


To the Honorable Council
City of Norfolk, Virginia

March 24, 2020

From: Richard Broad
Director of Public Works

Subject: Long Term Wireless Facilities
Franchise Agreement

Reviewed: 

Wynter C. Benda, Chief Deputy City Manager

Ward/Superward: Citywide

Approved: 

Dr. Larry H. Filer II, City Manager

Item Number: IB-1

I. **Recommendation:** Receive bid(s) and continue matter for further consideration.

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is to accept bids for a wireless facilities franchise agreement which will grant permission to a wireless service provider to install, operate, and maintain wireless facilities and associated infrastructure in 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 the City's design guidelines.
- Small cell facilities improve wireless communications by increasing existing cell phone coverage and enabling enhanced broadband speeds and capacity for 5G communication services.

V. **Financial Impact:**

In accordance with Federal Communication Commission regulations, 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 \$270 for each small cell facility installed on new poles or support structures and a \$100 permit fee for each permit application.

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:

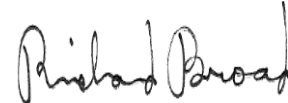
This letter and ordinance have been coordinated with the City Attorney's office, and the Departments of Information Technology and Public Works.

Supporting Material from the Department of Public Works:

- Ordinance
- Exhibit A: Non-exclusive Wireless Facilities Franchise Agreement
- Invitation to bid

Form and Correctness Approved: *BAP*

Contents Approved:



By: _____
Office of the City Attorney

By: _____
DEPT. Public Works

NORFOLK, VIRGINIA

AN ORDINANCE ACCEPTING THE BID SUBMITTED BY _____ FOR A LONG-TERM 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.

- - -

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 long-term wireless facilities franchise agreement, with a term of ten (10) years with up to three (3) renewal terms of five (5) 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 Section 15.2-2101 and 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 _____, being the highest responsible bidder, its bid for a long-term wireless facilities franchise agreement, with a term of ten (10) years with up to three (3) renewal terms of five (5) 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 \$100,000.00 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.

Attachments:

Exhibit A - Terms and Conditions (____ pages)

NON-EXCLUSIVE WIRELESS FACILITIES FRANCHISE AGREEMENT

This Nonexclusive Wireless Facilities Franchise Agreement (hereinafter "Agreement") is made and entered into as of _____, 2020, by and between the City of Norfolk, Virginia, a Virginia municipal corporation (hereinafter "City" or "Grantor") and _____ (hereinafter "_____" or "Grantee"), having an office at _____, _____, _____.

WHEREAS, _____ has requested the right to install, operate and maintain Wireless Facilities in the City's rights-of-way in order to provide Wireless Services within certain areas of the City; and

WHEREAS, _____ desires to enter the City's rights-of-way under a non-exclusive Wireless Facilities Franchise to use the rights-of-way at its own risk; and

WHEREAS, the City is agreeable to allowing _____ to use the City's rights-of-way subject to certain terms and conditions hereinafter set forth.

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

Section 1. Grant of Authority. _____ is hereby granted a non-exclusive Wireless Facilities Franchise to construct, maintain, and operate Wireless Facilities in, over, under, and across the public ways within the City for the purpose of providing Wireless Services. This 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. _____ 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 provided, however, that _____ shall be permitted to sublicense or sublease the use of Wireless Facilities to any Person for the purpose of providing Wireless Services so long as such Person does not install or attach its own equipment within the Public Ways of the City.

Section 2. Acceptance of Franchise. _____ hereby accepts the 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.

"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 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.

"Communications Act" means the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, and as may be amended from time to time.

"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.

"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 or the Department 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 of the City 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 _____, LLC

"Grantor" means the City of Norfolk, Virginia.

"Maintenance" 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.

"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 way" means and includes all public streets and utility easements, as those terms are defined herein, now or hereafter held or controlled by the City, but only to the extent of the City's right, title, interest or authority to grant a License to occupy and use such streets and easements for telecommunications facilities.

"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.

"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.

"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" 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, or electricity.

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

"Wireless infrastructure provider" means any person, including a person authorized to provide telecommunications service in the state, that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

"Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile

services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

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

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

Section 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 is a non-exclusive Wireless Facility Franchise and that no other rights of any kind are granted by this Agreement, including but not limited to any 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 the following fees:

- (a) \$270 as an annual recurring fee for any Small Cell Facility mounted on a new Wireless Support Structure Pole in the City's right-of-way;
- (b) \$500 for a single application that includes up to five small wireless facilities, with an additional \$100 for each small wireless facility beyond five;

7.1 During the term of this Agreement if: (a) different rates are established or charged to Grantee's competitors as a result of any ordinance or statute subsequently adopted by the City, State or Federal government; or (b) a court or regulatory agency makes a final, non-appealable determination that the rates set forth in this Agreement are not reasonable or legal, then the parties shall negotiate in good faith to adjust the rates set forth in this Agreement accordingly. The City reserves the right to adjust rates as permissible under State or Federal law.

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 The annual recurring fee shall be paid by check made out to "City of Norfolk" and mailed to the following address for proper accounting:

City of Norfolk
Right-of-Way Management Division
810 Union St., Suite 201
Norfolk, VA 23510

- 7.5 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.
- 7.6 The City will consider waiving recurring user fees for 5G demonstrations for a period of six months from the date of the approval of the permits for the installations for such demonstration.

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 Agreement may be terminated earlier by mutual agreement or in the event of default. The commencement of the term of this Franchise shall constitute the mutual agreement of Grantor and Grantee to terminate any existing Franchise then in effect between Grantor and Grantee, and the terms of this Franchise shall supersede the terms of any such existing Franchise. 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 14 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 facilities shall be constructed, installed and located, at their sole 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 an existing Utility Pole.

- (b) New Small Cell Facilities, Wireless Support Structures, and Wireless Facilities shall be installed in accordance with the "Guidelines for the Installation of Wireless 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, is required to 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.

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 Structure, Wireless Facility, or Small Cell Facility 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 Structure, Wireless Facility or Small Cell Facility, 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 public ways of the City, shall be subject to the provisions of this Agreement and to all applicable ordinances, codes and regulations of the City. The Wireless Support Structure, Wireless Facility, or Small Cell Facility 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 the Wireless Support Structure, Wireless Facility, or Small Cell Facility of Grantee with reference to municipal facilities, such as sewer and water mains, drainage facilities, fiber optic cables, signal poles and lines and similar services, other facilities, such as 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 Structure, Wireless Facility, or Small Cell Facility 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 Structure, Wireless Facility, or Small Cell Facility 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 requirement shall be waived. Such permission shall be conditioned upon compliance with the terms and conditions of this Agreement, with such other terms and conditions as will preserve, protect and promote the safety of the public using the Public Ways, and as will prevent undue interference with or obstruction of the use of the Public Ways by the public, the City or by any other public utility or public service corporation for their respective purposes and functions. Such work by Grantee shall also be coordinated with the City's annual paving program through the Department of Public Works.
- 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 Structure, Wireless Facility, or Small Cell Facility. Such

permits may be made applicable to any and all types of excavations in the Public Ways, as prescribed by City, and City may establish a fee for each excavation made in a Public Way by a Grantee. 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) working 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 Structure, Wireless Facility, or Small Cell Facility 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 material 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 material 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 cost thereof shall be charged against Grantee and may be enforced as a lien upon any of Grantee's properties or assets. Any 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 Structure, Wireless Facility, or Small Cell Facility shall be borne by Grantee and any and all 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 sole 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 Structure, Wireless Facility, or Small Cell Facility. 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 Structure, Wireless Facility, or Small Cell Facility 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 in accordance with Section 22 its Wireless Support Structure, Wireless Facility, or Small Cell Facility 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 Structure, Wireless Facility, or Small Cell Facility or any part hereof may be removed, altered or relocated by the City and the City shall not be liable to Grantee for any damages resulting from such 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 Structure, Wireless Facility, or Small Cell Facility 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) day notice by the City to remove the Wireless Support Structure, Wireless Facility, or Small Cell Facility 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 reasonable 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.

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 of the City, 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 Structure, Wireless Facility, or Small Cell Facility 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 Grantee's 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 Structure, Wireless Facility, or Small Cell Facility 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.

Grantee may voluntarily remove any Wireless Support Structure, Wireless Facility, or Small Cell Facility at Grantee's expense and in accordance with the terms of this Franchise. Upon receipt of Grantor of written notice from Grantee that a Wireless Support Structure, Wireless Facility, or Small Cell Facility has been voluntarily and permanently removed, Grantor shall be excused from further obligation under this Franchise with respect to the removed facility and, upon commencement of the next City fiscal year, shall not be required to pay the recurring fee for the facility.

Section 23. Emergency Removal or Relocation of Grantee's Facilities. The City retains the right and privilege to cut or move any Wireless Support Structure, Wireless Facility, or Small Cell Facility 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 Structure, Wireless Facility, or Small Cell Facility. 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 Structure, Wireless Facility, or Small Cell Facility 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 ten (10) 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 Structure, Wireless Facility, or Small Cell Facility 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 Structure, Wireless Facility, or Small Cell Facility

within 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 reasonable times and intervals.

Section 26. Insurance and Bond Requirements.

- 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.
- 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.
- 26.7 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.
- 26.8 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.
- 26.9 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.
 - (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.

- (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, keep and hold the City, its officers, agents, and employees free and harmless from any and all claims, causes of action, damages or any liability on account of any injury or damage of any type to any persons or property growing out of, or directly or indirectly resulting from, any act or omission of Grantee, 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 provided that Grantee shall have no liability for any claim due to the negligence or willful misconduct of the City. In the event that any suit or proceeding shall be brought against the City at law or in equity, either independently or jointly with Grantee on account thereof, Grantee, upon notice given to it by the City, will defend the City in any such action or other proceeding at the cost of the Grantee. In the event of any settlement or final judgment being awarded against the City, either independently or jointly with Grantee, then Grantee will pay any such settlement or judgment or will comply with such decree, pay all costs and expenses of whatsoever nature and hold the City, its officers, agents, and employees free and harmless therefrom.

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 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.

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.

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 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 one hundred thousand dollars (\$100,000). 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 Structure, Wireless Facility, or Small Cell Facility, 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 location of the facilities as specified by the City;
- (d) proper maintenance of Grantee's facilities during the term of this Agreement;
- (e) restoration of the public ways and other property affected by any construction or repair work performed by or at the request of Grantee;
- (f) the submission of "as-built" drawings after completion of the work as required by this Agreement; and
- (g) 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 Structure, Wireless Facility, or Small Cell Facility.

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 Structure, Wireless Facility, or Small Cell Facility, 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 Structure, Wireless Facility, or Small Cell Facility 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 sixty (60) 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 Structure, Wireless Facility, or Small Cell Facility, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as may be deemed necessary or appropriate.

Section 37: Construction Schedule. The Grantee shall submit a written construction schedule to the Director of Public Works ten (10) working 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) working 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 as it may require 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 30 days of the date of issuance of the permit.

Section 43: As-Built Drawings. Within sixty (60) 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 Structure, Wireless Facility, or Small Cell Facility constructed pursuant to the permit and shall include a digitized map(s) in both printed and electronic form in a format compatible with the City's Geographic Information System, such as Shape files (.shp) or Keyhole Markup Language (.kml, .kmz). As-built plans shall be referenced to the North American Datum (NAD83). Grantee shall, upon request, provide updated maps annually.

Section 44: Landscape Restoration.

44.1 All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of telecommunications facilities shall be replaced or restored, as nearly as may be practicable, to the condition existing prior to performance of the work.

44.2 All restoration work within the public ways or other areas shall be done in accordance with landscape plans approved by the Director of Public Works, or his designee, and shall comply with sections 45-10 through 45-31 of the Code of the City of Norfolk, 1979.

Section 45: Responsibility of Owner. The owner of the facilities to be constructed and, if different, the Grantee is responsible for performance of and compliance with all provisions of this Agreement.

Section 46: Controlling Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia and any applicable federal laws.

Section 47: Captions. The paragraph Captions and Headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 48: Nondiscrimination. Grantee shall not discriminate on the basis of race, religion, color sex or national origin in its employment practices, contracting or provision of services.

Section 49: Commencement of Work. Grantee will not commence work within City until detailed plans have been provided to and approved by the Director of Public Works.

Section 50: Forum Selection. By virtue of entering into this Agreement, Grantee agrees and submits itself to a court of competent jurisdiction in the City of Norfolk, Virginia, or in the United States District Court for the Eastern District of Virginia, Norfolk Division, and further agrees that this Agreement is controlled by the laws of the Commonwealth of Virginia or any applicable federal laws and that all claims, disputes and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia or any applicable federal laws or by any regulatory body with jurisdiction including the Federal Communications Commission.

Section 51: Effective Date. This Agreement shall be in full force and effect as of the Effective Date when fully executed by an authorized officer of Grantee and the authorized officials of the City.

Section 52: Removal of Grantee's Facilities. Subject to applicable law, if Grantee is not awarded a franchise or otherwise granted rights by any future ordinance or agreement adopted by the City, or if the term of this Agreement expires or the rights granted to Grantee by this Agreement are revoked by the City, Grantee shall immediately cease operations within the City and shall not be permitted to operate, maintain or repair its existing encroachments or facilities and shall promptly remove any and all Grantee's Wireless Support Structure, Wireless Facility, or Small Cell Facility and equipment within the City, all at the sole cost of Grantee.

Section 53: Notices. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, addressed as follows or if sent by facsimile to the facsimile number set forth below, with a hard copy contemporaneously mailed as previously specified:

If to Grantor to: City of Norfolk
City Manager
810 Union Street, Room 1101
Norfolk, Virginia 23510

With copies to: City of Norfolk
City Attorney
810 Union Street, Room 908
Norfolk, Virginia 23510

City of Norfolk
Director of Public Works

810 Union Street, Room 700
Norfolk, Virginia 23510

If to Grantee to: _____, LLC

_____, _____

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

Section 54. 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 55. 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.

_____ by the undersigned authorized agent, does hereby agree to abide by the terms, conditions, and obligations of the Agreement.

WITNESS the following duly authorized signatures:

(SIGNATURE PAGES TO FOLLOW)

**CITY OF NORFOLK
NORFOLK, VIRGINIA**

_____, LLC

By: _____
City Manager

By: _____

Title: _____

Date

Date

ATTEST:

ATTEST:

City Clerk

Secretary

Date

Date

Approved as to Form and Correctness:

Deputy City Attorney

Approved as to Content:

Director of Public Works