



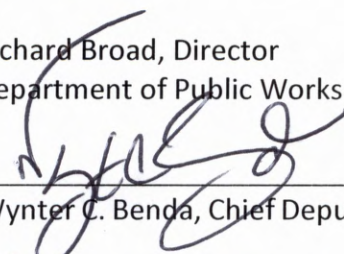
**\*continued from City Council meeting of February 26**

To the Honorable Council  
City of Norfolk, Virginia

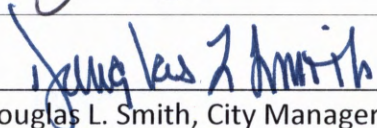
March 5, 2019

From: Richard Broad, Director  
Department of Public Works

**Subject:** Acceptance of a bid for a wireless facilities franchise agreement

Reviewed:   
Wynter C. Benda, Chief Deputy City Manager

**Ward/Superward:** Citywide

Approved:   
Douglas L. Smith, City Manager

**Item Number:** R-3

I. **Recommendation:** Accept bid submitted by Cox Wireless Access, LLC

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item an ordinance to accept bids for a wireless facilities franchise agreement which will grant permission to a wireless service provider to install wireless facilities and infrastructure in the City of Norfolk's (the "City's") rights-of way for a ten (10) year term with three options for renewal for terms of five years each.

IV. **Analysis**

- In order to improve and enhance wireless broadband and cellular coverage, wireless service and wireless infrastructure providers need access to the public rights of way to install small cell antennas on new or existing infrastructure, typically utility poles.
- In accordance with Federal and State law, localities cannot prohibit the installation of small cell facilities.
- Permits are required to install small cell facilities in the right-of-way and these facilities must comply with the City's design guidelines.
- The installation of small cell facilities improves existing 4G/LTE communications and they also lay the groundwork for next generation of communication services known as 5G.

V. **Financial Impact:**

Wireless service and wireless infrastructure providers are required to compensate the City for the use of its rights of way by paying an annual fee of \$1,000 for each small cell facility installed on new infrastructure up to 50 feet in height, and \$1,500 for each facility over 50 feet in height.

**VI. Environmental:**

N/A

**VII. Community Outreach/Notification:**

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

**VIII. Board/Commission Action:**

N/A

**IX. Coordination/Outreach:**

This letter and ordinance have been coordinated with the City Attorney's office, and the Departments of Information Technology and Public Works.

Supporting Material from the Department of Public Works:

- Ordinance
- Exhibit A: Non-exclusive Wireless Facilities Franchise Agreement
- Invitation to bid
- Material Terms
- Procedure for accepting bids.

Form and Correctness Approved:

*RMP*

Contents Approved:

By Martha P. McBurn  
Office of the City Attorney

By Richard Broad  
DEPT. PUBLIC WORKS

NORFOLK, VIRGINIA

### ORDINANCE No. 47,561

R-3

AN ORDINANCE ACCEPTING THE BID SUBMITTED BY COX WIRELESS ACCESS, LLC FOR A WIRELESS FACILITIES FRANCHISE AGREEMENT; WITH A TERM OF TEN YEARS WITH UP TO THREE RENEWAL TERMS OF FIVE YEARS EACH IN THE CITY'S RIGHTS-OF-WAY.

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WHEREAS, pursuant to the provisions of Section 15.2-2100, et seq., of the Code of Virginia, 1950, as amended, the City of Norfolk has invited bids for a wireless facilities franchise agreement with a term of ten years with up to three renewal terms of five years each in the City's rights-of-way, subject to the terms and conditions set forth in Exhibit A attached hereto; and

WHEREAS, the requirements of Sections 15.2-2101 and 15.2-2102 of the Code of Virginia, 1950, as amended, have been met and the Council has carefully considered all bids submitted; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Cox Wireless Access, LLC being the highest responsible bidder, its bid for a wireless facilities franchise agreement, with a term of ten years with up to three renewal terms of five years each in the City's rights-of-way, in accordance with the terms and conditions set forth in Exhibit A attached hereto, is hereby accepted.

Section 2:- That pursuant to Section 15.2-2104 of the Code of Virginia, 1950, as amended, the Council has determined that a bond in the sum of \$100.00 shall be executed in favor of the City of Norfolk by the person or entity to whom this wireless facilities franchise agreement is awarded.

Section 3:- That the City Manager is authorized to execute a Wireless Facilities Franchise Agreement, containing the terms and conditions set forth in Exhibit A, on behalf of the City of Norfolk and to do all things necessary and proper to carry out its terms.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

Adopted by Council March 5, 2019  
Effective March 5, 2019

TRUE COPY  
TESTE:

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RICHARD ALLAN BULL, CITY CLERK

BY: 

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CHIEF DEPUTY CITY CLERK

## NON-EXCLUSIVE WIRELESS FACILITIES FRANCHISE AGREEMENT

This Nonexclusive Wireless Facilities Franchise Agreement (hereinafter "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Norfolk, Virginia, a Virginia municipal corporation (hereinafter "City" or "Grantor") and Cox Wireless Access, LLC (hereinafter "Cox Communications" or "Grantee"), having an office at 1341 Crossways Boulevard, Chesapeake, Virginia 23320.

**WHEREAS**, Cox Communications has requested the right to install, operate and maintain Wireless Facilities in the City's Public Ways in order to provide Wireless Services within certain areas of the City; and

**WHEREAS**, Cox Communications desires to enter the City's Public Ways (as hereinafter defined) under a non-exclusive Wireless Facilities Franchise to use same; and

**WHEREAS**, the City is agreeable to allowing Cox Communications to use the City's Public Ways subject to certain terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the City and Cox Communications agree as follows:

**Section 1. Grant of Authority.** Cox Communications is hereby granted a non-exclusive Wireless Facilities Franchise to construct, maintain and operate Wireless Facilities in, over, under, and across the Public Ways for the purpose of providing Wireless Services (as hereinafter defined). This Wireless Facilities Franchise does not include any provision of any cable television services of any type or any video programming other than Wireless Services as defined in the definitions section of this Agreement. The City specifically reserves the right to grant other wireless facilities franchises, licenses or other rights as it deems appropriate for other wireless systems or facilities or any other purposes in accordance with the law. Cox Communications is not authorized to sublicense or sublease to any Person the right to occupy or use the Public Ways of the City to install, construct, maintain, upgrade, repair, or remove Wireless Facilities or any other equipment for any purpose.

**Section 2. Acceptance of Franchise.** Cox Communications hereby accepts the Wireless Facilities Franchise and agrees to comply with all of the terms of the Agreement, as well as with all applicable Federal, State and local laws, ordinances, resolutions, codes, rules and regulations, regardless of whether they are expressly referenced in this Agreement.

**Section 3. 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:

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

**"Antenna"** means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

**"Business Day"** shall refer to any day other than Saturday, Sunday or federal holiday, or on any other day on which national banks in the State of Virginia are not opened for business.

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

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

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

**"City"** means the City of Norfolk, Virginia, and where appropriate its officers, agents, employees and volunteers.

**"City property"** means and includes all real property owned by the City, other than public streets and utility easements, as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to right-of-way franchising as provided by law.

**"Co-locate"** means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

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

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

**"Excess capacity"** means the volume or capacity in any existing or future duct, innerduct, conduit, manhole, handhold or other utility facility within the Public Way that is, or will be, available for use for additional Wireless Facilities.

**"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 a locality of an agreement with the owner of the structure to co-locate equipment on that structure. "Existing structure" 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.

**"Effective Date"** means the date of this Agreement as set forth on the first page of this Agreement, which shall be effective upon the date on which this Agreement has been fully executed by all the parties. This date shall be used for reference purposes and all other purposes.

**"FCC"** or **"Federal Communications Commission"** means the Federal administrative agency, or lawful successor, authorized to regulate and oversee Wireless Service Providers on a national level.

**"Franchise"** means the non-exclusive, revocable license granted to Grantee in this Agreement to use the Public Ways for the purposes of constructing, installing, using, maintaining testing, inspecting, operating, repairing, and removing Wireless Facilities pursuant to and in accordance with this Agreement.

**"Grantee"** means Cox Wireless Access, LLC

**"Grantor"** means the City of Norfolk, Virginia.

**"Maintenance" or "Maintain"** means any effort or expenditure taken or made by a Grantee to preserve, repair, or improve existing telecommunications facilities or infrastructure in accordance with generally accepted industry standards.

**"Micro-wireless facility(ies)"** means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

**"Other ways"** means the highways, streets, alleys, utility easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.

**"Overhead facilities"** means utility poles, public utility facilities and Wireless Facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

**"Person"** means any natural person, corporation, company, association, joint stock company or association, firm, partnership, limited liability company, joint venture, trust, individual and any other legally recognized entity, private or public, whether for profit or not-for-profit and includes the officers, agents, employees or representatives of such entity where appropriate.

**"Public street"** means the surface of and the space above and below any public street, road, highway, avenue, sidewalk, way, bridge, viaduct, alley or other public right-of-way, including non-paved surfaces, now or hereafter held by the City for the purpose of public travel, communications, alarm, street lighting, power distribution, water or sewer easements or similar public use.

**"Public Utility" or "Utility"** shall be defined in accordance with applicable state laws regarding public utilities, but shall specifically include providers of Wireless Services or Wireless Infrastructure.

**"Public Way"** means and includes all public streets, rights of way, and utility easements, now or hereafter held or controlled by the City.

**"Small cell facility"** means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications 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.

**"State" or "Commonwealth"** means the Commonwealth of Virginia.

**"State Corporation Commission"** means the State administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the Commonwealth of Virginia.

**"Underground facilities"** means utility or telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

**"Utility easement"** means any easement held by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with Wireless Facilities.

**"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, electricity or lighting.

**"Water tower"** means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

**"Wireless Facility(ies)"** 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, 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 4. Grantee's 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 Wireless Services it intends to provide within the City and upon request by the City will provide evidence of such authority.

**Section 5. Franchise Only.** Grantee acknowledges and agrees that all Grantee is granted by this Agreement a non-exclusive Wireless Facility Franchise, and that no additional rights of any kind are granted by this Agreement, including, but not limited to, the right to provide any type of cable television services or video programming.

**Section 6. Application of Undergrounding Ordinances.** Grantee understands that the City has designated underground districts, and other areas of the City where overhead facilities have been relocated underground, and that new Utility Poles and overhead wires and cables are prohibited in these districts and areas. The City may consider the installation of Wireless Facilities, and Utility Poles intended to support Wireless Facilities, on a case by case basis taking into account aesthetic impacts, the location of historic properties nearby, and potential interference with current or planned public safety communications. Grantee is encouraged to propose innovative means to camouflage its Wireless Facilities in these areas.

**Section 7. Compensation.** For the rights and privileges granted herein, Grantee shall pay to the City an annual user fee for each Small Cell Facility installed in the Public Ways of the City. The amount of the annual user fee shall be:

- (a) \$1,000 for any Small Cell Facility mounted on a Wireless Support Structure or Utility Pole at or below 50 feet in total height;
- (b) \$1,500 for any Small Cell Facility mounted on a Wireless Support Structure or Utility Pole above 50 feet in height;
- (c) \$1.00 per square foot for any other associated equipment or shelter mounted on the ground.

7.1 The annual user fee shall be adjusted every five years, as of January 1 of that year, in the amount equal to the annual increases U.S. Consumer Price index ("CPI-U") for that five-year period.

7.2 The annual user fee shall be paid to the City within 90 days after the completion of construction and prorated for the remainder of the City's fiscal year which ends June 30. Each year thereafter, the user fee shall be paid 45 days prior to the end of the City's fiscal year.

7.3 Each payment shall be accompanied by a statement showing the manner in which the user fee was calculated and with a cover letter on company letterhead, which contains a statement by an officer



of the Grantee certifying that the information and computation of the payment amount shown are true and accurate.

- 7.4 No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further sums payable under this agreement or for the performance of any obligation hereunder.
- 7.5 The annual user fee shall be paid by check made out to "City of Norfolk" and mailed to the following address for proper accounting:

City of Norfolk  
Department of Public Works  
810 Union St. Suite 201  
Norfolk, VA 23510  
ATTN: Right-of-Way Management Division

**Section 8. Term.** The term of the franchise shall begin on the Effective Date of this Agreement and shall expire ten (10) years from the Effective Date. The term may be terminated earlier by mutual agreement or in the event of default. Upon expiration of this Agreement, the Grantee shall have the option to renew the Agreement for up to three terms of five (5) years each with the Franchise Agreement containing substantially similar terms; however, any such renewal Franchise Agreement shall be subject to the approval of City Council through a duly adopted ordinance. Grantee shall notify the City in writing of its desire to exercise any such renewal options at least ninety (90) days in advance of the expiration of the then current Franchise term

**Section 9. 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.

**Section 10. 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.

**Section 11. Transfer of Ownership.** Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either voluntarily or by forced or involuntary sale, or ordinary sale, consolidation, or otherwise (except to a parent or affiliate, or in connection with financing by Grantee in the ordinary course of business) any of the rights or privileges granted by this Agreement without the prior consent of the City Council, which consent shall not be unreasonably withheld. Notwithstanding any other provision of this Agreement, but subject to any applicable requirements in the City Charter and the State Code, no consent from the City shall be required for a transfer in trust, mortgage, collateral, assignment or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a *pro forma* transfer of corporation, partnership, or other entity controlling, controlled by or under common control with the Grantee.

**Section 12. Administrative Costs.** Grantee will pay to the City the sum of One Thousand Dollars (\$1,000) for the administrative costs and expenses incurred by the City related to the grant of this Franchise. Upon execution of the Agreement by both parties, the administrative fee shall be paid to the City within fourteen (14) Business Days. Failure to pay such fee shall entitle the Grantor to revoke this Franchise Agreement at its sole discretion.

**Section 13. Location of Facilities.** Subject to the terms of Section 16 of this Agreement, Grantee's Wireless Facilities shall be constructed, installed and located, at Grantee's sole cost and expense, as follows:

- (a) Subject to any applicable City ordinances or code provisions, Grantee may Co-locate its Wireless Facilities on Existing Structures and Utility Poles provided that the Wireless Services Provider or Wireless Infrastructure Provider (i) has permission from the owner of

the structure to Co-locate equipment on that structure and (ii) provides notice of the agreement and co-location to the City for approval prior to installation. In instances where the existing Utility Pole is to be removed and replaced with a new Utility Pole, the Wireless Facilities will be considered as attaching to a new Wireless Support Structure, provided however, that Wireless Facilities that are located on utility poles that have been replaced due to age, maintenance, condition or structural issues shall not be considered as attaching to New Wireless Support Structures unless the height of the pole exceeds the height of the pole replaced.

- (b) New Wireless Support Structures and Wireless Facilities shall be installed in accordance with the "Guidelines for the Installation of Wireless Telecommunications Facilities in the City of Norfolk Right-of-Way." These guidelines are part of the Right-of-Way Excavation and Restoration Manual, and may be amended from time to time.

**Section 14. Permits.** Grantee, including its contractors and consultants, prior to commencement of any construction or work, shall obtain at its sole expense all applicable permits, including any application and permit for, street opening, if any streets will be disturbed, and street, lane or sidewalk closures. However, nothing herein shall prohibit the City and a Grantee from agreeing to an alternative plan to review permit and construction procedures provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices, and are in accordance with applicable City Code provisions, and all applicable Laws.

**Section 15. Public Works.** The rights and privileges granted by this Agreement shall not be in preference or hindrance to the rights of the City and any other lawful governmental authorities having jurisdiction to perform or carry out any public works or public improvements. Should the Wireless Support Structures and/or Wireless Facilities interfere with the construction, maintenance or repair of such public works or improvements, Grantee, at its sole expense, shall protect or relocate the Wireless Support Structures and Wireless Facilities, or any applicable part thereof, as directed by the City or other governmental authorities having jurisdiction.

**Section 16. Use of Public Ways.**

- 16.1 Grantee, in any opening it shall make in the City's Public Ways, shall be subject to the provisions of this Agreement and to all applicable ordinances, codes and regulations of the City. The Wireless Support Structures and Wireless Facilities of the Grantee shall be located so as not to interfere with the public safety or with the convenience of persons using the Public Ways.
- 16.2 The City reserves the right by resolution of the City Council or otherwise through proper representatives of the City to specifically designate the location of new Wireless Facilities, in the event the location proposed by Grantee interferes with existing Municipal Facilities such as to sewer and water mains, drainage facilities, fiber optic cables, signal poles and lines, public telephone utilities, public electric utilities, public cable television utilities, 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 so designate does not relieve Grantee of its responsibilities in matters of public safety as provided in this Agreement. Grantee shall construct, maintain and locate its Wireless Support Structures and Wireless Facilities so as not to interfere with the construction, location and maintenance of sewer, water, drainage, electrical, signal and fiber optic facilities of the City.
- 16.3 Except in the cases of emergencies, Grantee shall not move, alter, change or extend any of its Wireless Support Structures and Wireless Facilities in any Public Way unless prior written notice of its intention to do so is given to the Director of Public Works, and permission in writing to do so is granted by the Director of Public Works. Such permission shall be conditioned upon compliance with the terms and conditions of this Agreement, and 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 or public service corporation for their respective purposes and functions.

- 16.4 The City requires that written permits, in any and all cases, be obtained by Grantee whenever it becomes necessary for Grantee to excavate in the Public Ways in order to install, construct, maintain or extend the Wireless Support Structures and Wireless Facilities. Such permits may be made applicable to any and all types of excavations in the Public Ways, as prescribed by City. Such permits may require the particular location in the Public Ways where construction or excavation is to be conducted, the length of time in which such permit shall authorize such work to be done and the hours of each day during which such work shall be undertaken. A single permit maybe issued for multiple excavations to be made in Public Ways; provided, however, any Public Way opening fee established by City shall apply to each excavation made in Public Ways of the City. 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 made in the Public Ways without permit, Grantee shall attempt to notify the Director of Public Works or his designee immediately to obtain appropriate guidance and authority; however, in the event Grantee is unable to make such contact after making a diligent attempt to do so, Grantee may make a report of each such excavation to the City within two (2) Business Days and pay such fee as may be established by City for excavations in Public Ways by Grantee. Any permit applications and inspections related to repair of excavations shall be promptly acted upon by the City so as not to unreasonably delay Grantee in efficiently discharging its public service obligation.
- 16.5 Immediately after installation, repair or extension of the Wireless Support Structures and Wireless Facilities 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 acceptable to the Director of Public Works. 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 Public Works 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 Public Works. 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, provided such maintenance and repair shall be necessary because of defective workmanship or materials supplied by Grantee. All work by Grantee shall be done in accordance with the Right-of-Way Excavation and Restoration Manual as amended from time to time.
- 16.6 Grantee shall promptly remove or correct any obstruction, damage, or defect in any Public Way which may have been caused by Grantee in the installation, operation, maintenance or extension of Grantee's telecommunications system. Any such obstruction, damage, or defect which is not promptly removed, repaired or corrected by Grantee after proper notice so to do, given by the City to Grantee, may be removed or corrected by the City, and the actual cost thereof shall be charged against Grantee. and Any actual expense, cost, or damages incurred for repair, relocation, or replacement to City water, sanitary sewer, storm sewer, storm drainage, communication facilities or other property resulting from construction or maintenance of Grantee's Wireless Support Structures and Wireless Facilities shall be borne by Grantee and any and all actual expense and cost incurred in connection therewith by the City shall be fully reimbursed by the Grantee to the City.
- 16.7 If weather or other conditions do not permit the complete restoration required by this Section, the Grantee shall temporarily restore the affected Public Ways or property. Such temporary restoration shall be at the Grantee's expense and the Grantee shall promptly undertake and complete the

- required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- 16.8 Grantee or other person acting in its behalf shall use suitable barricades, flags, flagmen, 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 the Virginia Work Area Protection Manual as amended from time to time.
- 16.9 Grantee shall not open, disturb or obstruct, at any one time, any more of the Public Ways than reasonably may be necessary to enable it to proceed in laying or repairing its Wireless Support Structures and Wireless Facilities. Neither shall Grantee permit any Public Ways so opened, disturbed or obstructed by it in the installation, construction, repair or extension of its Wireless Support Structures and Wireless Facilities to remain open or the Public Way disturbed or obstructed for a longer period of time than reasonably shall be necessary. In all cases where any Public Ways shall be 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.
- 16.10 Whenever the City shall widen, reconstruct, realign, pave or repave, or otherwise work on any Public Ways, or shall change the grade or line of any Public Ways, or shall construct or reconstruct any water, sanitary sewer, storm sewer, drainage or communications facility of the City, it shall be the duty of Grantee to move, alter or relocate its Wireless Support Structures and Wireless Facilities or any part thereof as requested by the City at Grantee's expense. Upon written notice by the Director of Public Works of the City's intention to perform work as specified above, Grantee shall within a reasonable period of time accomplish its obligation in accordance with and to conform to the plans of the City for such construction, reconstruction or improvements. Should the Grantee fail, refuse or neglect to comply with such notice, the Wireless Support Structures and Wireless Facilities or any part hereof may be removed, altered or relocated by the City and the City shall be liable to Grantee for any damages resulting from negligent removal, alteration or relocation.
- 16.11 In the event any Street or portion thereof used by Grantee shall be vacated by the City or the use thereof discontinued by Grantee during the term of this Franchise Agreement, Grantee shall not be obligated to remove its Wireless Support Structures and Wireless Facilities therefrom unless specifically requested by the City to do so and on the removal thereof Grantee shall, at its own expense, restore, repair or reconstruct the Public Ways where such removal has occurred and restore the Public Ways where such removal has occurred to a condition similar to that existing before such removal took place. In the event of failure, neglect or refusal of Grantee, after one hundred and eighty (180) days' notice by the City to remove the Wireless Support Structures and Wireless Facilities or to repair, restore, reconstruct, improve or maintain such Street portion, the City may do such work or cause it to be done, and the actual cost thereof as found and declared by the City shall be paid by Grantee as directed by the City and collection may be made by any available remedy.
- 16.12 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 be exempt from City-imposed permitting requirements and fees. However, the City may require a single use permit if such activities (1) involve working within the highway travel lane or require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway or ditch line; (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place or manner that is inconsistent with terms of the existing permit for that facility or the structure upon which it is attached.

**Section 17. Damage to Property.** 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, Public Ways or Other Ways, or other property located in, on or adjacent thereto.

**Section 18. Repair and Emergency Work.** In the event of an unexpected repair or emergency, Grantee may commence such repair and emergency response work as required under the circumstances, provided 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.

**Section 19. Maintenance of Facilities.** Grantee shall maintain its Wireless Support Structures and Wireless Facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements, laws, ordinances, standards and regulations.

**Section 20. Safety Standards.** 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.

**Section 21. Police Power.** All rights and privileges granted hereby are subject to the lawful exercise of the police power of the City to adopt and enforce local laws, rules and regulations necessary to the health, safety and general welfare of the public. 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 22. Relocation or Removal of Facilities.** Within one hundred and eighty (180) days following written notice from the City, Grantee shall temporarily or permanently remove, relocate, change or alter the position of any Wireless Support Structures and Wireless Facilities within the Public Ways at Grantee's expense whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- (a) The construction, repair, maintenance or installation of any City facilities or other public improvement in or upon the Public Ways.
- (b) The operations of the City or other governmental entity in or upon the Public Ways.

**Section 23. Emergency Removal or Relocation of Facilities.** The City retains the right and privilege to cut or move any Wireless Support Structures and Wireless Facilities located within the Public Ways or other areas of the City as the City may determine to be necessary, appropriate or useful in response to any life-threatening emergency. The City will endeavor to notify Grantee of such emergencies that may affect their Wireless Support Structures and Wireless Facilities. 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.

**Section 24. Damage to Grantee's Facilities.** Except for acts of gross negligence or willful misconduct, and subject to the City's rights to sovereign immunity, the City, its officers, agents, and employees, shall not be liable for any damage to or loss of any Grantee's Wireless Services or Wireless Support Structures and 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.

**Section 25. Duty to Provide Information.** Within thirty (30) days of a written request from the City, Grantee shall furnish the City with information sufficient to demonstrate:

- (a) That Grantee has complied with all requirements of this Agreement.
- (b) That all user fees, municipal sales taxes, Wireless Services taxes, utility taxes or any other taxes, fees or charges due the City in connection with the Wireless Services or Wireless

Support Structures and Wireless Facilities provided by the Grantee have been properly collected and/or paid by Grantee.

- (c) All books, records, maps, and other documents maintained by Grantee with respect to its Wireless Services or Wireless Support Structures and Wireless Facilities within the City or the Public Ways shall be made available for inspection by representatives of the City at least every six (6) months and at other commercially reasonable times and intervals.

## **Section 26. Insurance.**

- 26.1 Requirement of Insurance. Grantee shall, at its expense, obtain and maintain during the life of this Agreement the insurance and bond required by this Agreement. Any required insurance and bond shall be effective prior to the beginning of any work by Grantee within the City. The City acknowledges and agrees that Grantee may self-insure. Such self-insurance does not limit the Grantee's indemnification obligations set forth in Section 27 of this Agreement.
- 26.2 Commercial General Liability. Grantee shall maintain during the life of this Agreement Commercial General Liability insurance coverage on an occurrence basis insuring against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of any of the work or activity under or by virtue of this Agreement. The minimum limits of liability for this coverage shall be \$2,000,000 combined single limit for any one occurrence.
- 26.3 Contractual Liability. Grantee shall maintain during the life of this Agreement broad form Contractual Liability insurance including the indemnification obligation set forth in this Agreement.
- 26.4 Workers' Compensation. Grantee shall maintain during the life of this Agreement Workers' Compensation insurance covering Grantee's statutory obligation under the laws of the Commonwealth of Virginia and Employer's Liability insurance for all its employees engaged in work under this Agreement.
- 26.5 Automobile Liability. Grantee shall maintain during the life of this Agreement Automobile Liability insurance. The minimum limit of liability for such insurance shall be \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Agreement.
- 26.6 Umbrella Coverage. The insurance coverages and amounts set forth in subsections (b), (c), (d) and (e) of this Section may be met by an umbrella liability policy following the form of the underlying primary coverage in a minimum amount of \$5,000,000. Should an umbrella liability insurance coverage policy be used, such coverage shall be accompanied by a certificate of endorsement stating that it applies to the specific policy numbers indicated for the insurance providing the coverages required by subsections (b), (c), (d) and (e), and it is further agreed that such statement shall be made a part of the certificate of insurance furnished by Grantee to the City.
- 26.7 Pollution Liability Insurance. Grantee shall maintain during the life of this Agreement Pollution Liability Insurance in the amount of \$1,000,000 each occurrence. Coverage shall be provided for bodily injury and property damage resulting from pollutants, which are discharged suddenly and accidentally. In addition, the insurance will provide coverage for cleanup costs.
- 26.8 Evidence of Insurance. All insurance shall meet the following requirements:
  - (a) The Grantee shall furnish the City a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. Certificates of insurance shall include any insurance deductibles, the amount of such deductible being subject to approval by the City. Grantee shall also provide a statement indicating the types of insurance provided by the Grantee's self-insurance.

- (b) The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been received by the City of Norfolk."
- (c) The required certificate or certificates of insurance shall name the City of Norfolk, its officers, agents, employees and volunteers as additional insured as their interests may appear under this Agreement.
- (d) Insurance coverage shall be in a form and with an insurance company approved by the City which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Agreement must be authorized to do business in the Commonwealth of Virginia.

**Section 27: Liability.** Grantee agrees and binds itself to indemnify, defend and hold harmless the City, its officers, agents, and employees free and harmless from any and all actual claims, causes of action, damages or any liability on account of any injury or damage of any type to any persons or property directly growing out of, or directly resulting from, any act or omission of Grantee (except to the extent caused by the negligence or willful misconduct of the City, its officers, employees or agents), including but not limited to: (a) Grantee's use of the public ways or other areas of the City; (b) the acquisition, construction, reconstruction, erection, installation, operation, maintenance, repair or extension of Grantee's telecommunications facilities; (c) the exercise of any right or privilege granted by or under this Agreement; or (d) the failure, refusal or neglect of Grantee to perform any duty imposed upon or assumed by Grantee by or under this Agreement. Notwithstanding anything contained herein to the contrary, neither the City nor Grantee shall be liable to the other for consequential, indirect, or punitive damages in any cause of action.

**Section 28: Hazardous Materials.**

- 28.1 While on or near City's property or easement or in its performance of this Agreement, Grantee shall not transport, dispose of or release any hazardous substance, material, or waste, except as necessary in the performance of its work under this Agreement 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 City's acquiescence, Grantee shall indemnify and hold 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 paragraph and agrees to reimburse City for all costs and expenses incurred by City in eliminating or remedying such violations. Grantee also agrees to reimburse City and hold 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 City's premises; provided, however, that 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 effective date of this Agreement or that otherwise did not result from Grantee's activities.
- 28.2 The Grantee shall protect, indemnify, and hold harmless the City 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 negligence or willful misconduct of the City..



**Section 29: Performance and Labor and Material Surety.** Before this Agreement is effective, and as necessary thereafter, the Grantee shall provide such bonds or other instruments in form and substance acceptable to the City as may be required by this Agreement.

**Section 30: Bond.**

30.1 Within ten (10) consecutive calendar days after the effective date of this Agreement but before any construction is commenced, Grantee shall furnish to the City a performance bond made payable to the City in the amount of fifty thousand dollars (\$50,000). The Performance Bond is to guarantee that the project is constructed and maintained in a proper manner without damage to the Public Ways or other areas of the City. The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. Upon satisfactory completion of construction of the Grantee's Wireless Support Structures and Wireless Facilities, the performance bond may be reduced to the amount of twenty-five thousand dollars (\$25,000) and made payable to the City, and shall be maintained at this amount throughout the term of this Agreement.

30.2 The bond shall guarantee, to the satisfaction of the City:

- (a) timely completion of construction;
- (b) construction in compliance with applicable plans, permits, technical codes and standards;
- (c) proper maintenance of Grantee's facilities during the term of this Agreement;
- (d) restoration of the Public Ways and other property affected by any construction or repair work performed by or at the request of Grantee;
- (e) the submission of "as-built" drawings after completion of the work as required by this Agreement; and
- (f) timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work
- (h) the removal of abandoned Wireless Support Structures and Wireless Facilities.

**Section 31: Coordination of Construction Activities.** Grantee is required to cooperate with the City as follows:

- (a) Anytime Grantee plans expansion of its Wireless Support Structures and Wireless Facilities, Grantee shall provide the City with a schedule of its proposed construction activities in and around any Public Ways, or that may affect the Public Ways.
- (b) Grantee shall meet with the City and other users of the Public Ways annually, or as determined by the City, to schedule and coordinate construction in the Public Ways.
- (c) All construction locations, activities, and schedules shall be coordinated, as ordered by the Director of Public Works, to minimize public inconvenience, disruption or damages.

**Section 32: Nonenforcement by City.** Grantee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City, upon any one or more occasions, to insist upon Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions of this Agreement.

**Section 33: Construction Codes.** Wireless Support Structures and Wireless Facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Safety Code.

**Section 34: Engineer's Certification.** All permit applications for bridge attachments and for excavations that are adjacent to the Light Rail track bed shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

**Section 35: Traffic Control Plan.** All permit applications which involve work on, in, under, across or along any Public Ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with applicable local, state and federal laws and regulations, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

**Section 36: Issuance of Permit.** Within thirty (30) days after submission of all plans and documents required of the applicant and payment of the fees required by this Agreement, and compliance with the provisions of the Virginia Code, the City, if satisfied that the applications, plans and document comply with all requirements of this Agreement, shall issue a permit authorizing construction of the Wireless Support Structures and Wireless Facilities

**Section 37: Construction Schedule.** The Grantee shall submit a written construction schedule to the Director of Public Works ten (10) Business Days before commencing any work in or about the Public Ways. The Grantee shall further notify the Director of Public Works not less than five (5) Business Days in advance of any excavation or work in the Public Ways and shall comply with the provisions of the Virginia Underground Utility Damage Prevention Act, Virginia Code § 56-265.14 et. seq.

**Section 38: Compliance with Permit.** All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City and its representatives shall be provided access to the work and such further information to ensure compliance with such requirements.

**Section 39: Display of Permit.** The Grantee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City at all times when construction work is occurring.

**Section 40: Survey of Underground Facilities.** The Grantee shall supply and specify the location of all facilities by depth, line, grade, proximity to other facilities, or other standard, the Grantee shall cause the location of such facilities to be verified, to the extent required, by a registered state surveyor. The Grantee shall relocate, at its expense, any facilities which are not located in compliance with permit requirements.

**Section 41: Noncomplying Work.** Upon order of the City, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Agreement, shall be removed at the sole expense of Grantee.

**Section 42: Completion of Construction.** The Grantee shall promptly complete all construction activities so as to minimize disruption of the City's Public Ways and other public and private property. All construction work authorized by a permit within the Public Ways, including restoration, must be completed within 60 days of the date of issuance of the permit.

**Section 43: As-Built Drawings.** Within ninety (90) days after completion of construction, the Grantee shall furnish the City with two (2) complete sets of as-built plans, drawn to scale and certified to the City as accurately depicting the actual location of all Wireless Support Structures and Wireless Facilities constructed pursuant to the permit and shall include a digitized map(s) in both printed and in electronic form in a format compatible with the City's Geographic Information System such as Shape files (.shp) or Keyhole



Norfolk, Virginia 23510

City of Norfolk  
Director of Public Works  
810 Union Street, Room 700  
Norfolk, Virginia 23510

If to Grantee to:

Cox Wireless Access, LLC  
1341 Crossways Boulevard  
Chesapeake, Virginia 23320  
Attention: Network Real Estate

With copy to:

Cox Communications  
Attn: Vice President of Government Affairs  
6205B Peachtree-Dunwoody Road  
Atlanta, Georgia 30328

Grantor or Grantee may from time to time designate any other address for this purpose by written notice to the other party.

**Section 53. Compliance with Federal Immigration Law.** At all times during which any term of this Franchise is in effect, Grantee shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

**Section 54. Compliance with State Law – Authorization to Conduct Business in the Commonwealth:** Grantee hereby represents that it is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

(SIGNATURE PAGE TO FOLLOW)

**The parties**, by and through the undersigned authorized agent(s), do hereby agree to abide by the terms, conditions, and obligations of this Agreement.

**WITNESS** the following duly authorized signatures:

**CITY OF NORFOLK**

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

**COX Wireless Access, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

Approved as to Form and Correctness:

\_\_\_\_\_  
Deputy City Attorney

Approved as to Content:

\_\_\_\_\_  
Director of Public Works

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date