



City of Hampton, Virginia
Ordinance - Non-Coded

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: 14-0399

Enactment Number: -

Ordinance Granting a Franchise to NewPath Networks, LLC for the Term and Upon the Conditions Herein Stated to Occupy and Use the Streets, Alleys, and Public Places of the City of Hampton, Virginia Within Its Corporate Limits to Install, Maintain, Upgrade, Repair, and Remove Poles, Cable, Optical Fibers, Wires, Electrical Conductors, Conduits, Subways, Manholes, and Other Equipment and Fixtures of a Telecommunications System In the Corporate Limits of the City of Hampton, Virginia

WHEREAS, pursuant to Virginia Code §§ 15.2-2100 through 15.2-2108, the City of Hampton (the "City") has the authority to grant franchises and other authorizations for the use and occupancy of the Streets (as hereinafter defined);

WHEREAS, the Streets are a valuable public resource that have required and will continue to require substantial investment by the City;

WHEREAS, NewPath Networks, LLC (the "Grantee") requests a franchise to use and occupy the Streets for the purpose of constructing, maintaining, and repairing a Telecommunications System (as hereinafter defined);

WHEREAS, the City intends to exercise its authority with respect to the regulation of the occupation and use of the Streets in connection with the construction, maintenance, and repair of a Telecommunications System to the fullest extent permitted by applicable law, including the Communications Act of 1934, as amended by the Telecommunication Act of 1996 (the "1996 Act"); §§ 15.2-2100, 56-458 through 56-468.2 of the Code of Virginia (Va. Code Ann. §§

56-458 through 56-468.2 (as amended) ("State ROW Law"); and Chapter 34 of the Code of the City of Hampton ("City ROW Law"); and

WHEREAS, consistent with applicable law, including § 253 of the 1996 Act and State ROW Law, the City desires to minimize inconvenience and disruption to the public, provide for the orderly and efficient use of the Streets now and in the future, and preserve adequate capacity for existing and future uses of the Streets.

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

DEFINITIONS

1. Definitions. The following terms, as used in this Ordinance, have the following meanings, with all terms defined in the singular to have the correlative meaning when used in the plural and vice versa:

- (a) "Cable Services" means "cable services" as defined in § 602(5) of the Communications Act of 1934, as amended by the Cable Communications policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 and as may be further amended from time to time (the "Cable Act"). In the event "cable services" is no longer defined in the Cable Act or the definition in the Cable Act otherwise becomes inapplicable, "Cable Telecommunications Services" shall mean "cable services" as defined in the Cable Act

Immediately prior to such term no longer being defined in the Cable Act or such definition otherwise becoming inapplicable.

- (b) "City" means the City of Hampton, Virginia.
- (c) "Customer" means any Person (as hereinafter defined) who uses the services of the Grantee in the corporate limits of the City.
- (d) "Construction" means to install, construct, maintain, upgrade, repair, or remove Equipment.
- (e) "Emergency" means an "emergency" as defined under § 56-265.15 of the Code of Virginia.
- (f) "Equipment" or "Facilities" means the cables, optical fiber, poles, wires electrical conductors, conduits, subways, manholes, fixtures, appliances, and appurtenances that are owned, physically controlled, or physically maintained by the Grantee in, on, over, or under the Streets to provide Telecommunications Services.
- (g) "FCC" means the Federal Communications Commission.
- (h) "Franchise" has the meaning set forth in Section 2 of this Ordinance.
- (i) "Grantee" means NewPath Networks LLC, a New Jersey limited liability company.

- (j) "Like-for-Like" means the installation or relocation of Facilities in a like or similar manner of construction when compared to previously installed Facilities. For example, placement of facilities above-ground using aerial construction in locations where existing facilities are constructed above ground (aerial-to-aerial) or the placement of facilities underground, either direct bury or within conduit, in locations where existing facilities are constructed underground (underground-to-underground).
- (k) "New Equipment" means any Equipment to be placed in, on, over, or under the Streets by the Grantee where no Equipment owned by that Grantee existed prior to this construction.
- (l) "Ordinance" means this Ordinance, as amended, modified, or supplemented from time to time.
- (m) "Performance Bond" has the meaning set forth in this Ordinance.
- (n) "Person" means an individual, a corporation, a partnership, an association, a trust, or any other entity or organization, including a governmental or political subdivision or an agency or instrumentality thereof.
- (o) "PROW Use Fee" means the Public Rights of Way Use Fee that the City has imposed pursuant to § 56-468.1 of the

Code of Virginia, 1950, as amended, and § 37-225 of the City Code.

- (p) "Streets" means the streets, alleys, parks, parkways, public grounds, waters, and other public places and public thoroughfares, other than Structures (as hereinafter defined), of the City, as the same now exist or may be hereafter extended or altered, and any location on, over, or under and any portion thereof.
- (q) "Structures" includes buildings, signs, fences, tanks, poles, lines, fixtures, Equipment, and appurtenances of the City.
- (r) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received by or through any electronic, cable, optical, microwave, or other medium or method in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.
- (s) "Telecommunications Services" means the offering of Telecommunications for a fee, regardless of the Facilities used. The term Telecommunications Services" shall not include Cable Services.
- (t) "Telecommunications System" means the plant, equipment, real property (including interests in real property), tangible

and intangible personal property, cable, wires, optical fibers, amplifier, antenna, and all other electronic devices, Equipment, and Facilities of a telecommunications provider located in, on, over, or under the Streets.

(u) "Term" has the meaning set forth in Section 3 of this Ordinance.

2. Grant of Franchise. The City grants the Grantee a franchise to occupy and use the Streets to install, construct, maintain, upgrade, repair, and remove Equipment of its Telecommunications System subject to the conditions of this Ordinance (the "Franchise"). Grantee is not authorized to sublicense or sublease to any Person the right to occupy or use the Streets to install, construct, maintain, upgrade, repair, or remove, trim, cut, and keep clear of its Equipment the trees in the Streets, but in the exercise of such right Grantee shall not cut or otherwise injure these trees to any greater extent than is reasonably necessary for the installation, upgrade, construction, repair, maintenance, and removal of the Equipment. Grantee shall not trim, cut, or remove any tree from any Street unless prior written notice of its intention to do so is given to the department or agency of the City as shall be designated by the City Manager and permission in writing to do so is granted by this department or agency, except in cases of emergency or when this requirement is waived by this department or agency. Any trimming, cutting or removal of trees by the Grantee shall be done in accordance with industry standards in urban forestry.

3. Term of Franchise. The Franchise commences on the Effective Date and expires fifty-nine (59) months after the Effective Date, unless the Franchise is renewed. The period of time the Franchise is in effect is referred to as the "Term."

4. Non-exclusive Franchise. Nothing in the Ordinance affects the right of the City to grant any Person a franchise to occupy and use the Streets to install, construct, maintain, upgrade, repair, and remove such Person's equipment, poles, wires, electrical conductors, optical fibers, conduits, subways, manholes; fixtures, appliances, and appurtenances for the purpose of providing Telecommunications Services or to engage in any other activity in the Streets, provided the exercise of such right will not require any existing grantee's Facilities to be unreasonably interfered with or relocated.

5. Right of City to Use Streets. Nothing in this Ordinance affects the right of the City to occupy and use the Streets to install, construct, maintain, operate, upgrade, repair, and remove its Equipment, poles, wires, electrical conductors, optical fibers, conduits, subways, manholes, fixtures, appliances, and appurtenances or to engage in any other activity in the Streets, provided the exercise of such right will not require any existing grantee's facilities to be unreasonably interfered with or relocated.

6. Renewal. Provided Grantee is not then in default under the terms of this Ordinance, Grantee shall have the option, subject to City Council approval and without unreasonable delay, to renew this Franchise for four (4) consecutive renewal terms of fifty-nine (59) months each (each, an "Extended Term").

Grantee shall notify the City of its desire to exercise any such renewal option at least six (6) months in advance of the expiration date or the applicable Extended Term, as the case may be. During any Extended Term, all terms and conditions of this Ordinance shall remain in full force and effect, unless the parties hereto otherwise mutually agree to modifications.

7. Street Repair and Relocation of Equipment.

- (a) Whenever the City or any of its departments, agencies, and/or agents, servants, or employees shall grade, regrade, construct, reconstruct, widen, or alter any Street, except for aesthetic purposes, for the benefit of a third party, or the benefit of the City to compete as a Telecommunications provider, it shall be the duty of the Grantee, upon written request of the City, within a reasonable time as may be agreed to by the parties based on the size and scope of the work, to alter or relocate its Equipment in the Street, using Like-for-Like construction. Grantee's expenses for such alteration or relocation shall be reimbursed by the City in accordance with § 56-468.2 of the Code of Virginia, 1950, as amended. In the event Grantee must relocate Equipment pursuant to this section, the City shall provide, at no cost to Grantee, permits and alternative space in the Streets or within private easements for such relocation of Equipment, provided that (1) such alternative space need not be in the

exact same Streets but shall be in reasonable proximity to the previous location; and (2) such space shall be reasonably economically and technologically feasible for the relocation of such Equipment.

- (b) If Grantee refuses or neglects to so protect, alter, or relocate Equipment within thirty (30) days after a second notice to Grantee by the City, the City may break through, remove, alter, or relocate Equipment; and Grantee shall pay to the City the reasonable, actual costs incurred in connection with such breaking through, removal, alteration, or relocation as described in the preceding paragraph.
- (c) If the City determines at any time that any of Grantee's Facilities or Equipment pose a threat to the health, safety, or welfare of any Person or property, the City may order Grantee to remove, relocate, or alter Grantee's Facilities. Grantee shall promptly take action necessary to remedy any unsafe condition necessary to protect public health, safety, or welfare.
- (d) Grantee shall be entitled to an apportioned amount of state or federal funds made available to the City in conjunction with the relocation or protection of work. If two or more Telecommunications service providers are eligible for relocation reimbursement, then available funds shall be

shared by those eligible providers by prorating the reimbursement based on the amount and value of Equipment or Facilities relocated as a percentage of the total reimbursement to which each provider would be entitled.

- (e) Grantee shall be given access to the Street plans and specifications, and any proposed modifications to such, in the possession of the City, subject to existing law.

8. Requested Relocation of Grantee Facilities. Except for the relocation of Facilities at Grantee's expense to make way for new Street construction as specified above, if the City or any Person requests that Grantee move, change, alter, or relocate Grantee's Facilities, then the City or Person requesting the relocation shall reimburse Grantee for all such relocation costs. The cost of such relocation or removal shall include the cost of installing such Facilities in a new location, and the cost of any lands, or any rights or interest in lands, and any other rights, required to accomplish such relocation or removal. The cost of relocation or removal shall include the entire amount paid by Grantee properly attributable to such relocation or removal after deducting therefrom any increase in the value of the new Facility and any salvage value derived from the old Facility.

9. Street Closings. Nothing in this Ordinance waives or releases the rights of the City in and to the Streets. If all or part of the Streets are eliminated, discontinued, closed, or demapped in accordance with applicable law, the Franchise shall cease with respect to such Streets upon the later to occur of (a)

the effective date that such Streets become eliminated, discontinued, closed, or demapped and any conditions specified by the City are met; or (b) in the case of any transfer of title to such Streets to a private Person, the closing date of such transfer. If the elimination, discontinuance, closing, or demapping of all or part of the Streets is undertaken for the benefit of any private Person, the City shall condition its consent to the elimination, discontinuance, closing, or demapping on the agreement of the private Person on (i) granting the Grantee the right to continue to occupy and use the Streets or (ii) reimbursing Grantee for the reasonable costs of relocating the affected Equipment.

10. Quality. All work involved in the installation, maintenance, upgrade, repair, and removal of Equipment shall be performed in a safe, thorough, and reliable manner in accordance with industry, professional, state, and federal mandated standards and using materials of good and durable quality. If, at any time, it is determined by an agency or authority of competent jurisdiction that any Equipment is harmful to the health, safety, or welfare of any Person or property, then Grantee, at its own cost and expense, shall promptly correct all such conditions.

11. Non Like-for-Like Relocation of Grantee's Equipment. If Grantee is required to relocate its Facilities in a Like-for-Like (aerial-to-aerial or underground-to-underground) manner, such relocation shall be conducted at Grantee's expense, as necessary to accommodate a Street improvement project of the City. If the City or any Person requests that Grantee relocate its Facilities to an underground location where aerial construction would normally suffice, then

the City or any Person requesting the underground construction shall reimburse Grantee for the incremental difference between aerial and underground construction. The underground construction costs shall include the cost of any lands, or any rights or interest in lands, and any other rights, required to accomplish the underground construction less any salvage value derived from the old Facility.

12. New Equipment to be Placed Underground. Where financially and technically reasonable and consistent with tariffs, Grantee shall place its New Equipment underground in locations serving new subdivisions or other areas within the City where Equipment currently does not exist to the extent the City makes the same undergrounding requirement applicable to all users of the Streets. Existing overhead utility services may remain overhead when repaired, replaced, upgraded, or increased in capacity.

13. Temporary Raising and Lowering of Wires. Upon sixty (60) days prior written notice by the City or any Person holding a permit to move any Structure or within the time that is reasonable under the circumstances, Grantee shall temporarily raise its cables and wires or otherwise move Equipment to permit the moving of said Structure. Grantee may impose a reasonable charge based on its actual costs and industry standards on any Person other than the City for any such movement of its Equipment and may require payment of such charge prior to such movement.

14. Restoration. At its own cost and expense, Grantee shall replace, repair, or restore any damaged property as close as reasonably possible to its

prior condition. Grantee shall be liable, at its own cost and expense, to reasonably replace or repair, within a reasonable time to the condition that existed prior to the commencement of Grantee's activities, any Street or Structure thereon, thereunder, or thereover that may become disturbed or damaged as a direct result of Grantee's activities. If Grantee does not commence such replacement or repair within a reasonable time period as agreed to by the parties and after notice by the City to Grantee, the City may make such replacement or repair, the Grantee shall pay the reasonable cost of the same.

15. Compensation/PROW Use Fee. The City has imposed a PROW Use Fee in accordance with § 56-468.1(G) of the Code of Virginia, 1950, as amended. The City reserves the right to impose at any time on Grantee any other fee or payment as may be allowed by federal or state law. Grantee shall be obligated to pay the PROW Use Fee and/or any fee or payment authorized by federal or state law. The City has provided Grantee appropriate notice of the PROW Use Fee as required by § 56-468.1(G) of the Code of Virginia, 1950, as amended. If the PROW Use Fee is eliminated, discontinued, preempted, or otherwise is declared or becomes invalid, Grantee and the City shall negotiate in good faith to determine fair and reasonable compensation to the City for use of the Streets by Grantee for Equipment to provide Telecommunications Services.

16. No Credits or Deductions. The compensation and other payments to be made: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by § 56-468.1 of the Code of Virginia, 1950, as amended, shall be in addition to any and all taxes or other fees or charges that

Grantee shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of Grantee.

17. Reservation of Rights. No acceptance of any compensation payment by the City shall be construed as an accord and satisfaction that the amount paid is, in fact, the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Ordinance. All amounts paid shall be subject to audit and recomputation by the City.

18. Remedy for Underpayment. If (a) as a result of an audit or any other review, the City determines that Grantee has not remitted all PROW Use Fees which Grantee has received from Subscribers in any twelve (12) month period, and (b) the amounts due are undisputed or uncontested by Grantee, then, in addition to making full payment of the relevant obligation, Grantee shall pay the City the legal rate of interest as provided by state law on the past due obligation.

19. Liability Limitation. Neither the City nor its officials, employees, agents, attorneys, consultants, or independent contractors shall be responsible to Grantee for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any Equipment by or on behalf of Grantee or the City in accordance with this Franchise and in connection with any emergency related to the safety, health, and welfare of the public. However, nothing in this section shall waive any rights that Grantee has against the City for any willful or negligent acts or omissions of the City.

20. No Obstruction. Except in the case of an emergency involving public safety, in connection with the installation, maintenance, upgrade repair, or removal of Equipment, Grantee shall not obstruct the sidewalks, Streets, subways, railways, rivers, or other traffic to, from, or within the corporate limits of the City without the prior consent of the City. Grantee's Equipment in the Streets shall be located so as to cause minimum interference with any use of the Streets and adjoining property. As soon as practicable, Grantee shall notify the City Manager or Public Works Director or their designee of any emergency necessitating an obstruction under this section, and as necessary to protect the public health, safety, and welfare, Grantee shall coordinate its activities in responding to the emergency with the City Manager or Public Works Director or their designee.

21. Safety Precautions. At its own cost and expense, Grantee shall undertake to prevent accidents at its work sites in, at, or on the Streets, including the placing and maintenance of proper guards, fences, barricades, watchmen, and suitable and sufficient lighting, in accordance with federal and state law.

22. Emergency Activity. The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City in its sole reasonable discretion, cut or move Equipment, in which event the City shall not incur any liability to Grantee unless such liability is due to the negligent or willful acts or omissions of the City. The City will make every reasonable effort to consult with Grantee prior to any such cutting or movement of Equipment, and Grantee shall be given the opportunity to perform such work itself. The City shall have the

obligation to protect Grantee's Equipment to the maximum extent reasonable under the circumstances. Absent City negligence or willful misconduct, all costs to repair or replace such Equipment shall be borne by Grantee.

23. Use of City Structures. This Franchise does not grant to Grantee the use of City-owned Structures. The terms and conditions of Grantee's use of any City-owned Structure shall be set forth in a separate ordinance, agreement, lease, or other document, as appropriate.

24. City Use of Grantee's Facilities. Grantee agrees that at all times during the term of this Franchise it shall reserve six (6) strands of unlit (dark) fiber owned or operated by Grantee in the City for the City's exclusive use in operating any noncommercial data network or communications function, so long as the fiber is located within Grantee's planned deployment routes. Grantee shall not charge the City for any Grantee Facilities being utilized by the City for traffic signaling, lighting, police, fire, or any other public safety or governmental purposes as of the effective date of this Ordinance. However, Grantee may choose to enter into an agreement and impose charges going forward for the use of additional Grantee Facilities by the City.

25. Licenses and Permits. Except during emergency situations, Grantee will secure, prior to commencing construction activities, all necessary permits and licenses in connection with the Construction of Equipment within, on, over, or under the Streets. Prior to construction, Grantee shall first file with the City plans showing the location of proposed Facilities in the City's ROW, including the depth of all Facilities. The location of the proposed Facilities shall

be subject to review by the Director of Public Works or his designee who may impose such additional conditions, requirements, or restrictions as reasonably necessary to prevent or minimize interference with any Streets or other public places. During emergency situations, Grantee may take all reasonable measures to restore service and alter its Equipment as necessary to ensure the health, safety, and welfare of the citizens of the City. Nothing in this Ordinance waives any City ordinance or regulation or the right of the City to require Grantee to secure appropriate permits or approvals for use of the Streets.

26. Compliance with Laws; Licenses and Permits. Grantee shall comply with all reasonable and lawful local laws, rules, regulations, orders, or other directives of the City issued pursuant to this Ordinance or with respect to the City's management of its Streets, provided they are applied in an equitable, nondiscriminatory fashion to all users of the Streets. Grantee shall have the sole responsibility for obtaining all permits, licenses, and other forms of approval or authorization necessary to install, maintain, upgrade, repair, and remove Equipment within, on, over, and under the Streets.

27. Insurance Specifications. Throughout the Term, Grantee shall, at its own expense, maintain a liability insurance policy or policies, in a form reasonably acceptable to the City. Within thirty (30) days of the effective date of this Ordinance and prior to the commencement of any work, and annually on the anniversary of this Ordinance, and without need of demand, Grantee shall provide certificates of insurance to the City demonstrating that the Grantee is maintaining the insurance requirements of this section. Each certificate shall

include the City as an additional insured. Such policy or policies shall be issued by companies duly licensed to conduct business in the Commonwealth of Virginia. It is Grantee's responsibility to notify the City if its insurance is canceled or materially modified thirty (30) days prior to such cancellation for any reason except, non-payment of premium. With respect to cancellation of coverage for non-payment of premium, Grantee shall provide written notice to the City within three (3) business days of receiving notice of cancellation from its insurance carrier for the non-payment of premium. Failure to so notify the City prior to such cancellation or modification constitutes a material breach of this Ordinance. Such policy or policies shall insure Grantee and the City and its officials, boards, commissions, council, elected officials, agents, and employees as additional insureds against liability including:

- (a) Commercial General Liability Insurance (including, but not limited to, premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, personal injury) with limits of at least One Million and 00/100 Dollars (\$1,000,000.00) combined single limit for each occurrence; (limits may be satisfied with primary and/or excess coverage.);
- (b) Commercial Automobile Liability Insurance with limits of at least One Million and 00/100 Dollars (\$1,000,000.00) combined single limit for each occurrence;

- (c) Workers' Compensation insurance as required by Virginia law; and
- (d) Employer's Liability insurance with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

The foregoing minimum limitation shall not prohibit the Grantee from obtaining a liability insurance policy or policies in excess of such limitations.

28. Surety. The City may require the Grantee to furnish the City with a form of surety to ensure faithful performance under this Ordinance in an amount not to exceed One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00). The form of the surety may, at Grantee's option, be a performance bond, letter of credit, cash deposit, or cashier's check. Any required surety bond shall be written by a corporate surety or bank reasonably acceptable to the City and authorized to do business in the Commonwealth of Virginia. Grantee shall provide any required surety within thirty (30) days of the effective date of this Ordinance.

29. Bond Form. Any surety bond that may be required shall contain the following endorsements:

- (1) "This Bond shall be effective _____, 20____, and shall remain in full force and effect thereafter for a period of one (1) year and will automatically extend for additional one (1) year periods from the expiry date hereof, or any future expiration date, unless the

Surety provides to the Obligee not less than sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon sixty (60) days advance written notice from the Surety to the Obligee."

- (2) "Neither cancellation, termination, nor refusal by Surety to extend this Bond, nor inability of Principal to file a replacement Bond or replacement security for its obligations under said Ordinance, shall constitute a loss to the Obligee recoverable under this Bond."

30. Indemnification of City. Grantee shall defend, indemnify, and hold harmless the City, its officials, employees, agents, and attorneys, from and against all liabilities, whether special, incidental, consequential, and all other reasonable damages, costs and expenses (including reasonable attorneys' fees) arising solely out of or in connection with the installation, maintenance, upgrade, repair, or removal of Equipment except to the extent that such liabilities, damages, costs, and expenses are caused by the City's negligence or willful misconduct. The City shall notify Grantee within forty-five (45) days of any claims, demands, or actions ("Claims") covered by this indemnity after which the Grantee shall defend such Claims, provided that failure to give the above notice will not relieve Grantee from its obligation to indemnify the City unless Grantee is materially prejudiced by such failure. Grantee shall be entitled to have sole

control over the defense through counsel of its own choosing and over settlement of such Claim, and the City shall cooperate in the defense of such Claims. The City shall promptly notify Grantee of any claim filed against the City which may be covered by this section. The foregoing indemnity obligations shall not apply to Claims arising from the negligence or willful misconduct of City; however, they shall apply to Claims arising from the joint negligence of Grantee and City, provided that, in such cases, the amount of the Claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the negligence or willful misconduct of Grantee.

31. Waiver of Punitive Damages. Except with respect to indemnification obligations set forth in the preceding paragraph, both parties hereby waive the right to recover punitive damages from the other party.

32. Statutory Indemnification. The City does not waive any indemnification that it has under the laws of the Commonwealth of Virginia.

33. Transfer of Franchise. Grantee shall not transfer ownership or control of the System or Franchise without the written notice to the City. Grantee, or its successor in interest, shall submit to the City, within forty-five (45) days after closing of the transaction, a written certification, executed by an authorized senior officer or executive of Grantee, or its successor in interest, that subsequent to the transaction: (i) Grantee or its successor in interest shall continue to hold all required certificates of public convenience and necessity, or such other successor authorization, issued by the Virginia State Corporation Commission; and (ii) Grantee or its successor in interest shall continue to be

bound by the terms and conditions of this Ordinance, including but not limited to, the liability insurance policy and performance bond/security fund requirements of Sections 27 through 29 of this Ordinance. Upon such submission, the City's consent shall not be unreasonably withheld, delayed or conditioned.

34. Termination Events. The City, at its option, may terminate this Ordinance upon any material breach hereof by Grantee should Grantee fail to correct such breach within ninety (90) days after receiving specific written notice of such material breach from the City, or if the breach cannot reasonably be corrected within ninety (90) days, within a reasonable time as agreed to by the parties.

35. Entire Ordinance. This Ordinance embodies the entire understanding and agreement of the City and Grantee with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the City and Grantee with respect to the subject matter hereof, including, without limitation, all prior drafts of this Ordinance and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant, or independent contractor of the City or Grantee.

36. Delays and Failures Beyond Control of Grantee. Notwithstanding any other provision of this Ordinance, Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Ordinance due to strike, war, or act of war (regardless of whether an actual declaration of war is made), insurrection, riot, act of public enemy,

accident, fire, flood, or other act of God, technical failure, terrorism, sabotage, or other events, where Grantee has exercised all due care in the prevention thereof. To the extent that such causes or other events are beyond Grantee's control and such delay in performance or failure to perform affects only part of Grantee's capacity to perform, Grantee shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). Grantee agrees that, in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible.

37. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations, or other direction or communication hereunder by any party to another shall be in writing sent to the following address:

CITY:
City of Hampton, Virginia
Attention: City Attorney
Hampton City Hall, 8th Floor
22 Lincoln Street
Hampton, VA 23669

GRANTEE:
NEWPATH NETWORKS LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317-8564
Attn: E. Blake Hawk, General Counsel,
Legal Department

with a copy which shall not constitute
legal notice to:

NEWPATH NETWORKS LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive

Canonsburg, PA 15317-8564
Attn: SCN Contracts Management

38. Organization, Standing, Power, Authorization and Enforceability.

Grantee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Jersey, and is duly authorized to do business in the City. Grantee has all requisite power and authority to execute, deliver, and perform this Ordinance and all other agreements entered into or delivered in connection with or as contemplated hereby.


39. Binding Effect. This Ordinance shall be binding upon and inure to the benefit of the City and Grantee and their respective successors, permitted transferees, and assigns.


40. Headings; Other Terms. The headings contained in this Ordinance are to facilitate reference only, do not form a part of this Ordinance, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby", "herein", "hereof", "hereinafter", "hereunder", and "hereto" refer to this Ordinance as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; the terms "shall" and "will" are mandatory, not merely directive. All references to any gender shall be deemed to include all others, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

41. No Third Party Beneficiary Rights. Nothing in this Franchise is intended to interfere with any tariffs, contracts, or other arrangements between Grantee and a third party, or to create any third party beneficiary rights.

42. Effective Date. This Ordinance shall be in force from its passage.

Adopted at the regular meeting of the City Council of the City of Hampton, Virginia held on October 8, 2014.

Signed by  Date OCT 8 2014
George E. Wallace, Mayor

Attested by  Date OCT 8 2014
Katherine K. Glass, CMC
Clerk of the Council