COUNCIL BILL NO. 2021-168 ORDINANCE NO.

AN ORDINANCE authorizing the City of Joplin to enter into an agreement with **CableRunner USA, LLC ("CableRunner")** for the purpose of CableRunner installing, maintaining, and operating facilities for communications related capabilities within the City's underground sanitary sewer and stormwater systems and ensuring compliance with the City's requirements of such use of City property; authorizing the City Manager to execute the same by and on behalf of the City of Joplin.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, as follows:

Section 1. That the agreement by and between the City of Joplin and **CableRunner USA, LLC** for the purpose of CableRunner installing, maintaining, and operating facilities for communications related capabilities within the City's underground sanitary sewer and stormwater systems and ensuring compliance with the City's requirements of such use of City property, a true and accurate copy of said agreement being attached hereto and incorporated as "Exhibit A," be and the same is hereby approved.

Section 2. That the City Manager of the City of Joplin, Missouri, is hereby authorized to execute said agreement, or agreement in substantially similar form, by and on behalf of the City of Joplin.

Passed by the Council of the City of Joplin, Missouri, this _____ day of

_____, 2021.

_____
Ryan Stanley, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

Exhibit A

CableRunner USA, LLC Use of Stormwater / Sanitary Sewer System Lease Agreement

USE OF STORMWATER / SANITARY SEWER SYSTEM LEASE AGREEMENT

THIS USE OF STORMWATER / SANITARY SEWER SYSTEM LEASE AGREEMENT ("Lease") is entered into as of _____, 2021, between the **City of Joplin, Missouri**, a municipal corporation ("Landlord" or "City"), and **CableRunner USA, LLC**, a Delaware limited liability company authorized to do business in the State of Missouri, and including any authorized assignee ("Tenant"), (collectively the "Parties").

R E C I T A L S

Whereas, Landlord owns or has easement rights over certain real property located in Joplin, Missouri, upon which the City's underground sanitary sewer and stormwater systems (hereinafter the "Non-ROW Systems") are located;

Whereas, Landlord and Tenant desire by execution of this Lease to provide authority for non-exclusive tenancy of designated portions of the Non-ROW Systems in accordance with and subject to the terms of this Lease;

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Leased Premises.

(a) In consideration of the payments to Landlord and other terms herein, Landlord hereby leases to Tenant, on a non-exclusive basis, designated underground portions of the Non-ROW Systems (including both those held in fee and those over which Landlord has certain easement rights), as authorized by individual permits issued under this Lease and as depicted on the attached **Exhibit 1** (collectively hereinafter referred to as the "Premises"), subject to the terms and conditions set forth herein. The lease of the Premises hereunder shall include the non-exclusive right of access to the Premises (the "Access Right") across areas or portions of the ROW (as defined in the ROW Use Agreement or "Agreement") without access to which Tenant would be physically unable to reach the Premises (collectively the "Access Areas"). The Access Areas shall be deemed part of the Premises to the extent that Tenant physically utilizes its Access Right thereunto. The boundaries of the Premises shall be a subset of the Non-ROW Systems, and the footprint occupied by any of Tenant's Facilities (as defined below in Section 3(a)) shall be limited to the Premises for which Tenant has been granted a specific permit by the City to access and install its Facilities, as described in Subsection (c) of this Section 1.

(b) During the term of this Lease, Tenant and its agents, engineers, surveyors, and other representatives upon prior reasonable notice to and consent of Landlord shall have the right to enter upon the ROW, the Access Areas, and Non-ROW Systems to inspect, examine, and perform initial cleaning to jet wash and clear debris and to apply for and obtain all licenses and permits required for Tenant's use of them as the Premises from all applicable governmental or regulatory entities. Tenant shall also have the ability, upon prior written approval of the Landlord at Landlord's sole discretion, to repair, in compliance with all applicable federal, state, and local laws, codes, regulations, and ordinances (collectively, the "Laws") related to such work, certain

defects within the ROW, the Access Areas, and Non-ROW Systems that Tenant identifies in any analysis of the ROW, the Access Areas, and Non-ROW Systems for use as the Premises as part of the installation and maintenance of its Facilities. Any such repair of the ROW, the Access Areas, and Non-ROW Systems performed by Tenant shall be undertaken solely at Tenant's expense and only upon express, prior written approval by the Landlord. Any damage caused by Tenant arising from or in any way caused by jet washing, inspection, repairs, or installation of Facilities, or any other action taken by the Tenant within the Non-ROW Systems that is not promptly repaired by the Tenant may be repaired by the Landlord and all expenses incurred by the Landlord billed to the Tenant. As damage to one part of the Premises can impact the Non-ROW Systems, and such repairs may be subject to OSHA compliance, payment of prevailing wage, and other applicable requirements for work on public property, nothing in this Lease prevents Landlord from promptly making any repairs or taking other actions related to the Non-ROW Systems, or causing the same to be done, and billing Tenant for the costs of such repairs and Tenant hereby agrees to reimburse Landlord for the same within thirty (30) days after receipt of an itemized invoice for same.

(c) Prior to installation of Tenant's Facilities, on an application form provided by Landlord, Tenant shall pay any applicable fees and apply for and obtain a revocable installation permit (a "Permit") for each and every installation of Tenant's Facilities so that Landlord can review the proposed space of each such installation for compliance with this Lease, including compliance with **Exhibit 2** and City Codes, compatibility with the Non-ROW Systems, and authorization rights. The cost of such Permits shall be established by the Landlord in accordance with Section 106-144 of the City's Code, as may be hereinafter amended or recodified, on a non-discriminatory basis. A Permit application shall describe the space of the Non-ROW Systems that Tenant proposes to attach to (including, specifically, the exact dimensions of the interior space of the piping proposed to be utilized), the method of attachment to such piping, the Facilities proposed to be attached to such piping (with exact dimensions), and any other information that the Landlord determines is applicable within the Permit application documents. A Permit request shall be reviewed by the Landlord and may be denied at Landlord's sole discretion, including if Landlord's review determines that any underlying easement rights granted to Landlord do not extend to the attachment of Tenant's Facilities. A Permit granted shall be limited to the specific interior space of piping within the Non-ROW Systems proposed by Tenant on the specific application. If Tenant shall need additional interior space within the Non-ROW Systems not specifically authorized in an issued Permit, Tenant shall submit for, and acquire, additional Permits prior to utilizing any additional space. Tenant agrees that it shall pay for any necessary title searches to ascertain the Landlord's rights to grant access to Tenant in areas of the Non-ROW Systems proposed within a Permit application. Tenant shall have six (6) months from the issuance of a Permit to complete any installation work approved, as the same may be reasonably extended by Landlord upon a showing of good cause. Failure to complete such work within said timeframe shall result in that specific Permit being null and void. Upon completion of the work authorized in a Permit, Tenant shall promptly provide to the Landlord as-built schematics of the Facilities installed. The Parties agree that these submitted as-built documents shall be integrated into **Exhibit 1** and shall constitute expansions of the Premises. Failure of the Tenant to submit these as-builts in a timely fashion shall be deemed a breach of this Lease.

2. Term.

(a) The Lease shall become effective on the Effective Date, as defined below in § 4(b). During the initial period of one (1) year (the "Pre-Commencement Term") Tenant and Landlord shall coordinate to ascertain appropriate routes within the Non-ROW Systems that are suitable for Tenant's Facilities. This Pre-Commencement Term may be extended by mutual written agreement by the Parties. If at the conclusion of the Pre-Commencement Term no viable routes are ascertained for Tenant's Facilities and Tenant's Permitted Use (as defined in Section 3 below), then this Lease shall terminate. Tenant shall be liable for any additional costs to Landlord in ascertaining these routes, including for title searches for the Non-ROW Systems as described in this Lease. Once routes have been ascertained, Tenant may apply for Permits during this Pre-Commencement Term.

(b) The commencement date of the term of this Lease (the "Commencement Date") shall be the date of issuance of Tenant's first valid Permit for construction of its Facilities pursuant to § 1.3(c) above, and the term shall extend for a period of **twenty (20) years** commencing on the Commencement Date and ending on the last day of the calendar month in which falls the twentieth (20^{th}) anniversary of the Commencement Date (the "Expiration Date"). Landlord and Tenant shall memorialize the occurrence of the Commencement Date signed by Tenant and Landlord's Director of Public Works or designee.

(c) If Tenant remains in possession of the Premises at the expiration of this Lease without a written agreement, such tenancy shall be at sufferance and subject to double the Rent (as defined in § 4 below) in effect immediately prior to such holding over until the sooner of a new written agreement authorizing such use is in place or removal of occupancy and all Facilities from the Premises, including any restoration requirements under this Lease, in addition to any other damages as may be available in law or equity.

3. Permitted Use.

(a) The Premises may be used by Tenant only for the following permitted use: (i) the installation, maintenance, upgrade, repair, replacement, and relocation of fiber optic cables, wires, ducts, conduit, micro tubes, attachment bolts, modular cable trays and covers, fiber laterals, handholes, auxiliary equipment, and related components on the interior walls of the piping located throughout the Premises, substantially as such are shown and described on the attached **Exhibit 2** (collectively the "Facilities"); (ii) the leasing of fiber, conduit, and/or duct to commercial customers in the Premises, provided that such customers shall have no right of physical possession or ownership, including ownership of any residual interest or remainder in Licensee's Facilities, or physical access to the Premises; and (iii) transmission and reception of communication signals from the same to the extent that Tenant is certificated under applicable Laws as a competitive local exchange carrier; provided that if Tenant is authorized under applicable Laws as a competitive local exchange carrier to transmit and receive communications signals, Tenant shall notify Landlord in writing that it plans to use the Facilities to conduct this business (collectively, "Tenant's Permitted Use").

(b) Tenant represents and warrants to Landlord that the Facilities will be operated now and shall continue in the future to be operated, managed, and maintained in compliance with all applicable federal, state, and local laws, rules, regulations, and orders (the "Laws"), including without limitation Federal Communications Commission ("FCC") requirements. Tenant agrees to provide Landlord, upon Landlord's written request, with all documentation evidencing current compliance with this Lease, including the Laws on an ongoing basis during the term of this Lease.

(c) Tenant shall, as a condition of the Lease, comply with the requirements of the City's Code of Ordinances and the Parties' Rights-of-Way Use Agreement for Communications Facilities of even date with this Lease (the "Agreement"), including but not limited to the requirements for maintenance, relocation, and removal of the Facilities upon abandonment.

(d) Tenant shall, within eighteen (18) months of issuance of Permits, complete the initial construction of its Facilities and commence offering commercial dark-fiber services within the City to customers. Tenant shall also be obligated, absent technological, environmental, or interference issues, to keep its Facilities operational for at least three (3) calendar years from the execution of this Lease, subject to the superseding provisions of §§ 10(b) through (f) below.

(e) No later than thirty (30) days after receipt of notice by Landlord that the Facilities are no longer in operation and therefore treated as abandoned, or of Tenant's abandonment of its Facilities at any location within the Non-ROW Systems, Tenant shall remove its Facilities and replace or restore any damage or disturbance in accordance with Section 11 herein. If Landlord is mistaken regarding its notice to Tenant and the Facilities are still in operation, Tenant shall promptly notify Landlord with information indicating that Tenant's Facilities are still in operation at that location. Landlord shall be entitled to all reasonable costs, at its discretion, incurred by removal and enforcement for any violation of this provision. In lieu of removal, Landlord may, upon written application from Tenant, allow Tenant's Facilities or portions thereof to remain in place if the Landlord determines, at its sole discretion, that it is in the best interest of the public health, safety, and general welfare, and conducive to the integrity of the Non-ROW Systems to do so.

4. Rent; Payments.

(a) Tenant agrees to pay the City for its Facilities located in the Non-ROW Systems at a rate of one thousand five hundred dollars ($1,500.00)/month for the first (1st) mile of linear Facilities, or part thereof, plus a monthly fee of $0.2448 per linear foot for each additional linear foot of Facilities located in the Non-ROW Systems ("Rent"). The Rent shall be increased by two percent (2%) over the Rent then existing at each yearly anniversary of the Commencement Date. Rent shall be payable in advance at the beginning of each quarter (January 1, April 1, July 1, October 1) and shall be calculated based on the greatest total linear feet of Facilities located in the Non-ROW Systems during the preceding calendar quarter. For the avoidance of doubt, although such quarterly payments of Rent shall be paid in advance, each such payment shall reflect and be based on the aggregate total linear feet of Facilities located in the Non-ROW Systems during the preceding calendar quarter, and the parties agree that no

reconciliation or true-up shall be utilized with respect to the actual aggregate of linear feet of Facilities located in the Non-ROW Systems during the quarter for which Rent has been previously prepaid. Such payment shall also include a quarterly submission by Tenant of an affidavit, signed as true, stating the greatest total linear feet of Facilities located in the Non-ROW Systems during the preceding calendar quarter and payment of Rent made. Additionally, on an annual basis by January 1, Tenant shall submit an affidavit certifying as true each statement submitted for the previous calendar year. If any statement for the previous calendar year was incorrect, a corrected statement shall be submitted with the affidavit. If an incorrect fee statement understated the Rent owed, then such additional amount owed, including with interest on said amount as provided herein, shall be submitted with the affidavit. Payments due Landlord under this Lease and not paid when due shall accrue interest from the due date at the lesser of one and half percent (1.5%) per month or the highest rates allowable under applicable Laws until paid. Landlord or its designated representatives shall have the right to inspect, examine, or audit, during normal business hours and upon seven (7) calendar days' notice, all documents, records, or other information that pertains to the Tenant's Facilities, Rent, or any other Tenant obligations under this Lease.

(b) Special Permit Fee. The parties understand and agree that Tenant shall not pay Rent under § 4(a) above with respect to its Facilities that may have been permitted during a particular calendar quarter but not yet constructed at the beginning of the following quarter when the Rent payment is due (collectively "Non-Constructed Facilities" or "NCFs"). Because the parties wish to avoid the administrative burden of instituting a reconciliation process for the partial payments that may be owing with respect to such NCFs, Tenant and City agree that Tenant shall pay a special permit fee (the "Special Permit Fee") of Two Hundred Fifty Dollars ($250.00) per thousand feet of linear Facilities upon application for the installation of all such Facilities, which Special Permit Fee shall substitute for any Rent that may be owing at the beginning of each quarter with respect to any NCFs that may have been permitted during the previous calendar quarter. Commencing with the Rent payment due for each subsequent calendar quarter, the full Rent shall be payable with respect to any as-yet unconstructed NCFs, regardless of their then-current construction status. Tenant and City agree that the payment of the Special Permit Fee is fair and equitable inasmuch as it approximates that maximum Rent that would otherwise be due and owing with respect to any NCFs permitted during the previous calendar quarter. The amount of the Special Permit Fee shall be increased by two percent (2%) over the Special Permit Fee level then existing at each yearly anniversary of the Commencement Date.

(c) Effective Date. This Lease shall become effective upon the latter signature date of Landlord or Tenant ("Effective Date").

(d) Tenant shall, upon submission to Landlord of the executed Lease, also pay Landlord, in addition to any amount owed for Rent, a single additional payment in the amount of Ten Thousand and no/100 Dollars ($10,000.00) to in part compensate the City for its legal, engineering, and/or other costs associated with the negotiation and execution of this Lease. Such payment shall also be in addition to any required permitting or inspection obligations or fees otherwise required.

5. Interference/Relocation/Permit Revocation.

(a) Tenant shall not use the Premises or the Access Areas in any way which interferes with the use of the Non-ROW Systems by Landlord or the purposes for which the Non-ROW Systems are dedicated, or by tenants or licensees of Landlord holding rights to the Non-ROW Systems on the Effective Date of this Lease, except as otherwise provided by applicable Laws or Agreement of the Parties.

(b) Landlord reserves the right, privilege, and authority to continue to use and occupy the Non-ROW Systems for any purpose whatsoever, including without limitation, the modification, maintenance, repair, restoration, or replacement of its facilities within the Non-ROW Systems or the ROW, or the sale or lease of the Non-ROW Systems, or any portion of the Non-ROW Systems; except Landlord hereby covenants that it shall not knowingly enter into any lease, license, or other agreement pursuant to which a third party is authorized to use the Premises so as to interfere with Tenant's Permitted Use at the time of such lease, license, or agreement.

(c) Tenant accepts the Lease with the reservations in this Lease and further agrees that, if Landlord's public use or public occupancy interferes with Tenant's Permitted Use, Tenant will, if practicable and at its sole cost and expense, modify or relocate the Facilities in the Non-ROW Systems to make Tenant's Permitted Use compatible with Landlord's use or occupancy, and such modified or relocated site shall constitute the Premises. If modification of Tenant's Facilities in a specific space within the Premises is impracticable, such specific Permit authorizing such attachment within that area shall terminate. If modification or relocation is impracticable in all places throughout the Non-ROW Systems wherein Landlord could authorize Tenant's Permitted Use in the judgment of the Tenant, and Permits are not granted to modify or relocate Tenant's Facilities in a manner that is sufficient for Tenant to continue to provide services, then this Lease shall terminate upon notice of such from Tenant, and any existing Permits shall also terminate, and Landlord shall return any prepaid Rent, prorated to the date of termination. Nothing in this Subsection (c) shall terminate Tenant's obligations under this Lease to remove its Facilities or to restore the Premises, or effect any other continuing obligations of Tenant after termination of this Lease. Notwithstanding anything in this Lease, Landlord shall have the right to immediately revoke a Permit and request immediate removal of Tenant's Facilities for a specific location due to interference reasons upon prior written notice to Tenant. Nothing in this right shall relieve Landlord from working with Tenant to find a suitable replacement location, however.

(d) If the interference in Subsection (c) is temporary, for example, the need to remove the Facilities for Landlord to repair or maintain the Non-ROW Systems hosting the Premises, then Tenant may install temporary or mobile facilities to accomplish Tenant's Permitted Use; provided, however, that, to facilitate such temporary use, the Tenant shall submit information to the Landlord indicating where Tenant proposes to locate such temporary or mobile facilities within the Non-ROW Systems and acquire from the Landlord written approval for such location(s) prior to installation of such temporary or mobile facilities within the Non-ROW Systems.

(e) All interference claims relating to any communications or electronic equipment shall be settled in accordance with the then prevailing interference rules and regulations promulgated by the FCC, except to the extent any such claims relate to any police, public works, or other City or other governmental users on the Premises or the Non-ROW Systems for which interference is prohibited and the City or governmental use shall prevail. In the event Landlord observes interference of the City or governmental uses by Tenant, it may give written notice of such interference and Tenant shall take immediate action to cease such interference. Failure by Tenant to immediately cease any such interference shall be deemed a material breach of this Lease and Landlord may immediately send notice that the specific Permit for such location is revoked. Thereafter, Tenant must take immediate action to remove its Facilities and otherwise restore the area in accordance with Section 11 herein.

(f) It is understood that Landlord from time to time, will need to repair, maintain, replace, install, construct, or modify the Non-ROW Systems or perform planned or emergency service that may affect Tenant (the "Work"). Landlord agrees to provide Tenant with not less than thirty (30) days' prior written notice of the Work, along with a schedule showing anticipated dates and duration of such Work, except in the event of emergencies as reasonably determined by Landlord. Following notification of such Work, Tenant shall at its cost, if so requested by Landlord, remove, secure, relocate, and/or protect its Facilities during the entire duration of the Work. The cost of City-initiated Work shall not be the responsibility of Tenant, except any additional reasonable costs incurred to perform such Work due to the installation or presence of the Facilities shall be borne by Tenant. Tenant may install temporary Facilities at Tenant's cost during such Work under such reasonable conditions as established by Landlord and within a location pre-approved in writing by Landlord.

(g) It is further understood that from time to time Landlord may, in the public interest, necessity, or convenience or for public projects require the Non-ROW Systems, and Tenant's Facilities located therein shall be relocated at Tenant's sole expense. This public interest or public project may include the City's abandonment of any section of the Non-ROW Systems or may include street widening projects or expansion of the Non-ROW Systems. Such relocation shall be performed by the Tenant within the timeframes established by Landlord. The Permit issued for such affected space shall be null and void, and the City shall issue a new Permit for the relocated space.

(h) Any third party having facilities within the Non-ROW Systems under a validly issued permit or other authorization may make a request for adjustment, relocation, or temporary dislocation of Tenant's Facilities, and Tenant shall, after reasonable advance written notice by the third party adjust, relocate, or temporarily dislocate its Facilities to accommodate such third party, and the actual cost reasonably incurred by the Tenant shall be paid by the third party requesting such adjustment, relocation, or temporary dislocation. Tenant may require payment from the third-party in advance.

6. Maintenance, Repair, and Improvements.

(a) Tenant, at its own cost and expense, shall maintain, repair, or replace the Facilities.

(b) Tenant shall have the right to modify, supplement, replace, or upgrade the Facilities within the Premises at any time during the term of this Lease if consistent with the design, location, size, and orientation of the Facilities on **Exhibit 2**; provided, however, that any such modification, supplement, replacement, or upgrade shall first be reviewed by Landlord for Landlord to determine and approve that such complies with the terms of this Lease and applicable codes, such approval not to be unreasonably withheld, conditioned, delayed, or denied. Review by Landlord may be approved on the building permit or excavation permit, whichever is applicable in the specific request. The Facilities installed by Tenant shall remain the exclusive property of Tenant, and Tenant shall have the right to remove all or any portion of the Facilities at any time during the term of this Lease. Tenant shall repair any and all damage to the Premises, the Non-ROW Systems, Access Areas, the ROW, and any other property of Landlord resulting therefrom, normal wear and tear excepted. Such removal of Facilities from the Non-ROW Systems may also require the grant of permits to insure such work is performed in a way that protects the integrity and operability of the Non-ROW Systems.

7. Utilities. Tenant shall pay any utility charges incurred in connection with Tenant's use of the Premises. Tenant shall, wherever practicable, install separate meters for utilities used on the Premises. Such separate meters for utilities used on the Premises shall also be subject to approval by the Landlord, and shall be designed to be minimally intrusive with the build environment of the City. In the event separate meters are not installed, Tenant shall pay pro-rata charges for all utilities reasonably attributed by Landlord to Tenant's use within thirty (30) days of being billed by Landlord for such charges.

8. Access. Landlord hereby grants Tenant the non-exclusive rights for ingress, egress, and access to the Premises and the Access Areas to service the Premises and the Facilities from 6:00 A.M. to 9:00 P.M., Monday through Friday, except that Tenant shall have access to the Premises at any time in the case of an emergency during the term of this Lease. Except in cases of emergency, Tenant shall notify Landlord of its intent to access the Premises. No excavation work shall occur on City weekends or holidays except in the case of an emergency and in accordance with the City Code Section 106-144.4 specifically related to emergency work in the ROW, as may be hereinafter amended or recodified. Any rights provided hereunder shall have the same term as this Lease. Tenant acknowledges that, since the Non-ROW Systems are used as a public utility, reasonable security measures may be maintained and implemented at any time by Landlord as may be deemed appropriate in the public interest and that such reasonable security measures shall not be deemed to be an interference with Tenant's rights hereunder.

9. Default. Any of the following occurrences, conditions, or acts shall be deemed a "Default" under this Lease:

(a) if Tenant fails to pay amounts due under this Lease within ten (10) days of its receipt of written notice that such payments are overdue; or

(b) if either party fails to observe or perform its obligations under this Lease and does not cure such failure within thirty (30) days from its receipt of written notice of breach; or such longer period as may be required to diligently complete a cure commenced within the 30-day period; or

(c) if the Facilities or Tenant's use of the Premises are not in compliance with this Lease, any issued permits therefore, or the Laws beyond any applicable cure period.

10. Termination. Except as otherwise provided herein, this Lease may be terminated as follows:

(a) upon twenty (20) days' written notice in the event of a Default after Tenant's failure to cure within the time allowed for cure hereunder;

(b) upon ninety (90) days' written notice by Tenant if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license, permit, or any applicable governmental or regulatory entity approval necessary for the construction and/or operation of the Facilities or Tenant's use of the Premises;

(c) upon ninety (90) days' written notice by Tenant if Tenant determines, in its reasonable discretion exercised in good faith, that based on a material interference with use of the Premises resulting from the acts of Landlord or an act of God or from other natural forces, Tenant's use of the Premises is no longer feasible; provided Tenant shall have first provided Landlord and all parties to the interference written notice and proof of such interference and a reasonable period of time to cure or eliminate such interference;

(d) at the time title of all or a portion of the Premises transfers to a condemning authority, pursuant to a taking of all or a portion of the Premises sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking, and Tenant shall be entitled to reimbursement of any prepaid Rent, to be apportioned as of the date title transfers. Sale of all or part of the Premises to a purchaser with the power of eminent domain shall be treated as a taking by condemnation upon the exercise of the power of eminent domain;

(e) upon ninety (90) days' written notice by Tenant in the event there is a formal governmental environmental investigation initiated as to the Non-ROW Systems, not involving or caused by Tenant's use of the Premises, that causes Tenant to conclude, in Tenant's reasonable discretion exercised in good faith, that continued leasing of the Premises would expose Tenant to undue risk of third-party liability; or

(f) upon ninety days (90) days' written notice by Tenant to Landlord, if Tenant determines, in its reasonable discretion, that the Premises are no longer feasible due to technological or environmental reasons.

11. Obligations upon Termination or Expiration. Upon termination of this Lease or a specific Permit, including termination upon expiration of this Lease, Tenant shall remove the Facilities from the Premises, repair any damage caused thereby, and shall surrender the Premises and the Access Areas in as good order and condition as when first occupied by Tenant, ordinary wear and tear and damage not caused by Tenant excepted. Termination or expiration of this Lease shall automatically terminate any and all issued Permits. Any property which is not removed by Tenant within ninety (90) days after the expiration or earlier termination of this Lease shall, upon the expiration of the ninety (90) day period, become the property of Landlord,

unless rejected by Landlord, and Tenant shall thereafter have no rights whatsoever with respect thereto. Tenant shall be liable to Landlord for costs incurred by Landlord in removing and disposing of such property. In the event of termination by Tenant other than for (i) material uncured breach by Landlord or (ii) termination by virtue of impracticality or infeasibility as provided in § 5(c) above, Tenant shall be obligated to pay as liquidated damages an amount equal to one (1) year of the Rent that would have been due during the remainder of the initial term of the lease.

12. Insurance and Subrogation. Tenant shall provide Commercial General Liability Insurance from a company authorized to do business in the state, with a rating by Best of not less than "A minus," and, unless otherwise approved by the City Council at its sole discretion, in an aggregate amount of not less than $3,000,000.00 per occurrence and in the aggregate. Such insurance shall name Landlord as an additional insured on the policy or policies with full and equivalent coverage as the insured under the insured's policy, and in no event less than the then current sovereign immunity limits established by R.S.Mo. § 537.610 ("Sovereign Immunity Limits") (which is, upon the Effective Date of this Lease, $2,940,868.00); provided nothing herein shall be deemed to waive the City's sovereign immunity. The City's additional insured coverage shall have no deductible. Tenant may satisfy this requirement by obtaining an appropriate endorsement to any master policy of liability insurance Tenant may maintain. All such policies shall provide that they may not be canceled except upon thirty (30) days prior written notice to Landlord and provide defense coverage without deductible. Proof of compliance with this requirement, including current and duly issued certificates of insurance, or copies of the policies if so requested by Landlord, shall be maintained with Landlord at all times during the Lease. Any self-insurance must be declared to and pre-approved by the City.

13. Default by Tenant; Hold Harmless. Tenant agrees to indemnify, defend with Landlord's choice of counsel, and hold Landlord harmless from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorney's fees and court costs) arising hereafter from the installation, use, maintenance, repair, or removal of the Facilities, Premises, or Access Areas, or from the breach or default of this Lease by Tenant, unless such costs and expenses are solely attributable to the wrongful acts, omissions, or negligence of Landlord, its employees, agents, or independent contractors. If the Landlord retains legal counsel as a result of claims against Landlord that are associated with Tenant's construction, installation, use, maintenance, repair, or removal of the Facilities, the Premises, or Access Areas, or from the breach or default of this Lease by Tenant, Tenant shall pay Landlord's reasonable attorneys' fees and court costs. Tenant shall also hold Landlord harmless for any claims, including trespass or inverse condemnation, relating to Landlord's issuance of Permits, or any other authorization, for Tenant to install, repair, modify, or remove the Facilities. Tenant acknowledges that the physical condition of the Premises as of the Effective Date does not constitute a wrongful act, omission, or negligence of Landlord. Nothing in this Section shall be deemed to limit any other remedy Landlord may have pursuant to this Lease or in equity or at law. Notwithstanding anything to the contrary herein, neither Landlord nor Tenant shall be liable to the other in connection with this Lease for indirect, consequential, exemplary, or punitive damages.

14. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given (and deemed delivered upon receipt) if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight courier to the following addresses, or such other address that may be specified in writing at any time during the term of this Lease:

If to Landlord, to:

CITY OF JOPLIN
602 South Main Street
Joplin, MO 64801-2316
Attn: City Manager
Copy to: Legal Department

If to Tenant, to:

CABLERUNNER USA, LLC
Attn: Contracts Administration
c/o Perl Grossman & Associates LLP
3000 Marcus Avenue, Suite 3E6
Lake Success, NY 11042-1006

with a copy to:

CABLERUNNER USA, LLC
Attn: Vice President Government Relations
5902 Mount Eagle Drive, Suite 1517
Alexandria, VA 22303-2522

15. Quiet Enjoyment, Title, and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power, and authority to execute this Lease and has the power to grant all rights hereunder, (ii) Landlord's execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord; and (iii) Tenant shall have the quiet enjoyment of the Premises, and Tenant shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

16. Environmental Laws.

(a) Tenant represents, warrants, and agrees that it will conduct its activities on the Non-ROW Systems in compliance with all applicable Environmental Laws (as defined in the attached **Exhibit 3**).

(b) Tenant agrees to defend, indemnify, and hold Landlord harmless from and against any and all claims, causes of action, demands, and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments, and attorneys' fees that Landlord may suffer due to the existence or discovery of Hazardous Substance (as defined in the attached **Exhibit 3**) on the Non-ROW Systems or the migration of any Hazardous Substance to other properties or released into the environment that are caused by or result from Tenant's activities on the Non-ROW Systems. Tenant shall not be required to indemnify the Landlord under this subsection for the negligence or willful misconduct of the Landlord and in the event of joint and several negligence or fault of both Landlord and Tenant, indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Missouri, without, however, waiving any

governmental immunity available to Landlord under Missouri law and without waiving any defense of the parties under Missouri law.

(c) The indemnifications in this Section specifically include costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any governmental authority. The provisions of this Section will survive the expiration or termination of this Lease.

17. Assignment and Subleasing.

(a) Tenant may not assign this Lease or sublease the Premises or any portion thereof without first obtaining Landlord's prior written consent, at Landlord's discretion. Such consent shall not be unreasonably withheld or delayed.

(b) As an exception to the foregoing, Tenant may assign this Lease and its other rights hereunder (including, without limitation, its right to extend), to any person or business entity which (i) is a parent or subsidiary of Tenant; (ii) controls or is controlled by or under common control with Tenant; (iii) is merged or consolidated with Tenant; or (iv) purchases a majority or controlling interest in the ownership or assets of Tenant, provided such transactions are not designed as a means to effect transfer of ownership to an otherwise unrelated entity and Landlord is provided notice of the same with new contact information within thirty (30) days of the assignment.

(c) Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Facilities, and may assign this Lease and the Facilities to any such mortgagees or holders of security interests including their successors or assigns (hereinafter collectively referred to as "Mortgagees"), provided such Mortgagees agree in a writing that accompanies the notice to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Tenant shall reimburse Landlord for Landlord's reasonable costs in reviewing and consenting to such leasehold financing. Landlord agrees to notify Tenant and such Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant except that the cure period for any Mortgagee shall not be less than ten (10) days after receipt of the default notice. Failure by Landlord to notify Mortgagees of any default shall have no effect upon the effectiveness of such notice to Tenant.

18. Successors and Assigns. This Lease shall run with the Premises, and shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

19. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Facilities or any portion thereof which shall be deemed trade fixtures and/or personal property for the purposes of this Lease, regardless of whether or not the same is deemed real or personal property under applicable laws.

20. Default by Landlord. If Landlord fails to perform any of its obligations under this Lease, and such failure impairs or interferes with Tenant's Permitted Use of the Premises, Tenant may give Landlord written notice thereof at any time. If Landlord does not cure such failure

within thirty (30) days after receipt of such written notice from Tenant, or such longer period as may be required to diligently complete a cure commenced within the 30-day period, Tenant may, at its option, terminate the Lease pursuant to Section 10 herein, or may seek specific enforcement of the Lease, if otherwise available in law or equity, provided that Tenant shall not be entitled to file any action against Landlord or its officers, agents, or employees for damages, including for costs or attorneys' fees, pursuant to this Lease or for breach thereof.

21. Miscellaneous.

(a) This Lease shall be construed in accordance with the laws of the State of Missouri. This Lease creates no third-party beneficiaries.

(b) Landlord shall be entitled to its costs and reasonable attorneys' fees for enforcement of any provision of this Lease against Tenant or in any action arising under this Lease to which Landlord is prevailing party.

(c) This Lease, together with the ROW Use Agreement executed by Tenant concurrently with the parties' execution and delivery of this Lease to each other, constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations, and other agreements. Any amendments to this Lease must be in writing and executed by both parties.

(d) The parties acknowledge that this Lease is a lawful and enforceable contract between them, that they entered into this Lease voluntarily, and that they have full authority to sign this Lease. Tenant and Landlord agree that the Lease is a lawful lease and agree not to challenge any provision herein as unlawful or unenforceable.

(e) Nothing herein and no reference to Landlord shall be deemed to limit or interfere with Landlord's regulatory authority or police powers as a political subdivision or governmental entity, and nothing herein shall be deemed to waive application of any federal, state, or local law or obligation of Tenant or any other party.

(f) This Lease may be executed in one or more counterparts.

LANDLORD: CITY OF JOPLIN	**TENANT: CABLERUNNER USA, LLC**
By: _____	By: _____
Name: _____	Name: Chad Rasmussen
Title: _____	Title: President & CEO
Date: _____	Date: 11/1/21

EXHIBIT 1

[Premises and Access Area]

The Premises shall constitute that portion of the Non-ROW Systems wherein Licensee is authorized by specific, individual Permits to locate its Facilities, as depicted hereunder and may hereinafter be amended. The Access Areas of the ROW shall include manholes or other entry points into the Non-ROW Systems in or directly adjacent to the Premises that would allow Tenant to place its Facilities within the Non-ROW Systems, all as generally depicted in the map below and in the as-built drawings required under § 1(c) above or as otherwise approved in writing by Landlord:

EXHIBIT 2

[Facilities]

CableRunner Documentation

CableRunner products: Technical specifications and documentation

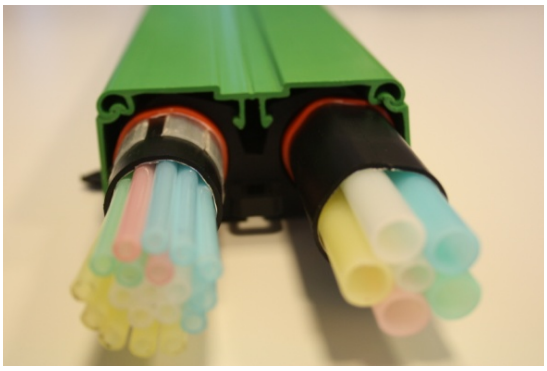


© CableRunner International, 2019

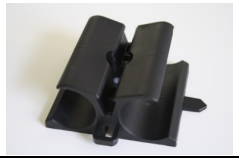
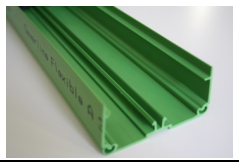
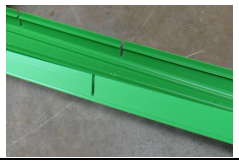
3. SewerLine Flexible A

3.1. Basic information

Usage area	In accessible sewers: minimum 800mm, no maximum diameter
Dimensions	Height: 36mm, width: 82mm
Capacity	Up to 1,440 fibers
Installation	Manual

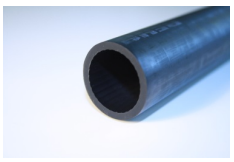


3.2. Product components

Product	Material	Sample picture
Mounting clip	Main component ABS	
Cover straight	Main component PVC	
Cover horizontal	Main component PVC	
Cover vertical	Main component PVC	
Connection box	Main component PP	

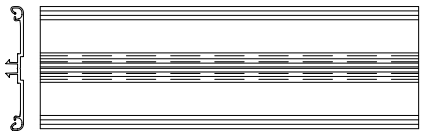
3.3. Cable housing

The SewerLine A profile can house two pieces of any cable with a diameter of 32mm. In CableRunner International projects, the following types of cable usually are utilized:

Cable	**Dimensions**	**Sample picture**
5*10mm Modular Cable System	MCS: 32mm outer diameter, tubes: 10/8mm	
19*5mm Modular Cable System	MCS: 32mm outer diameter, tubes: 5/3.5mm	
Cable Protection tube	27/32mm	

3.4. Drawings

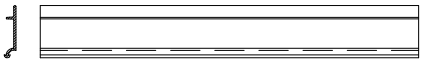
coverage top - top view scale 1:2



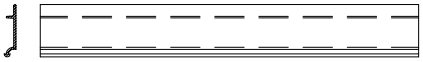
coverage top - buttom view



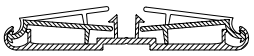
side frame - introversive view



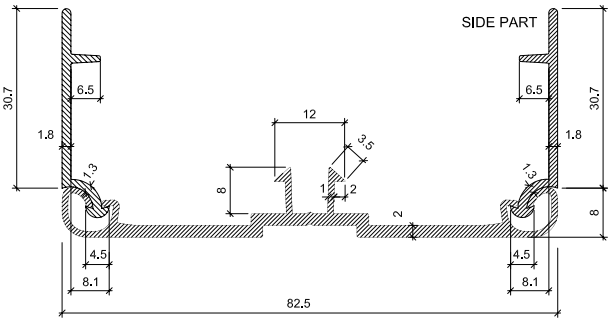
side frame - outside view



scale 1:1



cross section scale 2:1



material operating figures - COVERAGE TOP:

material:	[redacted]
deformation resistance to Martens:	[redacted]
deformation resistance to Vicat:	[redacted]
tensile strenght:	[redacted]
ultimate strain:	[redacted]
limit bending stress:	[redacted]
elastic modulus:	[redacted]
order number:	[redacted]

CableRunner
CableRunner Austria Gmbh Kolbegasse 68, A-1230 Vienna
Tel +43 (0)5 9099 - 100, Fax +43 (0)5 9099 - 999 office@cablerunner.com, www.cablerunner.com

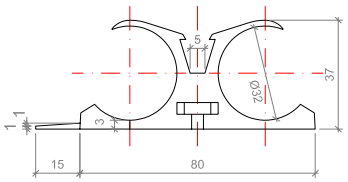
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Title
SEWERLINE FLEXIBLE "A" (accessible sewers)
COVERAGE TOP
all dimension in mm

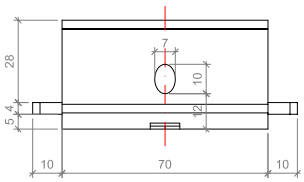
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date	signature	PLAN.No.	version
9.12.2004			01

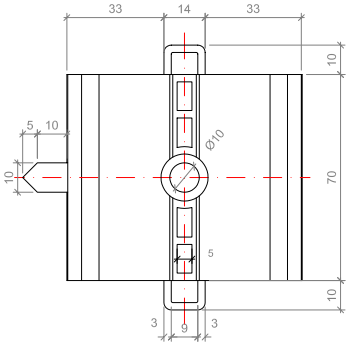
frontal view



side view



top view



materlal operatlng flgures:

MOUNTING CLIP

materlal:	[redacted]
order number:	[redacted]

FRAME ANCHOR

counter sunk bolt (6)

material:	[redacted]

anchor

materlal:	[redacted]
type:	[redacted]
dimension:	[redacted]
order numb.:	[redacted]

WASHER

materlal:	[redacted]
dimension:	[redacted]
order numb.:	[redacted]

CableRunner
CableRunner Austria Gmbh Kolbegasse 68, A-1230 Vienna
Tel +43 (0)5 9099 - 100, Fax +43 (0)5 9099 - 999 office@cablerunner.com, www.cablerunner.com

Scale: 1:1

Title
SEWERLINE FLEXIBLE "A" (accessible sewers)
"MOUNTING CLIP"

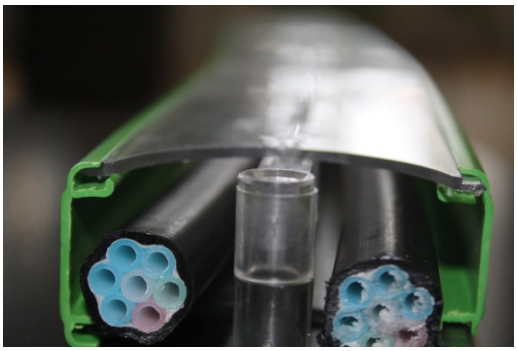
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4. SewerLine Flexible N

4.1. Basic information

Usage area	In non-accessible sewers: 250 to 800mm diameter
Dimensions	Height: 30mm, width: 68mm
Capacity	Up to 1,152 fibers
Installation	Robot technology



4.2. Product components

Product	**Material**	
Body part	Main component PP	
Side part	Main component PVC	

4.3. Cable housing

Each of the 2 SewerLine N profile chambers can house up to four loose 10mm tubes, up to seven 5mm tubes in a compound or just standard fiber cables. In CableRunner International projects, the following types of cable usually are utilized:

Cable	**Dimensions**	**Sample picture**
10mm blowing tubes (up to 4 times)	10/8mm	
7x5mm blowing tubes compound	17mm, 5mm tubes: 5/3.5mm	

4.4. Drawings

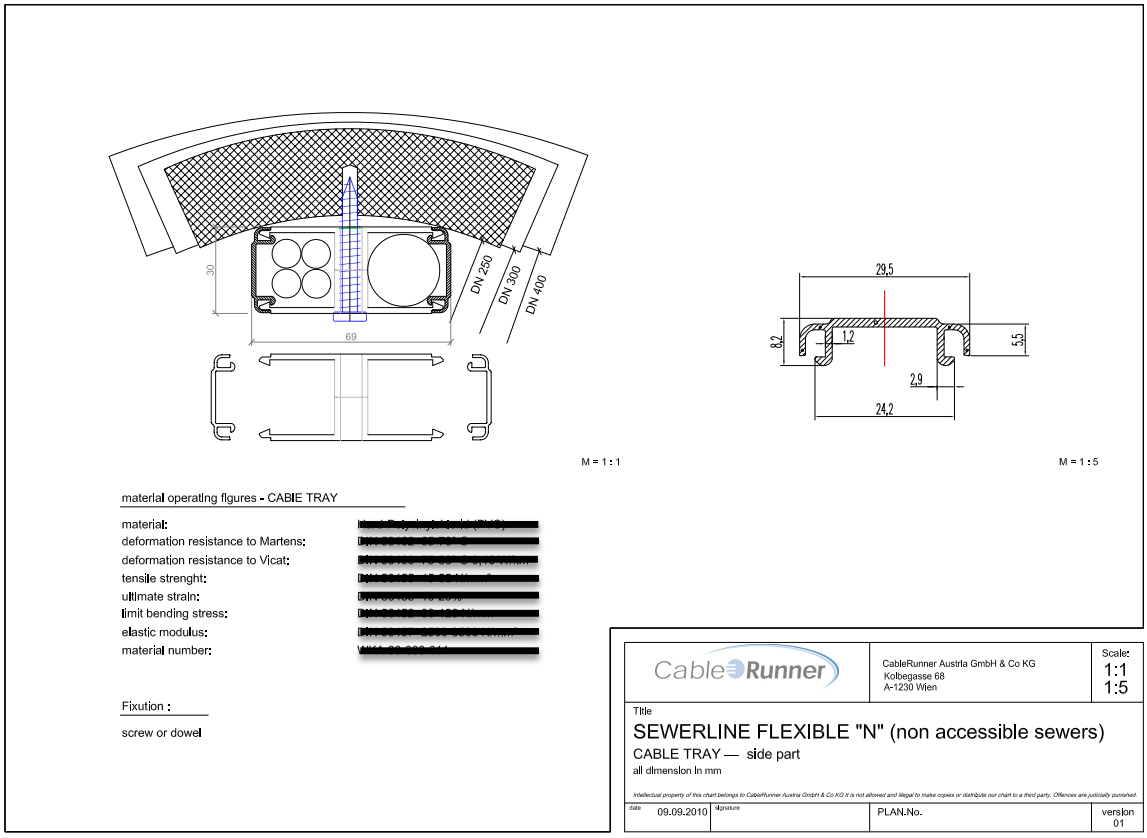

30
69
DN 250
DN 300
DN 400
M = 1 : 1
29,5
8,2
1,2
5,5
2,9
24,2
M = 1 : 5
materlal operatlng flgures - CABIE TRAY
material:
deformation resistance to Martens:
deformation resistance to Vicat:
tensile strenght:
ultlmate strain:
limit bending stress:
elastic modulus:
material number:
Fixution :
screw or dowel
CableRunner
CableRunner Austria GmbH & Co KG
Kolbegasse 68
A-1230 Wien
Scale:
1:1
1:5
Title
SEWERLINE FLEXIBLE "N" (non accessible sewers)
CABLE TRAY — side part
all dimension in mm
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date 09.09.2010
signature
PLAN.No.
version
01

EXHIBIT 3

Environmental Laws

As used in this Lease, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, pertaining to the protection of human health and/or the environment including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*, the Clean Air Act, 42 U.S.C. §§7401, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§1251, *et seq.*, the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§1101 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§2601, *et seq.*, the Oil Pollution Control Act, 33 U.S.C. §§2701, *et seq.*, and applicable Missouri state laws, or any other comparable local, state or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto. This definition includes all federal, state, or local land use laws dealing with environmental sensitivity, including but not limited to laws regarding wetlands, steep slopes, aquifers, critical or sensitive areas, shorelines, fish and wildlife habitat, or historical or archeological significance.

As used in this Lease, "Hazardous Substance" means any hazardous or toxic substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time; any and all material waste or substance defined as hazardous pursuant to any federal, state, or local laws or regulations or order; any substance which is or becomes regulated by any federal, state, or local governmental authority; and any oil, petroleum products, and their byproducts.

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