

**ORDINANCE NO. 4644-17**

**AN ORDINANCE AUTHORIZING THE CITY OF JOHNSON CITY TO ENTER INTO A CERTAIN RIGHT-OF-WAY ACCESS AGREEMENT WITH THE TENNESSEE INDEPENDENT TELECOMMUNICATIONS GROUP LLC, D/B/A IRIS NETWORKS LLC, WHICH AGREEMENT IS APPENDED TO THIS ORDINANCE AS EXHIBIT "A" AND INCORPORATED BY REFERENCE HEREIN AS FULLY AS IF SET FORTH VERBATIM, AND TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith**

WHEREAS, the Tennessee Independent Telecommunications Group, LLC, d/b/a Iris Networks, LLC, (hereinafter referred to as Iris) are limited liability companies duly authorized to do business under the laws of the State of Tennessee, and are authorized by the Federal Communications Commission to provide telecommunications services; and,

WHEREAS, the aforementioned Iris desires to construct, install and operate telecommunications facilities within the public rights-of-way of the City of Johnson City in order to provide telecommunications services within the City; and,

WHEREAS, the aforementioned Iris wishes to enter into an agreement with the City of Johnson City for access to its rights-of-way in order to construct, install, and operate the aforementioned telecommunications facilities; and,

WHEREAS, the City of Johnson City wishes to enter into such an agreement for access to its rights-of-way and considers it in the manifest best interest of the City and of its citizens to enter into such an agreement.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF JOHNSON CITY as follows:

SECTION I. That the Mayor be and is hereby authorized to execute on behalf of the City of Johnson City a certain rights-of-way access agreement between the City of Johnson City and the aforementioned Iris which agreement is appended to this ordinance as Exhibit "A" and is incorporated in its entirety into this ordinance by reference as fully as if set forth verbatim.

SECTION II. BE IT FURTHER ORDAINED that all ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed

SECTION III. BE IT FURTHER ORDAINED that this ordinance shall take effect from and after its passage on third and final reading as required by law, the public welfare requiring it.

PASSED IN OPEN, PUBLIC MEETING  
ON THE FIRST READING 7/20/2017  
PASSED IN OPEN, PUBLIC MEETING  
ON THE SECOND READING 8/3/2017

PASSED IN OPEN, PUBLIC MEETING  
ON THE THIRD READING 8/17/2017  
APPROVED AND SIGNED IN OPEN  
MEETING ON THE 17<sup>th</sup> DAY OF  
August, 2017  
FOLLOWING PASSAGE ON THIRD  
READING

/s/ David Tomita  
MAYOR

ATTEST:

/s/ Janet Jennings  
CITY RECORDER

APPROVED AS TO FORM:

/s/ James H. Epps, IV  
ATTORNEY FOR THE CITY

## RIGHT-OF-WAY ACCESS AGREEMENT

This Rights-of-Way Access Agreement (this "Agreement") is made as of the last signature date of the last party executing this agreement (the "Effective Date") by and between the City of Johnson City, Tennessee, (the "City"), and Tennessee Independent Telecommunications Group LLC, dba Iris Networks, LLC ("IRIS") having its principal office at 211 Commerce Street, Suite 610, Nashville TN 37201.

## RECITAL

WHEREAS, IRIS is a limited liability company duly organized and is authorized by the Federal Communications Commission to provide Telecommunications Services, as such term is hereinafter defined; and

WHEREAS, IRIS desires to construct, install and operate Telecommunications Facilities within the Public Rights-of-Way in order to provide Telecommunications Services within or without the City; and

WHEREAS, the City has the authority to grant access to its Public Rights-of-Way.

WHEREAS, the City is agreeable to allowing IRIS to use the Public Rights-of-Way subject to certain terms and conditions hereinafter set out and subject to any ordinance that may be adopted by the City in the future establishing uniform rules, procedures and obligations concerning the use of public rights-of-way by telecommunications carriers (a "New Ordinance").

NOW, THEREFORE, in consideration of the recitals and the promises contained herein, the City and IRIS agree as follows:

**Section 1: Definitions.**

For the purpose of this Agreement, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings:

**"Affiliate"** means a person that directly, or indirectly, through one or more intermediaries, owns, controls, is owned or controlled by, or is under common ownership or control with another person.

**"Cable Act"** shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. §532, *et seq.*, as now and hereafter amended.

**"Cable Operator"** means a person providing or offering to provide "cable service" within the City as that term is defined in the Cable Act.

**"Cable Service"** for the purpose of this Agreement shall have the same meaning provided by the Cable Act.