

Ordinance No. _____

Ordinance Accepting the Bid Submitted by _____ for a Nonexclusive Franchise Agreement to Use and Occupy the Streets and Public Rights-of-Way Located within the City for the Purposes of Constructing, Installing, and Maintaining Network Facilities for Wireless Services and for Providing Wireless Infrastructure Services within and through the City

WHEREAS, on January 24, 2024, pursuant to the provisions of §15.2-2100 et. seq. of the Code of Virginia, 1950, as amended, the City offered franchises to qualified Wireless Service Providers and Wireless Infrastructure Providers by publicly inviting bids for a wireless facilities nonexclusive franchise agreement, subject to the terms and conditions set forth in the Nonexclusive Franchise Agreement attached hereto as EXHIBIT A and made a part hereof to this Ordinance;

WHEREAS, _____ was one of the highest, qualified, responsible bidders;

WHEREAS, the requirements of §15.2-2101 and §15.2-2102 of the Code of Virginia, 1950, as amended, having been met and after careful consideration of the bids submitted, the bid of _____ should be accepted by City Council; and

WHEREAS, the City should grant the aforesaid wireless franchise to _____ subject to the execution of that certain Nonexclusive Franchise Agreement attached hereto as EXHIBIT A by the parties.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Hampton, Virginia as follows:

1. That bid of _____ is hereby accepted; and
2. That the City Manager, or her authorized designee, is hereby authorized to execute the Nonexclusive Franchise Agreement attached hereto as EXHIBIT A, in substantially the same form as set forth in this Ordinance, and to take any and all actions necessary to carry out the purposes of this Ordinance, subject to approval by the City Attorney.

EXHIBIT A

CITY OF HAMPTON, VIRGINIA
NONEXCLUSIVE FRANCHISE AGREEMENT WITH

[REDACTED]

This Nonexclusive Franchise Agreement (the "Agreement") is made and entered into as of this _____ day of _____, 2024 (the "Commencement Date"), by and between the City of Hampton, Virginia, a Virginia municipal corporation (hereinafter "City" or "Grantor") and [REDACTED] having its principal address at [REDACTED], hereinafter (" [REDACTED] " or "Grantee" or "Company").

WHEREAS, Grantee, is a general partnership duly organized and existing under the laws of the state of Delaware; and

WHEREAS, Grantee desires to use and occupy the streets and public rights-of-way (as hereinafter defined) located within the City for the purposes of constructing, installing, and maintaining network facilities for Wireless Services and/or as a Wireless Infrastructure Provider, as hereinafter defined, within and through the City; and

WHEREAS, pursuant to Article VII, Section 9 of the Constitution of Virginia and Chapter 21 of Title 15.2 of the Virginia Code, the City has the authority to grant franchises and other authorizations for the use and occupancy of the streets and public rights-of-way; and

WHEREAS, the City is agreeable to allowing Grantee to use the streets and public rights-of-way, subject to the terms and conditions hereinafter set forth and subject to Hampton City Code, Chapter 34, Article III, Division 2, Wireless Communications Infrastructure, as may be amended, and any lawful and applicable regulatory ordinance that may be adopted by the City in the future; and

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and Grantee agree as follows:

Section 1. Grant of Authority. (a) Subject to the terms of this Agreement, the City hereby grants to Grantee a non-exclusive revocable license to construct, install, maintain, manage, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove and replace Wireless Facilities, Utility Poles and Company Poles, and related facilities for the provision of Wireless Services in, on, over, under and through the public streets and public rights-of- way in the City of Hampton (for the avoidance of doubt, the parties acknowledge and agree that the license granted to Grantee hereunder expressly includes the right, subject to the written consent of the property owner, to attach its equipment and Wireless Facilities, as applicable, on existing, new and replacement Utility Poles, Third Party Existing Structures and Third Party New Structures, and existing, new and replacement Company Poles within the public streets and rights of way). Grantee shall be solely responsible for obtaining any required consents from State agencies, the City, or private parties to the extent required by law. It is expressly agreed that this Agreement does not

give Grantee the right to occupy any public rights-of-way with permanent above-ground cabinets, pads and other similar structures except pursuant to the express approval of the City pursuant to the applicable provisions of the City Code or any successor ordinance and that nothing in this Agreement shall be construed as consent by the City for Grantee to provide Cable Service within the City.

(b) Grantee acknowledges that this license is for the benefit of Grantee only, and that Grantee is not authorized to lease, sublease, assign or otherwise allow other providers to use or occupy the public rights-of-way except in accordance with provisions of this Agreement.

(c) Grantee acknowledges that, to the extent allowed by State and Federal law, the City has the authority to adopt ordinances regulating the use of the public rights-of-way, so long as such ordinances apply in a generally applicable, non-discriminatory manner equally to all certificated providers of telecommunications services and are related to using the public streets and public rights-of-way in the City. Grantee agrees to be bound by all such lawful ordinances so long as it operates telecommunication services or has property or equipment within the public streets or rights-of-way located in the City that support Wireless Services.

(d) This Agreement is not a grant by the City of any fee simple or other property interest except as expressly contemplated by this Agreement and is made subject and subordinate to the prior and continuing right of the City of Hampton to use the public streets and public rights-of-way occupied by Grantee for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water mains, storm drains, gas mains, poles and other equipment for municipal uses and with the right of ingress and egress, along, above, over, across and in said public streets and public rights-of-way.

(e) The Initial Term of this Agreement shall commence from and after such date (the "Commencement Date") that the Agreement has been approved by the City Council.

Section 2. Definitions. For the purpose of this Agreement, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

“Administrative Review-Eligible Project” means a project that provides for:

1. The installation or construction of a new structure that is not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent comprehensive annual financial report, on undergrounding projects since 1980; and (iv) designed to support small cell facilities; or

2. The co-location on any existing structure of a wireless facility that is not a small cell facility.

"Affiliate" means a person or entity 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 or entity.

"Cable Service" shall have the same meaning as in the 47 U.S. Code § 522, and shall be synonymous with the term "cable television service."

"City" means the City of Hampton, Virginia, and where appropriate to the context, its officers, agents, employees and volunteers.

"City Attorney" means the City Attorney or the City Attorney's designee.

"City Council" means the City Council of the City of Hampton.

"City Manager" means the City Manager or the City Manager's designee.

"City Facilities" means City-owned existing structures located within the public way. City facilities may include, by means of example, city-owned light poles and city-owned traffic signal poles and structures.

"City Property" means and includes all real property owned by the City, including all property held in a proprietary capacity by the City.

"Company Pole(s)" means any structure installed or approved to be installed by or on behalf of Grantee or its Carriers (as defined in Section 10 herein), in Public Streets and Public Rights-of-Way.

"Conduit" means any materials, such as metal or plastic pipe, that protects wire, cable, lines, fiber optic cable, or other technology for the provision of telecommunications service.

"Department" means the Department of Public Works or any other department designated by the City Manager.

"Duct" means a pipe, tube, channel or similar item for carrying wires, lines, cables, fiber optic cable, or other technology for the provision of telecommunications service.

"Existing Structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to the City of an agreement with the owner of the structure to co-locate equipment on that structure. Also includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

demarcation boxes, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

“Standard Process Project” means any project other than an Administrative Review-Eligible Project.

"Telecommunications Facilities" means the plant, equipment and property, including, but not limited to, the poles, light poles, Utility Poles, pipes, mains, conduits, ducts, fiber optic and other cables, circuits, and wires, antennas, radios, and any other equipment and property used by Grantee to provide telecommunications service.

"Telecommunications Service" means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of signals, including but not limited to, voice, data, image, graphic or video or other programming information, except cable television service, between or among points by wire, lines, cable, fiber optics, circuits, laser or infrared, microwave, radio, satellite or other Telecommunications Facilities, but not including cable television service.

"Third Party Existing Structure" means an existing structure that is not owned by the City.

"Utility Pole(s)" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, lighting, or electricity.

"Wireless Facility" means equipment at a fixed location that enables wireless services between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

“Wireless Infrastructure Provider” means any person, including a person authorized to provide telecommunications service in the state, that builds or installs transmission equipment, Wireless Facilities or Wireless Support Structures, but that is not a Wireless Services Provider.

"Wireless Services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

"Wireless Services Provider" means a provider of wireless services.

“Wireless Support Structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

Section 3. Term of Agreement. (a) The initial term of this Agreement shall be for a term of ten (10) years, commencing on the date of approval of this Agreement by the City Council ("Initial Term"). Before Grantee enters upon public right-of-way, all bonds, proofs of insurance and documentation of location must be filed with the City. The Agreement shall thereafter automatically renew for three additional five-year terms (each, a "Renewal Term"), provided, however, that either party may, upon giving ninety (90) days' written notice prior to the end of the Initial Term or any five-year Renewal Term, as applicable, terminate the Agreement. Upon termination of this Agreement as herein provided, and unless the parties are in active good faith negotiation of a replacement agreement or otherwise and agree in writing to an extension, Grantee shall be prohibited from further access to the public rights-of-way in the City of Hampton. The Initial term and all Renewal Terms hereunder shall be collectively referenced as the "Term". Notwithstanding this section, or any other provisions of this Agreement, Grantee has the right to terminate this Agreement for any reason ("Right to Unilateral Termination") upon ninety (90) days written notice of its intention to exercise its Right of Unilateral Termination. Upon such notice, Grantee shall remove its Telecommunications Facilities in such a manner as is set forth in this Section 3 of this Agreement.

(b) Either the City or Grantee may terminate this Agreement for an uncured material breach by the other. The non-breaching party must first provide written notice of the existence of a material breach to the breaching party. Such notice shall state the grounds for termination in reasonable detail. The party receiving notice of termination for cause shall thereafter have ninety (90) days to cure, or commence and vigorously pursue good faith efforts to cure the alleged material breach.

(c) Upon the expiration or termination of this Agreement (including any renewal period), or if any of Grantee's Telecommunication Facilities including, but not limited to individual units, are abandoned for a period of time exceeding ninety (90) days, Grantee shall remove its Wireless Facilities and equipment at its own expense. The City agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of Grantee shall remain the personal property of Grantee and Grantee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If, in the event Grantee fails to remove its facilities within thirty (30) days following written notice from the City requiring such removal, the City may cause such facilities to be removed, without further notice, and charge the actual cost for removal to Grantee which shall pay such costs within thirty (30) days after the City's written demand to do so. The City may collect such costs, expenses and attorney's fees as debts owed to the City by bringing action in any court of competent jurisdiction to enforce this section 3(c).

Section 4. Compliance With Applicable Law. The parties shall, at all times during the Term of this Agreement, including any renewal period, comply with this Agreement and all applicable federal, state, and local laws, ordinances, and regulations as of the Commencement Date of this Agreement, including but not limited to, Virginia Constitution Article VII, Section 9; Chapter 21 of Title 15.2 of the State Code; City Code Chapter 9, Article II; City Code Chapter 34, Article II and Article III; City Code Chapter 35.1; and the City's Zoning Ordinance; to the extent allowed by Virginia Code § 15.2-2316.4 and Virginia Code Title 56, Chapter 15.1. Expressly reserved to the City is the right to adopt, in addition to the provisions of this Agreement and existing laws, such additional ordinances and regulations as are necessary for the lawful exercise of its police power for the benefit and safety of the public.

Section 5. Construction, Location or Relocation of Facilities. All facilities of Grantee shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified by the City.

5.1. The City, as owner of the right-of-way, reserves the right to object to and reject the location of individual Wireless Facilities, the placement of which it deems, in its discretion, to be contrary to the best interests of the City.

5.2. Whenever existing electrical utilities, cable facilities or Telecommunications Facilities are located underground within a particular segment of a street or public right-of-way of the City, Grantee shall also install its Telecommunications Facilities underground. Provided, however, that Grantee reserves the option to attach Telecommunications Facilities to Third Party Existing (or replacement) Structures, as are appropriate for Grantee's Telecommunications Facilities and can safely bear the weight of wind loading thereof.

5.3. a. Whenever existing overhead electric utilities, cable facilities or Telecommunications Facilities are relocated underground within a particular segment of a street or public right-of-way of the City, the City may also require Grantee to relocate its Wireless Facilities underground, provided that: (a) such relocation does not prohibit, or have the effect of prohibiting, Grantee's Wireless Services from such location(s); (b) the relocation is commercially reasonable; (c) the City complies with the Undergrounding Notice Requirements as provided herein below; and (d) the additional incremental costs of such underground relocation (as compared to aerial) shall be paid by the City. Any such relocation, if required, shall be made concurrently to minimize the disruption of the public streets or public rights-of-way. As used herein, the applicable "Undergrounding Notice Requirements" shall be as follows: the City shall first notify Grantee in writing that it intends to require relocation of certain of Grantee's Wireless Facilities pursuant to this section. Thereafter, Grantee shall have thirty (30) days to respond to the City in writing, specifying the projected costs associated with such relocation. If the parties conclude in writing that such relocation is commercially reasonable, and determine to proceed with the relocation, Grantee shall have ninety (90) days thereafter to effectuate same; provided, however, that if Grantee determines that additional time is required to complete the relocation, this timeframe shall be reasonably extended as necessary. Once the relocation is complete, Grantee shall submit an invoice to the City for the costs payable by the City pursuant to this Section 5.3, and the City shall promptly submit payment to Grantee.

b. For the avoidance of doubt, the parties acknowledge and agree that this Section 5.3, and any relocation requirement hereunder, shall not apply to Small-Cell Facilities and Micro-Wireless Facilities, including those that are located on structures such as street lights, traffic-control structures, and buildings, that must be located above ground due to the nature of such Small Cell Facilities and Micro-Wireless Facilities and their ability to provide Wireless Services. In this case, Grantee will be allowed to erect a utility pole that comports with the dimensions as required by City ordinances and standards, in order to support Small Cell and Micro Wireless Facilities only.

5.4. In no event shall any such utility pole be erected less than 300 feet from any existing utility pole capable of bearing Wireless Facilities to transmit signals within the 500 MHz to 10 Ghz range, and provided such Utility Pole is available for attachment of Company's Wireless Facilities. Grantee shall obtain all required approvals and permits for the construction or installation of its Wireless Facilities as required in this Agreement; provided, however, that nothing in this Agreement shall prohibit the City and Grantee from agreeing to an alternative plan to review future City permit

and construction procedures, provided such alternative procedures do not present an undue hardship to Grantee and are uniform and non-discriminatory as to all similarly situated utilities, and provide substantially equivalent safeguards for responsible construction practices.

5.5. In the performance and exercise of its rights and obligations under this Agreement, Grantee shall not interfere in any manner with the existence and operation of any public street and public or private right-of-way, sanitary sewer, water line, storm drain, gas main, pole, overhead or underground electric and telephone wires, television cables, public works, facilities of other telecommunication providers, or City Property, without the prior written approval of the City.

5.6. Except as may be expressly provided herein, nothing in this Agreement shall be construed to abrogate or limit the right of the City of Hampton to perform any public works or public improvements. If any Wireless Facilities interfere with the construction, operation, maintenance, repair or removal of such public works or public improvements, within ninety (90) days following Grantee's receipt of written notice from the City of Hampton (or such other period of time set forth in Section 5.7 or as may be agreed upon in writing by the City of Hampton and Grantee) Grantee shall, at its own expense protect, alter, remove or relocate facilities, as directed by the City Manager or Director of the Department. If Grantee fails to so protect, alter, remove or relocate equipment within such period, the City may break through, remove, alter or relocate the Wireless Facilities without any liability to City, and Grantee shall pay to the City the actual costs incurred in connection with such breaking through, removal, alteration or relocation. Grantee shall also reimburse the City for or bear any additional cost actually incurred by the City as a result of Grantee's failure to comply with the City's request to protect, alter or remove equipment under this Agreement. The City may collect actual costs it has incurred in collecting such costs (excluding attorney fees), as debts owed to the City, by bringing action in any court of competent jurisdiction or exercising the City's rights to draw on bonds or letters of credit, or in any other lawful manner, individually or in combination. As used in this Agreement, "business day" shall refer to any day other than a Saturday, Sunday or federal holiday, or any other day on which national banks in the State of Virginia are not open for business.

5.7. The City retains the right and privilege to cut or move any Wireless Facilities located within the public ways or other areas of the City as necessary to mitigate situations that are impacting the public health and safety, which shall be determined in the reasonable, good faith discretion of the City; or as required for the City to comply with applicable federal, state, and local laws and regulations. The City will endeavor to give reasonable notice to Grantee of such situations which may impact its Wireless Facilities before or after the fact. Nothing herein shall create any duties or obligations on the City to so notify Grantee nor shall the City, its officers, agents, employees, or volunteers in any way be liable for any failure to notify Grantee.

5.8. The Wireless Facilities shall be located so as not to interfere with the public safety or, to the extent possible, with the convenience of persons using the public streets or rights-of-way. Grantee shall construct, maintain and locate its telecommunications system so as not to interfere with the construction, location and maintenance of sewer, water, drainage, electrical, signal and fiber optic facilities of the City.

5.9. The City shall have the right to specifically designate the location of the Wireless Facilities with reference to sewer and water mains, drainage facilities, fiber optic cable, signal poles and lines and similar services, other facilities, such as public telephone utilities, public electric utilities, cable

television facilities, and railway, communication and power lines, in such a manner as to protect the public safety and public and private property. Failure by the City to designate the location of any portion of the Wireless Facilities shall not relieve Grantee of its responsibilities in matters of public safety, as provided in this Agreement.

5.10. Except in the cases of emergencies, Grantee shall not move, alter, change or extend any of its telecommunications system in any public street or public right-of-way unless prior written notice of its intention to do so is given to the City Manager and permission in writing to do so is granted, or such requirement is waived, by the City Manager. The City Manager shall use their best efforts to either approve or deny Grantee's request to relocate the Wireless Facilities within thirty (30) days of receipt of Grantee's request to the extent reasonably practicable. Such permission shall be conditioned upon compliance with the terms and conditions of this Agreement, with such other terms and conditions as will preserve, protect and promote the safety of the public using the public ways, and as will prevent undue interference with or obstruction of the use of the public ways by the public, the City or by any other public utility, public service corporation or cable operator for their respective purposes and functions. Such work by Grantee shall also be coordinated with the City's street resurfacing program through the Department.

5.11. Grantee shall not open, disturb or obstruct, at any time, any more of the public streets or public rights-of-way than is reasonably necessary to enable it to proceed in laying or repairing its telecommunications system. Grantee shall not permit any public street or public right-of-way so opened, disturbed or obstructed by it to remain open, disturbed or obstructed for a longer period of time than shall be reasonably necessary. In all cases where any public street or public right-of-way is excavated, disturbed or obstructed by Grantee, Grantee shall take all precautions necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals and other devices necessary or proper to adequately give notice, protection and warning to the public of the existence of all actual conditions present.

5.12. After the installation, removal, relocation or construction or maintenance of the Wireless Facilities is completed, Grantee shall, at its own cost, repair and return the public streets or public rights-of-way to a minimum of the same or similar condition existing before such installation, removal, relocation construction or maintenance, in a manner as specified by the City in its Department of Public Works Design & Construction Standards, and to the reasonable satisfaction of the City. Grantee shall be responsible for damage to City street pavements, existing utilities, curbs, gutters and sidewalks due to Grantee's installation, construction, maintenance, repair or removal of its Wireless Facilities in the public streets, public rights-of-way, and shall repair, replace and restore in kind, the said damaged property at its sole expense. Upon failure of Grantee to repair, replace and restore said damaged property, in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City, after 30 days' notice in writing shall have been given by the City, or a different time frame to which Grantee and the City reasonably agree, the City may cause such necessary repairs to be made ("Self Help Repairs") and may collect the costs incurred from Grantee, including but not limited to, exercising the City's rights to draw on bonds or letters of credit. The City may collect such costs, and any expenses and attorney fees incurred in collecting such costs, as debts owed to the City, by bringing action in any court of competent jurisdiction or in any manner allowed bylaw.

5.13. Except as otherwise necessitated by installation, operation and maintenance of the Wireless Facilities contemplated by this Agreement, neither Grantee, nor any person acting on Grantee's behalf, shall take any action or permit any action to be done which may impair or damage

any City Property, including, but not limited to, any public street, public right-of-way or other property located in, on or adjacent thereto. As stated supra, Grantee shall, at its own cost, repair and return any City Property to the same or similar condition existing before such installation, removal, relocation construction or maintenance, in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City. Notwithstanding this provision, Grantee shall not be responsible for impairment or damage to City Property caused by Self Help Repairs.

5.14. In the event of an unexpected repair or emergency, Grantee may commence such repair and emergency response work as required under the circumstances, provided, however, that Grantee shall notify the City as promptly as possible, before such repair or emergency work is started (or as soon thereafter as possible if advance notice is not practicable).

5.15. Grantee shall maintain such Wireless Facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements, laws, ordinances, and regulations.

5.16. Grantee shall at all times employ a high standard of care and shall install and maintain and use approved methods and devices for preventing failure or accidents which are likely to cause damages, injuries or nuisances to the public.

5.17. Grantee shall obtain all required approvals and permits from the City, such as those necessary for Administrative Review-Eligible Projects and Standard Process Projects, and any other governmental entity having jurisdiction prior to commencing work of any nature and shall comply with all terms and conditions of any such permit. Grantee shall furnish detailed plans of the work and other required information, and shall pay all required fees prior to issuance of a permit in accordance with the rates in effect at the time of payment. Grantee shall fully comply with all City ordinances, policies, procedures, and permitting requirements including, but not limited to, those set forth in City Code Chapter 35.1.

At the discretion of the City, a single permit may be issued for multiple excavations, pole installations, or pole attachments to be made in public streets and rights-of way; provided, however, any applicable fees established by the City shall apply to each such excavation, pole installation or pole attachment unless otherwise provided by law. Exceptions to the requirement for a written permit may be allowed in cases of emergencies involving public safety or restoration of service. In the case of emergency excavations or pole-related repairs made in a public street or public right-of-way without a permit, Grantee shall make a report of each such excavation or pole-related repair to the City within two (2) business days and pay any applicable administrative fee (without penalty). Any permit application and inspection related to repair of excavations or pole-related repairs shall be promptly acted upon by the City so as not to unreasonably delay Grantee in efficiently discharging its public service obligation and in any event shall be granted or denied within thirty (30) days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

5.18. (a) Promptly after installation, repair or extension of a telecommunications system or any portion thereof or any pavement cut by Grantee in any public way of the City, the incidental trenches or excavations shall be refilled by Grantee in a manner reasonably acceptable to the Director of the Department. Pavement, sidewalks, curbs, gutters or any other portions of public ways damaged, disturbed or destroyed by such work shall be promptly restored and replaced with like materials to

their former condition by Grantee at its own expense; however, where it is necessary, and if authorized by the City, in order to achieve the former conditions, Grantee shall use materials whose type, specification and quantities exceed or are different from those used in the installation, then Grantee, at its own expense, shall provide such different materials. Where a cut or disturbance is made in a section of sidewalk or paving, rather than replacing only the area actually cut, Grantee shall replace the full width of the existing sidewalk or appropriate sections of paving as determined by the Director of the Department and the full length of the section or sections cut, a section being defined as that area marked by expansion joints or scoring or as determined by the Director of the Department. Grantee shall maintain, repair and keep in good condition for a period of two (2) years following such disturbance all portions of public ways disturbed by Grantee, normal wear and tear excepted, and provided such maintenance and repair shall be necessary because of defective workmanship or materials supplied by Grantee.

(b) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation maintenance, repair or replacement of Wireless Facilities shall be replaced or restored, as nearly as may be practicable, to the condition existing prior to performance of work. All restoration work within the public ways or other areas shall be done in accordance with landscape plans approved by the City.

5.19. (a) Grantee shall promptly remove or correct any obstruction, damage, or defect in any public street or public right-of-way caused by Grantee in the installation, operation, maintenance or extension of Grantee's Telecommunicates Facilities. Any such obstruction, damage, or defect which is not promptly removed, repaired or corrected by Grantee promptly following proper written notice to do so, given by the City to Grantee, may be removed or corrected by the City, and the cost thereof shall be charged against Grantee and payable on demand. Any expense, cost, or damages incurred for repair, relocation, or replacement to City water, sanitary sewer, storm sewer, storm drainage, telecommunication facilities or other property resulting from construction or maintenance of Grantee's telecommunications system shall be borne by Grantee, and any and all expense and cost incurred in connection therewith by the City shall be fully reimbursed by Grantee to the City.

(b) If weather or other conditions do not permit the complete restoration required by this Section, Grantee shall temporarily restore the affected property. Such temporary restoration shall be at Grantee's sole expense and Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(c) Grantee or other person acting in its behalf shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property and shall comply with all federal, state, and local laws and regulations, including, but not limited to, the flagging requirements of the Virginia Department of Transportation and/or the City.

5.20. Except in the case of the City's gross negligence or intentional or willful misconduct, the City, its officers, agents, or employees, shall not be liable for any damage to or loss of any of Grantee's Telecommunications Facilities or Wireless Facilities within the public ways or any other areas of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work or activity or lack of any activity of any kind by or on behalf of the City. Nothing in this Agreement shall be considered a waiver of sovereign, statutory or common law immunities of municipal corporations. Nothing in this section shall be construed as a waiver of the City's sovereign

immunity.

5.21. Grantee shall cooperate with the City in coordinating its construction activities as follows:

(a) Grantee shall provide the City with a schedule of its proposed construction activities prior to commencing any expansion of its backbone system;

(b) Upon request, Grantee shall meet with the City and other users of the public ways to coordinate construction in the public ways; and

(c) All construction locations, activities and schedules shall be coordinated, as directed by the Director of the Department, to minimize public inconvenience, disruption or damages. Grantee shall submit a written construction schedule to the Director of the Department at least ten (10) business days before commencing any work in or about the public streets or public rights-of-way. Grantee shall further notify the Director of the Department not less than five (5) business days in advance of such excavation or work and shall comply with the provisions of the Virginia Underground Utility Damage Prevention Act, Virginia Code Section 56-265.14, and et. seq.

5.22. Notwithstanding anything to the contrary in this section, the installation, placement, maintenance, or replacement of Micro-Wireless Facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes shall comply with applicable sections of Chapter 34 of the Hampton City Code.

Section 6. Compensation. In addition to any administrative and permitting fees required by the City; any fees as stated in Chapter 34 of the Hampton City Code; and any fees that may be imposed in accordance with the Code of Virginia, as amended, including but not limited to fees allowed in Va. Code 56-484.29, the annual recurring rate for the co-location of Wireless Facilities on City-Owned Facilities shall be governed by a separate agreement between Grantee and the City. Any and all fees shall be assessed only in compliance with applicable law. Such annual recurring rate shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or wireless infrastructure provider's use of space on the City-Owned Facilities.

Section 7. Mapping. (a) Grantee shall maintain an accurate map of its Wireless Facilities. Grantee shall provide the City with "as built" drawings and an accurate map or maps showing the location of the Wireless Facilities, including pole lines and conduit lines and any other details requested by the City, to include a digitized map(s) in both printed and electronic form readable by the current version of Auto CAD and tied to the Virginia State Plane Coordinate System and tied to the City's Survey Control monuments and geographic information system certifying the location of all Wireless Facilities within the City. Grantee shall, upon request, provide updated maps annually.

(b) If any of the requested information of Grantee in this Agreement is considered proprietary, confidential or a trade secret, Grantee will notify the City of this opinion and the City will keep such information confidential to the extent permitted by the Virginia Freedom of Information Act (Va. Code Sections 2.2-3700 to -3714) or any other successor statute or law. Grantee will submit an existing facilities map as a condition precedent to the City's approval of this Agreement. As for new installations, after the Commencement Date of this franchise, Grantee shall

submit the proposed mapping of its plans for new construction to the City prior to any construction. As-built drawings of any new construction of Wireless Facilities shall be furnished to the City within sixty (60) days of completion of such construction. All as-built maps and drawings shall be drawn to scale and reference to a physical City benchmark to the extent the physical benchmark is in reasonable proximity to Grantee's new installation. All mapping shall be provided in a format compatible to the City's present and future mapping systems. Alternatively, Grantee will pay for the cost of making the mapping compatible.

(c) Prior to its installation of any Wireless Facilities in the public streets or public rights-of-way and after Grantee provides the City with its proposed plans for the facilities, the City may in its discretion designate certain locations to be excluded from use by Grantee for its Wireless Facilities, including, but not limited to, ornamental or similar specially designed streetlights or other facilities or locations which, in the reasonable judgment of the Director of the Department, do not have electrical service adequate for or appropriate for Grantee's Wireless Facilities or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the Director of the Department is incompatible with the proposed Wireless Facilities or would be rendered unsafe or unstable by the installation. The Director of the Department may further exclude certain other facilities that have been designated or planned for other use or are not otherwise proprietary, legal or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with reasonable requirements of Grantee, the City will cooperate in good faith with Grantee to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial costs nor require the City to acquire new locations for Grantee. Grantee shall, prior to any excavation or installation within the public streets or public rights-of-way, provide sufficient notification and joint installation opportunity on a shared cost basis to potential users of the public streets or public rights-of-way as may be provided for by a separate City policy. Such notification and adopted policies shall be designed to maximize co-location of providers to minimize the disturbance to the public streets or public rights-of-way and maximize its useable capacity.

Section 8. Insurance Requirements. At all times during the term of this Agreement, Grantee shall, at its expense, maintain the insurance policies listed herein. Any required policy obtained through a third-party insurer shall be in a form and with an insurance company authorized or permitted to do business in the Commonwealth of Virginia and have a rating of no less than A-VII by A.M. Best Co. The City acknowledges and agrees that Grantee may elect to self-insure during the Term of this Agreement if: (a) Grantee meets the self-insurance requirements promulgated under Virginia law; and (b) Grantee has processed any necessary applications and/or materials with the state of Virginia required to self-insure (and has provided copies of same to the City).

(a) Commercial General Liability. Grantee shall procure and maintain throughout the Term of this Agreement commercial general liability insurance with limits of five million dollars (\$5,000,000.00) for bodily injury (including death), and for property damage each occurrence. Grantee agrees that it will include the City as an additional insured as its interest may appear under this Agreement. However, the parties acknowledge that Grantee may meet the policy limit in this section by combination of Grantee's General Commercial Liability Policy and Grantee's Umbrella or Excess Liability Policy.

Such policy shall contain Contractual Liability. Broad form Contractual Liability insurance, including the indemnification obligations of Grantee set forth in this Agreement.

(b) Workers' Compensation. Workers' Compensation insurance covering Grantee's statutory obligation under the laws of the Commonwealth of Virginia and Employer's Liability insurance in the amount of One Million (\$1,000,000) each accident/disease/policy limit for all its employees engaged in work under this Agreement.

(c) Commercial Automobile Liability. Commercial Auto Liability insurance having a combined single limit of liability of One Million Dollars (\$1,000,000) applicable to owned or non-owned vehicles used in the performance of any work under this Agreement.

(d) Pollution Liability Insurance. Grantee shall maintain during the life of this Agreement Pollution Liability Insurance in the amount of One Million Dollars (\$1,000,000) for each occurrence. Coverage shall be provided for bodily injury and property damage resulting from pollutants which are discharged suddenly and accidentally. Such insurance shall also provide coverage for cleanup costs.

(e) Waiver of Subrogation shall apply to all lines of insurance waiving the Grantees rights to subrogation against the City.

(f) Grantee shall, prior to commencing construction pursuant to the execution of this Agreement or within ten (10) business days after the granting of a permit contemplated by this Agreement, whichever is sooner, furnish to the City certificates of insurance, showing the type, amount, effective dates and date of expiration of the policies, and thereafter prior to the expiration of any such policy or change in the amount or conditions, of coverage. Such certificate or certificates and evidence of insurance shall include on the Commercial General Liability the City, its officers, and employees as additional insureds as their interest may appear under this Agreement.

(g) Grantee shall provide an endorsement from each insurer that provides the City with thirty (30) days advance notice of policy cancellation and ten (10) days for non-payment of premium. Certificates of Insurance (COI's) must be accompanied by an endorsement naming, on the Commercial General Liability Policy, City of Hampton and their elected and appointed officials, agents, employees and volunteers as additional insureds.

Section 9. Surety. (a) Within thirty (30) days after this Agreement is approved by the City, and prior to the issuance of any permits for construction by Grantee, Grantee shall furnish and file with the City a performance bond, in a form and by a surety authorized or permitted to do business in the Commonwealth of Virginia and approved by the City Attorney, in the sum of One Hundred Thousand Dollars (\$100,000). The rights reserved to the City with respect to such performance bond shall be in addition to all other rights Grantor may have under this Agreement or any other law. Grantee will maintain the bond for the duration of this Agreement, unless otherwise agreed to by the City in writing. The bond shall guarantee Grantee's faithful performance of the terms and conditions of the Agreement, including, but not limited to (1) the timely completion of construction; (2) compliance with applicable plans, permits, technical codes and standards; (3) proper location of the facilities as specified by the City; (4) restoration of the public ways and other

property affected by the construction as required by this Agreement; (5) the submission of "as-built" drawings after completion of the work as required by this Agreement; (6) timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work; and (7) the payment by Grantee of all lawful liens, taxes, damages, claims, costs or expenses which the City has been compelled to pay or has incurred by reason of any act or default of Grantee under this Agreement and all other payments due the City from Grantee pursuant to this Agreement. Provision shall be made to permit the City to make claims against the bond for any of the foregoing.

(b) Whenever the City determines that Grantee has violated one or more terms, conditions or provisions of this Agreement for which relief is available against the bond, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have twenty (20) days subsequent to receipt of the notice in which to correct the violation before the City may make demand upon the bond.

(c) Such bond shall be in addition to any performance and defect bond or other surety required by the City in connection with the issuance of any construction permit issued pursuant to the City Code.

Section 10. Transfer of ownership. Notwithstanding any provision of this Agreement, Grantee may not assign, transfer, lease, or sell any of the rights and privileges granted hereunder without the approval of the City Manager, provided, however, that no such consent need be obtained from the City Manager if Grantee assigns, transfers, leases or sells any rights and privileges granted hereunder to any of its principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Grantee's assets by reason of a merger, acquisition, or other business reorganization (each a "Permitted Transfer"). Notwithstanding anything contained herein to the contrary, a Permitted Transfer shall not be commenced until such transferee has filed with the City of Hampton a duly executed instrument reciting the fact of such assignment, transfer, lease or sale and accepting the terms of this Agreement and agreeing to perform all of the conditions hereof. The City and Grantee acknowledge and agree that, notwithstanding anything in this Agreement to the contrary, certain Wireless Facilities deployed by Grantee in the rights-of-way pursuant to this Agreement may be owned and/or operated by Grantee's third-party wireless carrier customers ("Carriers") and installed and maintained by Grantee pursuant to license agreements between Grantee and such Carriers. Such facilities shall be treated as Grantee's Wireless Facilities for all purposes under this Agreement provided that (i) Grantee remains responsible and liable for all performance obligations under this Agreement with respect to such facilities; (ii) the City's sole point of contact regarding such facilities shall be Grantee; and (iii) Grantee shall have the right to remove and relocate said facilities.

Section 11. Indemnification. Grantee agrees to indemnify, defend and hold harmless the City, its officers, employees and agents from and against all claims, demands, losses, damages, liabilities, fines, and penalties, and all actual costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the losses), arising out of any breach by Grantee of the terms and conditions of this Agreement, except to the extent proximately caused by the gross negligence or willful misconduct of the City of Hampton, its officers, employees and agents. In addition, Grantee shall protect, indemnify, and hold harmless the City, its

officers, agents, and employees, from any and all demands for fees, claims, suits, actions, causes of action, or judgments based on the alleged infringement or violation of any patent, invention, article, arrangement, or other apparatus that may be used in the performance of any work or activity arising out of the use of any telecommunication facilities or the provision of telecommunication service, except to the extent proximately caused by the gross negligence or willful misconduct of the City of Hampton, its officers, employees or agents. Notwithstanding any provision of this Agreement, to the extent permitted by law and without waiving the City's sovereign immunity, neither the Grantor nor the Grantee shall be liable to the other for consequential, indirect, or punitive damages (including lost revenue, loss of equipment, interruption, loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the City or Grantee was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

Section 12. Hazardous Substances. In its performance of this Agreement, Grantee shall not transport, dispose of or release any hazardous substance, material, or waste, except as reasonably necessary to allow Grantee in performance of its work under this Agreement or to reliably provide its telecommunications services, and in any event Grantee shall comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous material, substances or waste. Regardless of the City's acquiescence, Grantee shall indemnify and hold the City, its officers, agents, employees and volunteers harmless from all costs, claims, damages, causes of action, liabilities, fines or penalties, including reasonable attorney's fees, resulting from Grantee's violation of this section and agrees to reimburse City for all costs and expenses included by the City in eliminating or remedying such violations. Grantee also agrees to reimburse the City and hold the City, its officers, agents, employees and volunteers harmless from any and all costs, expenses, attorney's fees and all penalties or civil judgments obtained against any of them as a result of Grantee's use or release of any hazardous substance or waste onto the ground, or into the water or air from, near or upon the City's premises. Grantee shall not be responsible for any condition, including the release of a hazardous material, substance or waste to the extent that such existed on the Commencement Date of this Agreement or that otherwise did not result from Grantee's activities. For purposes of this Section, the following definitions shall apply: "Hazardous Substances" means asbestos and any and all pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials and hazardous substances as referenced or defined in, or pursuant to, any federal, state, local or other applicable environmental law, statute, ordinance, rule, order, regulation or standard in effect on the date hereof including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C 6901, et seq.), as amended, the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135, et seq.), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), as amended, and the Toxic Substance Control Act (15 U.S.C. 2601, et seq.), as amended.

As used in this Section, "release" includes the placing, releasing, depositing, spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any substance.

Section 13. Applicability of State Law. This Agreement covers existing wireless facilities and the installation and maintenance of Small Cell Facilities on structures as provided in Chapter 15.1 of Title 56 of the Virginia Code and Chapter 34 of the Hampton City Code, as it exists upon approval

of the Agreement. Grantee may have the ability to install or relocate Telecommunications Facilities to City-Owned Facilities at Grantee's expense, upon request of Grantee and execution of a separate agreement between Grantee and the City on terms and conditions satisfactory to the parties. In the event of any conflict between the terms of this Agreement and state law, state law shall at all times control.

Section 14. General Provisions

(a) Authority. Grantee warrants and represents that it has obtained all necessary and appropriate authority and approval from all applicable federal and state agencies or authorities to provide all Wireless Facilities and services it intends to provide within the City and upon request by the City will provide evidence of such authority.

(b) Other remedies. Nothing in this Agreement shall be construed as waiving or limiting any rights or remedies that the City or Grantee may have, at law or in equity, for enforcement of this Agreement.

(c) Conflict of Laws. If there is a conflict between the provisions of this Agreement and any law, whether federal, state, or City, including all future laws and ordinances, the law and conflicting Agreement provisions will, to the extent reasonably possible, be construed so as to be consistent with each other and if such construction is not reasonably possible, the conflicting provision of this Agreement shall be deemed superseded by such law and have no effect, notwithstanding the contract clause of the United States Constitution.

(d) Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

(e) Non-enforcement. Neither party shall be excused from complying with any of the provisions of this Agreement by any failure of the other party, upon any one or more occasions, to insist upon strict performance of this Agreement or to seek the other party's compliance with anyone or more of such terms or conditions of this Agreement.

(f) Controlling law and venue. By virtue of entering into this Agreement, Grantee agrees and submits itself to a court of competent jurisdiction in the City of Hampton, Virginia or in the United States District Court for the Eastern District of Virginia, Hampton Division and further agrees that this Agreement is controlled by the laws of the Commonwealth of Virginia or any applicable federal laws and that all claims, disputes and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia or any applicable federal laws or by any regulatory body with jurisdiction, including the Federal Communications Commission.

(g) If any of the requested information of Grantee in this Agreement is considered proprietary, confidential or a trade secret, Grantee will notify the City of this opinion and the City will endeavor to keep such information confidential to the extent permitted by the Virginia Freedom of Information Act (Virginia Code Sections 2.2-3700 through 3714), any successor statute or law, or any other law, as an accommodation to the Grantee. Grantee understands that the City cannot guarantee confidentiality and that the City will not be

liable for any release or partial release of information.

(h) Captions. The section captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.


(i) Nondiscrimination. During the performance of this Agreement, Grantee agrees that it will not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, handicap or national origin. Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Grantee in all solicitations or advertisements for employees placed by or on behalf of Grantee, will state that Grantee is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements herein. Grantee agrees to comply with the good faith minority business efforts required by the Hampton City Code.

(j) Notices. Notices given pursuant to this Agreement shall be in writing and addressed as provided below. Either party may change the address at which it will receive notices by providing written notice of the change to the other party.

To City: City Manager
City of Hampton
22 Lincoln Street
Hampton, Virginia 23669

Director of Public Works
City of Hampton
22 Lincoln Street
Hampton, Virginia 23669

With a Copy to: City Attorney
City of Hampton
22 Lincoln Street
Hampton, Virginia 23669

To Grantee: 




With a Copy to: 




[SIGNATURES PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

By: _____

Name: _____

Its: _____

Date: _____

STATE OF _____

CITY/COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2023,
by _____ of _____.

Notary Public

My Commission expires _____

My commission number: _____

[SIGNATURES CONCLUDE ON THE FOLLOWING PAGE]

CITY OF HAMPTON,
A Virginia municipal corporation

By: _____
City Manager

ATTEST: _____
City Clerk

Date: _____

COMMONWEALTH OF VIRGINIA

CITY OF HAMPTON, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2023,
by _____, City Manager of the City of Hampton, on its behalf.

Notary Public

My Commission expires _____

My commission number: _____

Approved as to Content:

Approved as to Form and Legal Sufficiency:

Department of Public Works

City Attorney's Office