

PREPARED BY AND RETURN TO:
HAMPTON CITY ATTORNEY'S OFFICE
TIMOTHY W. DREWRY (VSB #39558)
22 LINCOLN STREET
HAMPTON, VIRGINIA 23669

EXEMPTED FROM RECORDATION TAXES UNDER
SECTIONS 58.1-811(A) (3) AND 58.1-811(C) (4) AND
CLERK'S FEES UNDER SECTIONS 17.1-266 AND 17.1-279.E

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this "Agreement") made and entered into this _____ day of _____, 2022, between the **CITY OF HAMPTON**, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, located at 22 Lincoln Street, Hampton, Virginia 23669 (the "City," "Licensor," and "Grantor"), and **LUMOS NETWORKS INC.**, d/b/a **SEGRA**, a Virginia stock corporation, ("Licensee," and "Grantee").

WHEREAS, Licensee is a fiber optic communications network service provider intending to provide services to certain property owned by the Economic Development Authority of the City of Hampton, Virginia, a political subdivision of the Commonwealth of Virginia (the "EDA" or "Owner"), located at 5 Armistead Pointe Parkway, Hampton, Virginia 23666 (LRSN 13004683) (the "Serviced Parcel");

WHEREAS, the City is owner of Armistead Pointe Parkway (the "Right of Way") running up to the western property line of the Serviced Parcel;

WHEREAS, Licensee requested that the City grant Licensee permission to encroach into a 4,500 +/- square foot area (450' x 10' wide) of the Right of Way, all areas more or less the "Licensed Area", to install communication conduit with fiber optic cable in the Licensed Area (the "Licensed Improvement"), as illustrated in the hatched area on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, pursuant to Hampton City Code §34-86, the City agrees to grant Licensee a non-exclusive revocable license for use of the Licensed Area and development of the Licensed Improvement, subject to certain terms, conditions, and agreements, as specified herein.

NOW, THEREFORE, in consideration of these covenants, the parties agree as follows:

1. The recitals stated above are true and accurate and are incorporated herein.
2. The City agrees to grant a non-exclusive revocable license (the “Revocable License”) to Licensee, subject to the terms and conditions of this Agreement, for the installation and operation of the Licensed Improvement upon and under the property in the Licensed Area which shall commence on July 1, 2022, and continue unless and until terminated pursuant to this Agreement.
3. The City shall not be responsible for the installation, repair, replacement, maintenance of the Licensed Improvement, nor for any damage to the Licensed Improvement that may result from work performed within the Right of Way by the City, its employees, contractors, agents, or other City licensees.
4. Licensee agrees to the following at their sole cost and expense:
 - A. Licensee shall repair any damage to existing right-of-way, sidewalks, brick, landscaping, pipes, ditches, or other public improvements inside or outside the Licensed Area, caused by or resulting from or arising out of any act on the part of Licensee, its contractors, subcontractors, agents, or employees under or in connection with this Agreement, or maintenance or repair of the Licensed Improvement in the Licensed Area;
 - B. Licensee shall ensure that the Licensed Improvement or any other permanent structure does not restrict the City’s ability to inspect, repair, use, and/or maintain the Right of Way or any infrastructure in the Licensed Area;
 - C. Licensee agrees that all work under this Agreement shall occur only within the Licensed Area;
 - D. Licensee agrees to maintain and repair the Licensed Improvement;
 - E. Licensee agrees to remove and replace the Licensed Improvement if any utilities or infrastructure in the Licensed Area require maintenance or construction;

- F. Licensee agrees to ensure the Licensed Improvement does not restrict the City's ability to inspect, maintain and use the Right of Way or infrastructure in the Licensed Area;
 - G. Licensee agrees to abide by all utility ordinances, laws, rules, and regulations when crossing existing utilities, including but not limited to, avoiding any interference with the City's utilities or other utilities;
 - H. Licensee agrees to abide by all city, state, and local laws and regulations that may be applicable to the installation, use, and maintenance of the Licensed Improvement;
 - I. Except as otherwise provided herein, Licensee agrees to keep the Licensed Area in a neat and clean manner, free of noxious fumes and any obstructions so as not to cause disruption or hazard to the City, pedestrian, or vehicular traffic on or through the property;
 - J. Licensee shall be responsible for locating and marking the Licensed Improvement on all future "Miss Utility" or "Call Before You Dig" locate requests;
 - K. Licensee shall maintain twelve inches (12") of vertical separation when they cross any existing utilities;
 - L. Licensee shall daylight sewer force main and the storm system to verify location and depth, ensuring Licensee maintains a safe distance along the areas that the bore parallels the sewer and storm systems; and
 - M. Licensee shall consult all utilities and meet their requirements before commencing work.
5. This Agreement pertains only to the Licensed Area and shall not pertain to the other areas of the Serviced Parcel, any other property owned by the Grantor, or the property of any other property owner in the vicinity of the Licensed Area.
6. Licensee shall not use the Licensed Area for any other purpose other than the purposes set forth in this Agreement.

7. In the event the City reconstructs, widens, changes, or improves the Right of Way or other City property in the area, and the reconstruction, widening, changing, or improving would necessitate relocation of the Licensed Improvement, Licensee agrees that, upon receipt of written notice accompanied by plans for such work from the City Manager or her authorized designee, within a reasonable time, Licensee, at their sole expense, shall relocate their Licensed Improvement to conform with the City's plans. The City agrees in its sole discretion to consider granting an additional license to Licensee if deemed necessary for relocation of the Licensed Improvement.
8. It is understood and agreed that Licensee hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of the Licensee, their contractors, subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform any work required hereunder. Licensee agrees to defend, indemnify and hold harmless the City, and its agents, volunteers, guests, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses, suffered by an indemnified party or entity as a result of claims or suits, due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and/or (c) the performance of work by the Licensee or those for whom Licensee are legally liable. Upon written demand by the City, Licensee shall assume and defend at Licensee's sole expense any and all suits or defense of claims made against the City, its agents, volunteers, guests, employees, or officials. The indemnity given by Licensee herein shall survive the termination, revocation or expiration of this Agreement.
9. Licensee acknowledges and accepts any risk of damage to the Licensed Improvement located under and upon the Right of Way and Licensed Area which may be or has been caused from the construction or maintenance activities of the City in the vicinity of the Licensed

Improvement. Licensee hereby releases, acquits, and discharges the City from any liability for damage to the Licensed Improvement by the City's contractors, employees, or by franchised or authorized utility companies and public service providers. Further, and without waiving the City's rights of sovereign immunity or any other defenses and immunities available to municipal corporations, nothing contained herein shall constitute a release of any claim or cause of action which Licensee may have resulting from damages to the Licensed Improvement which is caused by the gross negligence of the City or its agents, volunteers, employees, and officials.

10. Licensee shall maintain at their expense, throughout the term of this Agreement, general liability insurance in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00) per occurrence with a TWO MILLION DOLLAR (\$2,000,000.00) aggregate limit, or such other amount as approved by the City, for any such damages referenced in this Agreement or otherwise caused directly or indirectly by Licensee, or any of Licensee's employees, agents, contractors, subcontractors, guests, or invitees. Such insurance shall be with a company satisfactory to the City. Any deductible provision of said insurance shall be subject to the approval of the City's Risk Management Administrator. Such insurance specifically shall insure the Licensee against all liability assumed by them under the terms of this Agreement and the license granted hereunder as well as any liability imposed by law and shall insure both the City and Licensee but shall be so endorsed as to create the same liability on the part of the insurer as if separate policies had been written for the City and Licensee. Licensee shall provide the City's Risk Management Administrator with a Certificate of Insurance ("COI") naming the City and its agents, guests, volunteers, employees, and officials as additional insureds, which shall be in a form satisfactory to the City and the City Attorney's Office. Licensee shall provide the City's Risk Management Administrator the COI annually without demand. Each insurer mentioned in this section shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to the City that it will give the

City at least 30 days' written notice before the policy or policies in question shall be altered or cancelled.

11. Pursuant to Hampton City Code §34-86(f), this Agreement and the license granted herein is neither transferable nor assignable.
12. Any notice, communication, or request under this Agreement by the City or Licensee shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand delivery if receipt is evidenced by a signature of the addressee or authorized agent, and addressed to the applicable parties as follows:

As to City/Grantor: City of Hampton, Virginia
Director of Public Works
22 Lincoln Street, 4th Floor
Hampton, Virginia 23669

Copy to: City of Hampton
City Attorney's Office
22 Lincoln Street, 8th Floor
Hampton, Virginia 23669

As to Licensee/Grantees: Attn: Billy Solomon,
Vice President of Network and Delivery
Lumos Networks Inc d/b/a Segra
One Lumos Plaza
Waynesboro, Virginia 22980

Either party may change his/her/its address for notice purposes by giving written notification thereof to the other party, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

13. Licensee shall pay all application fees, permit fees, and any and all required sums hereunder in the amount and at the times and in the manner herein provided or as otherwise required by the City.
14. Failure of the City to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed a waiver of such term, covenant, or condition herein contained.

15. The covenants and conditions contained herein, subject to the provisions as to assignment, transfer, or subletting, shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto, and all parties shall be jointly and severally liable hereunder.
16. Termination and Revocation. In addition to any other method prescribed herein, the Licensee may terminate and the City Council may revoke this Agreement as follows:
- A. Licensee may terminate this Agreement and any rights and obligations granted herein at any time upon 30 days written notice to the City delivered pursuant to the provisions of Paragraph No. 12 herein. Licensee shall comply with any reasonable conditions imposed by the City regarding said termination, including but not limited to the removal of the Licensed Improvement, as those conditions may be determined by the City Manager, in consultation with the Director of Public Works.
 - B. City Council may revoke this Agreement for any reason upon delivery to Licensee 30 days' written notice of revocation to be delivered pursuant to the provisions of Paragraph No. 12 herein. For this purpose, the City Council hereby delegates to the City Manager, or her authorized designee, any and all rights to revoke or otherwise terminate this Agreement as provided herein.
 - C. At the expiration or sooner termination of this Agreement or the revocation of the license granted for any reason, Licensee shall peacefully and quietly surrender to the City the rights granted hereunder. Licensee shall remove the Licensed Improvement at the written request of the City Manager, or her authorized designee, to Licensee after the termination or expiration of this Agreement or the revocation of the license granted thereunder. In the event Licensee has not removed the Licensed Improvement within 30 days of receipt or deemed receipt of the City Manager's (designee's) written request to remove the Licensed Improvement, the Licensed Improvement shall become the property of the City, with the City reserving the right to remove the Licensed Improvement, and the expense of said removal to be paid by Licensee which shall be

collected in the same manner as real estate taxes are collected if not paid by the Licensee.

17. This Agreement is a Virginia contract deemed executed and accepted in the City of Hampton, and any and all questions with respect to any of the provisions herein shall be instituted, maintained, and contested in a court of competent jurisdiction in the City of Hampton, Virginia. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to choice of laws.
18. In the event Licensee is for any reason or through any cause is in default under any terms of this Agreement, the City shall give Licensee written notice of such default as set forth in Paragraph No. 12 of this Agreement. Unless otherwise provided, Licensee shall have 10 days from the date such notice is deemed given in Paragraph No. 12 above in which to cure the default, but such time may be extended as long as Licensee are making a good faith effort to effect such cure and prove such good faith effort to the satisfaction of the City. Upon Licensee's failure to cure the default, the City immediately may cancel and terminate this Agreement which operates as a revocation of the license granted thereunder as of the mailing date of the default notice. Upon termination, the Licensee shall cease performance of any further activities under the Agreement.
19. This Agreement is entered into based upon the information given by the Licensee on and with the Encroachment Application and all its attachments (the "Application"), which is incorporated in and made part of this Agreement. Licensee must advise the City in writing of any change to the information provided on or with the Application. The City may terminate this Agreement if Licensee materially misrepresented any information in the Application.
20. This Agreement contains the final and entire agreement between the parties hereto and contains all the terms and conditions agreed upon; it being the intent of the parties that neither shall be bound by any terms, conditions, or other representations not herein written.

21. The individuals executing this Agreement represent and warrant that each are duly authorized to execute it in their representative capacities as indicated, and are able to bind each respective party to perform the obligations set forth herein.

22. Notwithstanding the foregoing, the approval of this Encroachment Agreement by the City Council of the City of Hampton, Virginia (the "City") does not constitute governmental approval by the City of any other regulatory authority of the structure(s) and/or improvements to be installed in the encroachment area, which must also be obtained (if applicable) before any installation or construction, including, but not limited to any permit or approval that may be required for the installation of the Licensed Improvement.

WITNESS the following signatures and seals as of the date first written above.

LICENSOR/GRANTOR:

CITY OF HAMPTON, VIRGINIA

By: _____ (SEAL)
City Manager/Authorized Designee

ATTEST:

Katherine Glass, Clerk of Council or designee

Approved as to Form:

By: _____
City Attorney's Office

Approved as to Content:

By: _____
Department of Public Works

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LICENSEE/GRANTEE:

**LUMOS NETWORKS INC. d/b/a SEGRA,
A Virginia stock corporation**

By: _____(SEAL)
Billy Solomon,
Vice President of Network and Delivery

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

I hereby certify on this ____ day of _____, 2022, that the foregoing Encroachment Agreement was acknowledged before me by Billy Solomon, Vice President of Network and Delivery on behalf of Lumos Networks Inc. d/b/a Segra. He is known to me personally or has provided _____ as identification.

Notary Public

My Commission Expires: _____
Notary Registration Number: _____

[END OF SIGNATURES]