



## **CITY COUNCIL SPECIAL MEETING**

Monday, May 06, 2024 at 5:30 PM

### **AGENDA**

*In compliance with the Americans with Disabilities Act, individuals needing special accommodations / during this meeting should notify the City of Dillingham at 907-842-5212 at least three working days before the meeting.*

#### **MEETING INFORMATION**

##### **CITY COUNCIL SPECIAL MEETING CITY HALL COUNCIL CHAMBERS / 5:30 p.m.**

141 Main Street, Dillingham, AK 99576 (907) 842-5212

This meeting will also be available at the following online location:  
<https://us02web.zoom.us/j/82227228234?pwd=c0hzU3JSYy9lU1pIQnQwR0xSSlUxdz09>

Meeting ID: 822 2722 8234; passcode: 200145  
Or dial (346) 248-7799, or (669) 900-6833

#### **CALL TO ORDER**

#### **ROLL CALL**

#### **PLEDGE OF ALLEGIANCE**

#### **APPROVAL OF AGENDA**

#### **CITIZEN'S DISCUSSION (Prior Notice or Agenda Items)**

#### **SPECIAL BUSINESS**

1. UNICOM Easement

#### **COUNCIL COMMENTS**

#### **MAYOR'S COMMENTS**

#### **ADJOURNMENT**

# CALL TO ORDER

# ROLL CALL

# PLEDGE OF ALLEGIANCE

# APPROVAL OF AGENDA

# CITIZEN'S DISCUSSION

# SPECIAL BUSINESS

**LAND ENTRY PERMIT  
and  
AGREEMENT TO GRANT EASEMENT AND RIGHT-OF-WAY**

This Land Entry Permit and Agreement to Grant Easement and Right-of-Way (the “Agreement”) is made between City of Dillingham, an incorporated city in the Dillingham Census Area, Alaska, with offices at 141 Main Street, Dillingham, AK 99576 (“Grantor”) and Unicom, Inc., an Alaska corporation, with offices at 2550 Denali Street, Suite 1000, Anchorage, AK 99503 (“Grantee”).

Grant of Land Entry Permission

WHEREAS, the objective of Grantee’s Airraq Project (“the project”) is to provide high speed internet (broadband) service to the Western Alaskan communities of Platinum, Quinhagak, Eek, Napaskiak, Oscarville, Bethel, Tuntutuliak, Atmautluak, Nunapitchuk, and Kasigluk;

WHEREAS, the project will require the installation of fiber optic cable (“FOC”) and facilities including a beach manhole (“BMH”) on Grantor’s property; and

WHEREAS, Grantee anticipates that construction will begin in January 2024 with an anticipated completion date of December 31, 2026;

NOW THEREFORE, Grantor hereby irrevocably gives permission to Grantee to enter upon and use the land described below (the “Property”) in accordance with the terms of this Agreement:

*The SE1/4 of SEC36, T13S, R56W within the Seward Meridan, Alaska.*

The preliminary figure attached hereto, and designated as **Exhibit A** was developed for the purpose of installing FOC and facilities, and includes the locations of the following project components:

Fiber Optic Cable (FOC): The project will extend the existing FOC network from Dillingham. Lightweight submarine cables will be used when crossing wetlands, and armored submarine cable will be used where crossing rivers. The final FOC easement will be 20 feet wide (10 feet each side of the FOC centerline).

Beach Manhole (BMH): BMHs are excavated manholes that provide connection points between submarine cable and terrestrial cable. The BMH will be constructed to contain the connections for the FOC to transition from water to land. The footprint of the BMH will be approximately 3 feet by 4 feet.



Land Entry Permit and Agreement to Grant Easement and Right-of-Way

1. Land entry permission for Grantee shall extend from January 1, 2024 and continue until the completion of the installation of the above-described FOC, facilities, as-built survey, and execution of subsequent easement and right of way documents.
2. Grantor authorizes access to the Property and the land use necessary to construct the herein described FOC and facilities.
3. After construction is completed, the exact location of the FOC and facilities will be determined. Grantee will provide Grantor a parcel plat by a registered land surveyor identifying the as-built centerline of the easement within Grantor's property.
4. After construction is completed, Grantor, and its successors and assigns, hereby agree to execute the Easement and Right-of-Way Agreement ("Easement and Right-of-Way Agreement") attached hereto as **Exhibit B**.
5. Following the completion of construction and execution of the Easement and Right-of-Way Agreement, the general permission for land entry to facilitate construction as set forth in this Agreement expires.
6. Grantor acknowledges that Grantee is expressly relying on its promise to execute the Easement and Right of Way Agreement. Grantee acknowledges that Grantor granting an easement requires compliance with Title 5, Chapter 30 of the Dillingham Municipal Code (DMC).
7. DMC 5.30.080 and DMC 5.30.100 require a reversionary clause for easements. Grantee acknowledges the code requirement that the easement may not be granted without an reversionary clause. Grantor acknowledges that the Easement and Right-of-Way Agreement attached as Exhibit B, and which Grantor has agreed to execute, meets this requirement.
8. Neither this Agreement nor the Easement and Right-of-Way Agreement will be recorded. A Memorandum of Easement executed by both parties shall be recorded by the Grantee, in the appropriate recording district, and a copy will be delivered to the Grantor.

[Signature Page Follows]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

GRANTOR: CITY OF DILLINGHAM

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

GRANTEE: UNICOM, INC








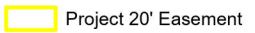

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

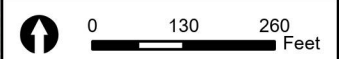
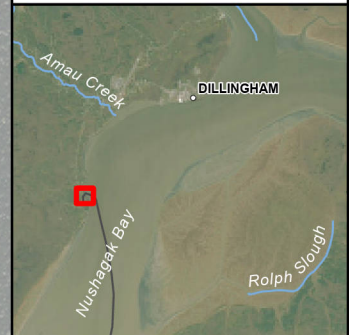
Title: \_\_\_\_\_

# EXHIBIT A

### AIRRAQ NETWORK EASEMENTS

-  Section
-  Quarter Section
- Airraq Fiber Optic Cable Route**
-  Buried
-  Marine
-  Existing Fiber
-  Beach Manhole
-  Connection Vault
-  Project 20' Easement
- Land Owner**
-  City of Dillingham

Disclaimer:  
 Land ownership shown is based on publicly available parcel information. Route lengths and easements are approximations for option consideration. Final easement acquisition will be based on property survey and title and may require adjustment to these values.



City of Dillingham



# EXHIBIT B

## **EASEMENT AND RIGHT-OF-WAY AGREEMENT**

This Easement and Right-of-Way Agreement is made between the City of Dillingham, an incorporated city in the Dillingham Census Area, Alaska, with offices at 141 Main Street, Dillingham, AK 99576 (“Grantor”) and Unicom, Inc., an Alaska corporation, with offices at 2550 Denali Street, Suite 1000, Anchorage, AK 99503 (“Grantee”).

1. **Grant of Easement.** Grantor, in exchange for a one-time \$200,000.00 payment and other valuable consideration, hereby grants, warrants and conveys to Grantee, its successors and assigns, and Grantee accepts, a 30 year, 20 foot wide easement and right-of-way (collectively, “Easement”) across the surface estate of the real property described herein, together with the right of ingress and egress as is reasonable and necessary over the adjacent lands of Grantor, its successors and assigns, for the purposes of this Easement.

2. **Option to Extend.** Provided Grantee is not in material default of this Easement and Right-of-Way Agreement, Grantee may elect to renew the term of this Easement and Right-of-Way Agreement for an additional 30-year period on the same terms and conditions set forth herein (“Renewal Option”). To exercise its Renewal Option, Grantee shall send written notice of its intent to renew to Grantor at least 26 months before the expiration of the initial 30-year term of this Easement and Right-of-Way Agreement, and Grantee, at least 30 days before the first day of the new term, shall send a one-time renewal payment of \$200,000 to Grantor. Grantor shall have the right to decline the renewal by providing written notice to Grantee at least 24 months before the expiration of the initial term.

3. **Wireless Service Commitment.** For the term of this Easement and Right-of-Way Agreement, the advertised monthly price of each consumer wireless plan GCI offers consumers in Dillingham will be equal to the advertised monthly price of the comparable consumer wireless plan GCI offers consumers in Anchorage. Further, no later than January 1, 2025, GCI will convert Dillingham to an Unlimited Market for purposes of consumer wireless services.

4. **Permitted Uses.** The Easement may be used by Grantee and its successors and assigns, affiliates, contractors, subcontractors, agents, representatives, employees and delegates to locate, access, construct, add to, reconstruct, alter, operate, repair, maintain, upgrade, improve and remove above ground and underground telecommunication facilities and services, including, and being limited to, fiber optic cable (FOC), conduits, and vaults (collectively, “Permitted Uses”). Grantee may allow joint usage of the Easement by other persons on the same terms and conditions as Grantee is entitled to use the Easement. Grantee may assign this Easement to a party to whom Grantee has assigned all of its rights and obligations with respect to the facilities and services for which this Easement was granted.

5. Location of the Easement. Grantor does hereby grant an Easement 20 feet in width, 10 feet on each side of the centerline, across Grantor's surface estate interest in the property described as follows: *The SE1/4 of SEC36, T13S, R56W within the Seward Meridan, Alaska.* Within one year from the date this Easement and Right-of-Way Agreement is executed, Grantee shall record a parcel plat prepared by a registered land surveyor identifying the as-built centerline of the Easement across Grantor's property and will provide a copy to Grantor. The recorded as-built survey shall define the specific location of this Easement.

6. Ownership of Equipment. Grantor agrees that all equipment, including but not limited, FOC, vaults, and conduits ("Equipment") installed on the property at Grantee's expense shall remain the property of Grantee, removable at the option of Grantee.

7. Ownership Covenant. Grantor covenants that it is the owner of the above described lands and is legally capable of granting and is authorized to grant, the Easement.

8. Easement Running with the Land. The Easement granted and the covenants, conditions, and terms of this Easement shall constitute covenants to run with the land covered by the Easement, and shall be binding upon Grantor and Grantee herein, and upon all other persons and parties claiming through Grantor or Grantee, and for the benefit of and limitation upon all future owners of said land and premises.

9. Reversion. In the event the Easement ceases to be used to provide high speed internet (broadband) service to Bethel and additional communities in Western Alaska by fiber optic cable, the Easement shall terminate and Grantee's rights to the Easement shall revert to the City.

10. Non-Interference. Grantor covenants and agrees that it shall not interfere or allow other persons to interfere with Grantee's Permitted Uses of the Easement.

11. Indemnity. Grantee shall defend, indemnify and hold harmless Grantor from and against all claims, obligations and liabilities for personal injury, death, property damage, or contamination of any kind occurring on the Easement to the extent that the claim, obligation or liability in any way arises out of, is based upon, or results from, in whole or in part, any actual or alleged acts or omissions in, on, about or with respect to the Easement by Grantee or its affiliates, contractors, representatives, agents, employees or joint users.

12. Governing Law. It is agreed that this Easement shall be governed by, construed, and enforced in accordance with the laws of the State of Alaska. Grantee agrees it will comply with all applicable laws, regulations and ordinances in the use of the Easement.

13. Recordation. This Easement and Right of Way Agreement shall not be recorded. Contemporaneously with the execution of this Easement and Right of Way Agreement, the parties shall execute the recordable Memorandum of Easement attached hereto as **Exhibit 1**. The fully executed Memorandum of Easement shall be recorded by Grantee in the appropriate recording district and a copy shall be delivered to the Grantor.

IN WITNESS WHEREOF, each party to this Easement has caused it to be executed by duly authorized representative, and it is effective on the date both parties have signed this Easement.

GRANTOR: THE CITY OF DILLINGHAM

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

GRANTEE: UNICOM, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_



# EXHIBIT 1

Memorandum of Easement

After Recording, Return to:  
Unicom, Inc.  
Attn: Corporate Counsel  
2550 Denali St., Suite 1000  
Anchorage, AK 99503

1. This Memorandum of Easement (“Memorandum”) relates to that Easement and Right-of-Way Agreement (“Easement”) between City of Dillingham, an incorporated city in the Dillingham Census Area, Alaska, with offices at 141 Main Street, Dillingham, AK 99576 (“Grantor”) and Unicom, Inc., an Alaska corporation, with offices at 2550 Denali Street, Suite 1000, Anchorage, AK 99503 (“Grantee”), dated effective as of \_\_\_\_\_, 2024 (“Effective Date”).
2. Term. The Easement shall commence at 12:01 a.m. local time on the Effective Date and continue for 30 years, subject to Grantee’s option to renew the Easement for one additional 30-year period and the reversion clause in the Easement
3. Easement Description. For consideration received, Grantor hereby grants, warrants and conveys to Grantee, its successors and assigns, and Grantee accepts an easement that is approximately twenty (20) feet in width along the proposed fiber optic cable path, ten (10) feet on each side of the centerline, across the surface estate of the real property described as follows, and as set forth in the as-builts attached as Exhibit A:

*The SE1/4 of SEC36, T13S, R56W within the Seward Meridan, Alaska*

4. Incorporation of Easement. This Memorandum is for informational purposes only and nothing contained in this Memorandum shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Easement, the terms of which are incorporated in this Memorandum by reference. This instrument is merely a memorandum of the Easement and is subject to all of the terms, provisions and conditions of the Easement. In the event of any inconsistency between the terms of the Easement and this instrument, the terms of the Easement shall prevail.
5. Binding Effect. The rights and obligations set forth in this Memorandum shall be binding upon and inure to the benefit of Grantor and Grantee and their respective heirs, personal representatives, successors, and assigns.
6. Authority. Grantor and Grantee represent and warrant to each other that they have full right, power, and authority to enter into this Memorandum of Easement without the consent or approval of any other entity or person and make these representations knowing that the other party will rely thereon. The signatories on behalf of Grantor and Grantee further represent and warrant that they have full right, power, and authority to act for and on behalf of Grantor and Grantee in entering into this Memorandum.

Dated as of \_\_\_\_\_, 2024.

(Signature pages follow)

GRANTOR: CITY OF DILLINGHAM

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

Title: \_\_\_\_\_

ACKNOWLEDGMENT OF GRANTOR

STATE OF ALASKA     )  
                                  ) ss:  
\_\_\_\_\_ Judicial District )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared \_\_\_\_\_, the Grantor, known to me to be the identical person who executed the foregoing instrument and who acknowledged to me that they executed the same as the free and voluntary act of said corporation, with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My Commission Expires: \_\_\_\_\_



Exhibit A (As-Built)

# COUNCIL COMMENTS

# MAYOR'S COMMENTS

# ADJOURNMENT