject to applicable contractual, underlying real property and other third-party limitations and restrictions.

(5) In performing the Maintenance Services as described herein, Pavlov will use workmanlike care to prevent any impairment of the Pavlov System and its operations. Pavlov shall reasonably cooperate with the Lake Cities in sharing information and analyzing any disturbances, events and conditions that affect the Pavlov System, including the Dark Fiber. If any Scheduled or Un-Scheduled Maintenance hereunder requires a traffic reconfiguration involving the Dark Fiber, electronic equipment, or regeneration or other facilities belonging to or administered by any one or more of the Lake Cities, then the affected Lake City(ies) shall, at Pavlov's reasonable request, make such personnel of the affected Lake City(ies) available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with Pavlov in performing such maintenance as required;

(6) Pavlov shall notify Lake Cities not less than seven (7) days prior to the date of any Maintenance Window of any Scheduled Maintenance and as soon as possible after becoming aware of the need for Un-Scheduled Maintenance. Lake Cities shall have the right to have a representative present during the performance of any Scheduled Maintenance or Un-Scheduled Maintenance so long as this requirement does not interfere with Pavlov's ability to perform its obligations under this Agreement.

C. Facilities

(1) Pavlov shall maintain and repair the Pavlov System and all of its components including, without limitation, the Dark Fiber and the Drops in a good and workman like manner according to prevailing industry standards, in order that the Pavlov System may function smoothly and efficiently. in accordance with the Customer Service Standards (SLA) set forth in **Exhibit D**, and in accordance with the requirements of this **Exhibit E**, in the provision of Services as described in this Agreement.

- (2) Except as otherwise expressly provided in the Agreement, the Lake Cities will be solely responsible for providing and paying for any and all maintenance of all electronic, optronic and other equipment, materials and facilities used by the Lake Cities in connection with the operation of their Dark Fibers, none of which is included in the maintenance services to be provided hereunder.

D. Dark Fiber

- (1) Pavlov shall monitor, maintain utilize appropriate testing of the Dark Fiber in accordance with Pavlov's then-current preventative maintenance procedures as set forth in this Exhibit E, and at no time may Pavlov's maintenance or testing procedures fall below prevailing industry best practices;
- (2) Pavlov shall maintain sufficient capability to teleconference with the Lake Cities during any Un-Scheduled Maintenance activities for the purpose of keeping the Lake Cities well informed as to the progress of such activities. With respect to any Un-Scheduled Maintenance activity, Pavlov technicians will be on-site within four (4) hours after Pavlov is made aware of the need for Un-Scheduled Maintenance, and Pavlov will repair any damaged fiber within six (6) hours after the technicians' arrival at the site, provided that the Lake Cities understand and agree that any repairs so effected may be temporary in nature. If any repair solution is temporary in nature, Pavlov will immediately commence planning for permanent repair and will promptly notify the affected Lake Cities concerning Pavlov's plan for permanent repair.
- (3) If an event, condition or situation that requires Un-Scheduled Maintenance, Pavlov will, promptly upon arriving on the site, formulate a plan to restore the Pavlov System and shall begin restoration efforts. Pavlov shall splice fibers tube by tube or ribbon by ribbon in a logical order with consideration to all lit fibers within the system.
- (4) In performing permanent repairs, including the repair of micro-bends and splice work, Pavlov shall comply with the splicing specifications as set forth in Exhibit H and shall take all reasonable steps to ensure that attenuation across the zone of repair satisfies the specifications in Exhibit H. Pavlov shall provide to the Lake Cities any modifications to these specifications as may be necessary or appropriate in any particular instance for the Lake Cities' approval, which approval shall not be unreasonably withheld.
- (5) Pavlov's representatives that are responsible for initial restoration of a cut fiber optic Cable shall carry on their vehicles the typical appropriate equipment that would enable a temporary splice, with the objective of restoring operating capability in as little time as possible. Pavlov shall maintain and supply an inventory of spare fiber optic cable in storage facilities supplied and maintained by Pavlov at strategic locations to facilitate timely restoration.

EXHIBIT F

Services and Initial Rates

For Government Locations on the Government WAN: Lit Fiber/Lit Fiber Service/Managed Service monthly recurring rates for the Government WAN locations listed in **Exhibit C** are as follows:

A:	1Gbps	\$ 75.00
B:	5Gbps	\$250.00
C:	10Gbps	\$500.00

The services for the Lake Cities Government Locations for the first ten (10) years of the Term are included in the price of the IRU. The service for the first ten (10) years will be delivered at 5Gbps to each Government Location listed in **Exhibit C**. If the Lake Cities desire 10G service to any location in the first ten (10) years of the Initial Term, the cost of that service will be \$250/Month.

After the first ten (10) years of the Initial Term, if the Lake Cities desires to continue the Lit Fiber/Lit Fiber Service/Managed Service for any or all the facilities listed in **Exhibit C**, the Lake Cities shall be charged according to the same pricing schedule listed in this **For Government** section. After year ten (10), Pavlov may adjust rates according to the **CPI** in the then-current Consumer Price Index or four percent (4%), whichever is less.

For Non-Government:

For Residential (Download/Upload): Monthly Rates not to exceed:

100Mbps/25Mbps	\$ 35 (This rate is only available for those eligible for the Federal Affordable Connectivity Program)
1Gbps	\$ 70 to 90
2Gbps	\$125
5Gbps	\$200
10Gbps	\$250

For Commercial (Download/Upload):

150Mpps/50Mbps	\$159
250Mpps/100Mbps	\$225
1000Mpps/500Mbps	\$375
2Gbps/2Gbps	\$895
4Gbps/4Gbps	\$1250

These rates for non-Government Locations are not to be exceeded for five (5) years after which Pavlov shall have the right to increase rates, but in no case more than once in any

twelve (12) month period, and in no case may a rate increase exceed the increase in the then-current Consumer Price Index or four percent (4%), whichever is less.

EXHIBIT G

Construction Schedule

September 2022

Obtain Building permits for three huts
Final ring plan approved

October 2022

Lay pads for huts
Begin construction of ring

November 2022

Install huts

January 2023

Northern Ring Segment completed.
6 drops along northern segment completed
First 6 sites get service

April 2023

Eastern Ring Segment Completed
5 drops eastern segment completed
Next 5 sites get service

July 2023

Southern and Western Segment Completed
6 drops for southern and western segment completed
Final 6 sites get service

EXHIBIT H

Dark Fiber Specifications and Testing

Dark Fiber Specifications

All Dark Fiber must meet the following specifications:

- a. The maximum bi-directional average splice loss shall not exceed 0.15 dB.
- b. All splices shall be sealed in water-proof splice enclosures.
- c. Attenuation at 1310 nm= 0.37 dB/km max
- d. Attenuation at 1550 nm= 0.3 dB/km max
- e. Connector loss shall not exceed 0.5dB per connector
- f. Fiber will meet or exceed Coming Single Mode Fiber SMF-28 Specifications
- g. Event Reflectivity (Minimum ORL) should not exceed 27 dB

Dark Fiber Testing

Pavlov will test the Dark Fiber to ensure that it meets each of the specifications enumerated above. Testing will be conducted according to the following parameters:

- ✓ Non-destructive Attenuation Tests (end-to-end)
- ✓ Optical Time Domain Reflectometer Tests (OTDR)
- ✓ All fibers shall be tested bi-directionally at 1310 nm or 1550 nm, as applicable, with an OTDR
- ✓ Subsequent traces shall be inspected for end-to-end continuity and for uniform attenuation. These traces will be attached to an email or contained on a removable storage drive
- ✓ Optical Length: the OTDR will be used to determine the end-to-end optical length of the fiber
- ✓ Splice Loss: splice loss will be measured bi-directionally with an OTDR using the Splice Loss average method
- ✓ End-to-End Loss: Using a light source and a power meter, the bi-directional, connector-to-connector attenuation will be measured for each fiber at 1310 nm and 1550 nm, as

applicable. The acceptance average attenuation per kilometer on a per span basis shall be the attenuation set forth in this Agreement

- ✓ The end-to-end value as measured by an industry-accepted laser source and power meter should have an attenuation rating of less than or equal to the following;
 - ✓ (1) At 1310 nm: $(0.37 \text{ dB/km} \times \text{km of Cable}) + (\text{number of connectors} \times 0.50) + (\text{number of splices} \times 0.10)$
 - ✓ (2) At 1550 nm: $(0.3 \text{ dB/km} \times \text{km of Cable}) + (\text{number of connectors} \times 0.50) + (\text{number of splices} \times 0.10)$
- ✓ Pavlov' loss/attenuation objective for each fiber optic splice is 0.10 dB (with a 0:15 upper limit) when measured in one direction with an OTDR test set (excluding connector loss, which is typically 0.50 dB per connector)
- ✓ (3) Out-of-Spec Testing. Test results outside the specifications listed above shall be noted but shall not preclude acceptance of a fiber if the out-of-spec condition does not affect transmission capability (based on use of then-prevailing telecommunications industry standards applicable to equipment generally used with the relevant type of fiber) or create a significant possibility of an outage.