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ORDINANCE NO. 2023-060

*An Ordinance Granting a Nonexclusive Franchise to Lumos Fiber of South Carolina, LLC for the Construction, Operation and Maintenance of Telecommunications Facilities in the City of Columbia, South Carolina*

**WHEREAS**, Lumos Fiber of South Carolina, LLC has requested consent of the City of Columbia to use the streets and public places of the municipality to construct, install, maintain, and operate its telecommunications facilities for its own business purposes and profit; and

**WHEREAS**, it is the policy of the City of Columbia to permit such entry into the corporate limits and such use of the streets and public places for the provision of telecommunications services, subject to the duty and authority of the City of Columbia to manage its streets, public property and rights-of-way, and to requirements under State and Federal law; and

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Council of the City of Columbia, South Carolina, this 18<sup>th</sup> day of July, 2023, that the City Manager is hereby authorized to enter into and execute a franchise to Lumos Fiber of South Carolina, LLC for the construction, operation and maintenance of telecommunications facilities within the corporate limits of the City of Columbia, South Carolina, upon the terms and conditions set forth in the Franchise Agreement attached as Exhibit A and incorporated herein.


If any section, subsection, or clause of this ordinance, including the Franchise Agreement, shall be deemed unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

This ordinance shall take effect upon the date of final reading.

Requested by:

Assistant City Manager Palen

Approved by:

 for Terese Wilson  
City Manager

Approved as to form:

  
City Attorney

Introduced: 6/20/2023

Final Reading: 7/18/2023

Mayor

ATTEST:

  
City Clerk

**CITY OF COLUMBIA, SOUTH CAROLINA NONEXCLUSIVE FRANCHISE  
AGREEMENT WITH LUMOS FIBER OF SOUTH CAROLINA, LLC**

This Nonexclusive Franchise Agreement (hereinafter "AGREEMENT") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2023 ("Effective Date"), by and between the CITY OF COLUMBIA, a South Carolina municipal corporation (hereinafter "CITY") and LUMOS FIBER OF SOUTH CAROLINA, LLC, a South Carolina limited liability company, (hereinafter "LUMOS" or "FRANCHISEE"), having its principal office at 4100 Mendenhall Oaks Parkway, Suite 300, High Point, NC, 27265.

**WHEREAS**, LUMOS is a limited liability company duly organized and existing under the laws of the State of South Carolina; and

**WHEREAS**, LUMOS desires to use and occupy the streets and public rights-of-way (as hereinafter defined) located within the CITY for the purposes of constructing, installing, and maintaining network facilities for telecommunications services within and through the CITY; and

**WHEREAS**, as used in this ordinance, the term "Telecommunications Services" has the meaning and definition given to that same term by S.C. Code Ann. § 58-9-10 and § 58-9-2200 (1), which includes operation and/or provision of access to transmission facilities and infrastructure for the transmission of voice, data, text, sound, and video using wired telecommunications networks, and 47 USC § 153; provided, however, for purposes of this Agreement, the term "Telecommunications Services" does not include cable television. Cable television services may only be provided in the municipal limits pursuant to a separate franchise pursuant to 42 USC § 542.

**WHEREAS**, pursuant to S.C. Code Ann. § 5-7-30 and S.C. Code Ann. § 58-9-2230, the CITY has the authority to grant franchises and other authorizations for the use and occupancy of the streets and public rights-of-way; and

**WHEREAS**, the CITY is agreeable to allowing LUMOS to use the streets and public rights-of-way, subject to the terms and conditions hereinafter set forth and subject to any lawful telecommunications regulatory ordinance that may be adopted by the CITY in the future; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the CITY and LUMOS agree as follows:

## **SECTION 1. 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:

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

*"City"* means the City of Columbia, South Carolina, and where appropriate to the context, its officers, agents, employees, and volunteers.

*"City Attorney"* means the City Attorney or his designee.

*"City Council"* means the City Council of the City of Columbia.

*"City Engineer"* means the City Engineer or her designee.

*"City Manager"* means the City Manager or her designee.

*"City Property"* means and includes all real property owned by the City deemed to be a public place or way by the City..

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

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

*"Eligible Property"* means multi-family housing properties identified by CITY and containing affordable housing units using the Area Median Income (AMI) for the Columbia Metropolitan Area as measured by the U.S. Department of Housing ("Eligible Properties").

*"Fiber optic or other cable and related facilities"* means fiber optic cables or other cables, facilities, Conduits, converters, splice boxes, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances and related facilities located or to be located by FRANCHISEE in the public streets or rights-of-way of the City used or useful for the transmission of telecommunications services.

*"FRANCHISEE" or "Lumos"* means Lumos Fiber of South Carolina, LLC.

***"Public streets and public rights-of-way" or "public ways"*** include 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 unimproved surfaces, now or hereafter held by the City for the purpose of public travel, communications, alarm, street lighting, power distribution, water or sewer service or other public use, whether present or future, to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such streets and easements for the purpose of providing telecommunications services.

***"Public works project or public improvements"*** include, without limitation, the construction, realignment, paving or repaving, or other work on any public street or public right-of-way, change of grade or alignment of any public street or public right-of-way, the construction or reconstruction of any water, sanitary sewer, storm sewer, force main, drainage or communications facility of the City.

***"SCDOT"*** means the South Carolina Department of Transportation.

***"Telecommunications facilities"*** means the plant, equipment, and property, including, but not limited to, the poles, pipes, mains, Conduits, Ducts, fiber optic and other cables, circuits, and wires, and any other equipment and property used by FRANCHISEE to provide telecommunications service.

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

***"Unused Facilities"*** means where, pursuant to this Agreement, LUMOS has commenced the installation of certain Fiber Optic or other Cable and Related Facilities in the CITY'S public streets or public rights-of-way, and (i) such installation work has ceased and remains unfinished for a period of twelve (12) consecutive months; or (ii) after installation, such Fiber Optic or Other Cable and Related Facilities are unused, for whatever reason, for a period of twelve (12) consecutive months; then, in the event of (i) or (ii) such Fiber Optic or Other Cable and Related Facilities or any parts thereof shall be deemed to be unused. For the purposes of this definition, Fiber Optic or Other Cable and Related Facilities shall not be considered unused merely because the fiber is dark, and shall be considered in use if the facilities are connected to other Fiber Optic or Other Cable and Related Facilities owned by LUMOS that are used. Should all of the Fiber Optic or Other Cable and Related

Facilities be determined to be unused, then the City Manager shall, within thirty (30) days thereof, by certified mail, return receipt requested, notify LUMOS of the City's intent to determine if such Fiber Optic or Other Cable and Related Facilities are unused. LUMOS shall then have thirty (30) days to respond to the CITY by demonstrating that such facilities are used. If LUMOS is unable to demonstrate that the Fiber Optic or Other Cable and Related Facilities are used, they shall be deemed Unused Facilities and shall be subject to Section 3(c) below.

## **SECTION 2. GRANT OF FRANCHISE.**

- (a) **Grant of Authority.** Subject to the terms of this AGREEMENT, the CITY hereby grants to FRANCHISEE the non-exclusive right to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove, and replace Fiber Optic or Other Cable and Related Facilities for the provision of telecommunications service in the public streets and public rights-of-way in the City of Columbia. FRANCHISEE shall be solely responsible for obtaining any required consents from State agencies or private parties to the extent that its operations affect State or private property. It is expressly agreed that this AGREEMENT does not give FRANCHISEE the right to occupy any public rights-of-way with permanent aboveground cabinets, pads, and other similar structures, except pursuant to the express approval of the CITY pursuant to the applicable provisions of Chapter 2 of the City Code or any successor ordinance, and that nothing in this Agreement shall be construed as consent by the CITY for FRANCHISEE to provide Cable Service within the City.
- (b) **No Authority to Assign.** FRANCHISEE acknowledges that this grant of authority is for the benefit of FRANCHISEE only, and that FRANCHISEE is not authorized to assign or otherwise allow other providers to use or occupy the public rights-of-way.
- (c) **Certificate of Public Convenience.** Prior to the commencement or continuation of any construction or operation in the corporate limits of the City, the FRANCHISEE shall be duly authorized to do business in South Carolina and shall have received any necessary certificate of public convenience and necessity or other required authority from the South Carolina Public Service Commission and the Federal Communications Commission. Evidence that such authority has been acquired or that it is not required must be filed with the CITY.
- (d) **Future Ordinances.** FRANCHISEE acknowledges that, to the extent allowed by State and Federal law, the CITY has the authority, to adopt ordinances regulating the use of the public rights-of-way, so long as such ordinances apply equally to all certificated providers of telecommunications services and are related to using the

public streets and public rights-of-way in the City. FRANCHISEE agrees to be bound by all such future lawful ordinances so long as it operates telecommunication services or has property or equipment within the public streets or rights-of-way located in the City.

- (e) No Property Interest. This AGREEMENT is not a grant by the CITY of any fee simple or other property interest and is made subject and subordinate to the prior and continuing right of the City of Columbia to use the public streets and public rights-of-way occupied by FRANCHISEE for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water mains, storm drains, gas mains, poles and other equipment for municipal uses and with the right of ingress and egress, along, above, over, across and in said public streets and public rights-of-way.
- (f) Compensation. In consideration of the grant of authority to utilize the streets and public rights-of-way of the CITY for the provision of Telecommunication Services, and in accordance with applicable laws and ordinances, FRANCHISEE shall pay such lawful franchise fees, business license taxes, and administrative fees as are presently permitted by S.C. Code Ann. § 58-9-2220 and S.C. Code Ann. § 58-9-2230 and as may be enacted and imposed by the CITY. The FRANCHISEE shall also pay all such ad valorem taxes, service fees, sales taxes, or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the CITY. Provided, however, that in the event that Article 20 of Chapter 9 of Title 58 of the Code of Laws of South Carolina, as enacted in 1999, or other laws governing franchise fees, business license taxes and/or other fees with respect to Telecommunication Services shall be substantially modified by subsequent legislation or court decision, the provisions herein contained may be brought into conformity with the changes in the applicable law by appropriate amendment to this ordinance. If the limitations on the amount of franchise fees, administrative fees, and business license taxes on providers of Retail Telecommunications Services presently contained in said statute shall be removed or modified, the CITY will be free, by amendment to this ordinance, to impose such fair, reasonable, competitively neutral, and nondiscriminatory fees and taxes as may then be permitted by that statute or by such applicable South Carolina and federal law as may then govern.
- (g) Police Power. Except as specifically provided herein, or otherwise mandated by law, the privilege granted to FRANCHISEE by this ordinance does not exempt or excuse FRANCHISEE from the police power and all other lawfully imposed municipal authority and laws including, but not limited to, those relating to zoning, permitting, traffic control, construction and excavation, planning, aesthetics, and the environment that are in effect on the Effective Date of the AGREEMENT and in the

future. FRANCHISEE is subject to payment of fees of general applicability such as building permit fees and zoning permit fees that are not related to the telecommunications company's occupation of or work within the public right of way.

- (h) Non-Discrimination. FRANCHISEE shall not deny service, deny access, or otherwise discriminate in the availability, rates, terms, or conditions of services provided to residential Subscribers on the basis of race, color, creed, religion, ancestry, national origin, gender, gender identity, sexual orientation, disability, age, familial status, marital status, or status with regard to public assistance. FRANCHISEE shall comply at all times with all applicable law relating to nondiscrimination with respect to the provision of services. FRANCHISEE shall not deny access to service to any group of potential subscribers because of the income of the residents of the local area in which such group resides.
- (i) Service Provision. Following construction and activation of the Telecommunications Facilities in an area, FRANCHISEE shall provide broadband service to each household requesting broadband service located within that area, including each multiple dwelling unit in the area, except for multiple dwelling units or any other private property to which FRANCHISEE cannot obtain legal access on commercially reasonable terms.
- (j) Effective Date. This AGREEMENT shall be in full force and effect from and after the date of its approval by City Council; provided, however, that notwithstanding such approval, this AGREEMENT shall not become effective until all required bonds, certificates of insurance and other instruments required by this Agreement have been filed with, and accepted and approved by the CITY, which acceptance and approval shall not be unreasonably delayed, conditioned, or withheld.

### **SECTION 3. TERM OF AGREEMENT.**

- (a) Initial Term and Renewal. The term of this AGREEMENT shall be for an initial term of twenty (20) years, commencing on the Effective Date ("Initial Term"). Unless either party gives ninety (90) days written notice of its intention to terminate the AGREEMENT prior to the end of the Initial Term, the AGREEMENT shall thereafter automatically renew for one (1) additional ten (10) year term, for a maximum of thirty (30) years; however, such renewal shall not automatically occur if any material, uncured breach has not been remedied and the non-breaching party provides ninety (90) days written notice prior to the end of a Renewal Term. Upon termination of this AGREEMENT as herein provided, and unless the parties are in active good faith negotiation of a replacement agreement or otherwise agree in writing to an

extension, FRANCHISEE shall be prohibited from further access to the public rights-of-way in the City of Columbia.

- (b) Breach Notice. In the event that the CITY determines that FRANCHISEE is in breach of its material obligations or duties under this AGREEMENT, the CITY may give written notice to FRANCHISEE setting forth in reasonable detail the nature of such breach. If FRANCHISEE fails to cure such breach within ninety (90) days from the date of FRANCHISEE'S receipt of such notice, or within such other reasonable time as may be agreed to in writing by the parties, then CITY, at its option, may terminate this AGREEMENT upon giving FRANCHISEE written notice of termination.
- (c) Removal or Abandonment. Upon the termination or expiration of this AGREEMENT, including any renewal period, or if any portion of FRANCHISEE'S facilities are deemed Unused Facilities, FRANCHISEE shall remove its telecommunications facilities, or, if applicable, the Unused Facilities, from the City's public streets and public rights-of-way at its own expense; provided, however, that if directed or authorized by the CITY in writing, FRANCHISEE may abandon some or all of the facilities in place, and such facilities shall become the property of the CITY upon their abandonment. If in the event FRANCHISEE fails to remove its facilities within ninety (90) days after termination or after such facilities are deemed to be Unused Facilities, except facilities abandoned in place at the direction of, or with the consent of the CITY, the CITY may cause such facilities to be removed, without further notice, and charge the cost for removal to FRANCHISEE, which shall pay such costs within thirty (30) days of the demand to do so. The CITY may collect such costs, expenses and attorney's fees as debts owed to the CITY by bringing action in any court of competent jurisdiction to enforce this section 3(c). The CITY shall also have a lien on the property of FRANCHISEE in an amount equal to all such costs, expenses, and legal fees associated with collection efforts.

#### **SECTION 4. CONSTRUCTION; LOCATION OR RELOCATION OF FACILITIES.**

All of FRANCHISEE'S facilities shall be constructed, installed, and located according to the terms and conditions contained herein, unless otherwise specified by the CITY.

- (a) Underground Installation. Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a particular segment of a street or public right-of-way of the City, FRANCHISEE shall also install its telecommunications facilities underground. Whenever existing overhead electric utilities, cable facilities or telecommunications facilities are



relocated underground within a particular segment of a street or public right-of-way of the City, FRANCHISEE shall relocate its facilities underground within a reasonable amount of time after notification by the CITY that such facilities must be relocated. Absent extraordinary circumstances or undue hardship as reasonably determined by the CITY, such relocation shall be made concurrently to minimize the disruption of the public streets or public rights-of-way.

- (b) No Interference. The facilities of FRANCHISEE shall be located so as not to interfere with public safety or, to the extent possible, with the convenience of persons using the public streets or rights-of-way. FRANCHISEE shall construct, maintain, and locate its telecommunications system so as not to interfere with the construction, location and maintenance of sewer, water, drainage, electrical, signal, and fiber optic facilities of the CITY. In the performance and exercise of its rights and obligations under this AGREEMENT, FRANCHISEE shall not interfere in any manner with the existence and operation of any public street and public or private right-of-way, sanitary sewer, water line, storm drain gas main, pole, overhead or underground electric and telephone wires, television cables, public works, facilities of other telecommunication providers, or City Property, without the prior approval of the CITY. Nothing in this AGREEMENT shall be construed to abrogate or limit the right of the CITY to perform any public works or public improvements.
- (c) Remedy for Interference. If any facilities of FRANCHISEE interfere with the construction, operation, maintenance, repair or removal of such public works or public improvements, within ninety (90) days after written notice by the CITY (or such other period of time set forth in Section 4(b) or as may be agreed upon in writing by the CITY and FRANCHISEE), FRANCHISEE shall, at its own expense protect, alter, remove or relocate facilities, as directed by the City Manager or City Engineer. If FRANCHISEE fails to so protect, alter, remove, or relocate equipment within such period, the CITY may break through, remove, alter, or relocate the facilities of FRANCHISEE without any liability to CITY, and FRANCHISEE shall pay to the CITY the costs incurred in connection with such breaking through, removal, alteration, or relocation. FRANCHISEE shall also reimburse the CITY for or bear any additional cost actually incurred by the CITY as a result of FRANCHISEE's failure to comply with the CITY'S request to protect, alter or remove equipment under this Agreement. The CITY may collect such costs, and any reasonable expenses and attorney fees incurred in collecting such costs, as debts owed to the CITY, by bringing action in any court of competent jurisdiction or exercising the CITY'S rights to draw on bonds or in any other lawful manner, individually or in combination.
- (d) Emergency Response. The CITY retains the right and privilege to cut or move any telecommunications 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 provide prior notice to FRANCHISEE of such emergencies which may impact its telecommunications facilities. If CITY is unable to provide prior notice of the life-threatening emergency as described above, CITY shall be required to notify FRANCHISEE within twenty-four (24) hours of the occurrence of such emergency.

- (e) Right to Designate Location of Telecommunication Facilities. The CITY shall have the right to specifically designate the location of the facilities of FRANCHISEE with reference to sewer and water mains, drainage facilities, fiber optic cable, signal poles and lines and similar services, other facilities, such as public telephone utilities, public electric utilities, cable television facilities, and railway, communication, and power lines, in such a manner as to protect the public safety and public and private property. Failure by the CITY to designate the location of FRANCHISEE's facilities shall not relieve FRANCHISEE of its responsibilities in matters of public safety, as provided in this AGREEMENT.
- (f) Relocation of Telecommunications Facilities. Except in the cases of emergencies, FRANCHISEE shall not move, alter, change, or extend any of its telecommunications system in any public street or public right-of-way unless prior written notice of its intention to do so is given to the City Manager and permission in writing to do so is granted, or such requirement is waived, by the City Manager. The City Manager shall either approve or deny FRANCHISEE's request to relocate its facilities within fifteen (15) days of receipt of FRANCHISEE's request. Such permission shall not be unreasonably withheld by the City Manager and shall be conditioned upon compliance with the terms and conditions of this Agreement, with such other terms and conditions as will preserve, protect and promote the safety of the public using the public ways, and as will prevent undue interference with or obstruction of the use of the public ways by the public, the City or by any other public utility, public service corporation or cable operator for their respective purposes and functions. Such work by FRANCHISEE shall also be coordinated with the CITY'S annual paving program through the Office of the City Engineer.
- (g) Extent and Duration of Excavation, Disturbance or Obstruction. FRANCHISEE shall not open, disturb or obstruct, at any time, any more of the public streets or public rights-of-way than is reasonably necessary to enable it to proceed in laying or repairing its telecommunications system. FRANCHISEE shall not permit any public street or public right-of-way so opened, disturbed, or obstructed by it to remain open, disturbed, or obstructed for a longer period of time than shall

be reasonably necessary. In all cases where any public street or public right-of-way is excavated, disturbed, or obstructed by FRANCHISEE, FRANCHISEE 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. All traffic control measures shall comply with SCDOT standards regardless of street ownership. FRANCHISEE shall place the following along the proposed construction route: (1) large folding signs informing the community that construction is about to begin, (2) door hangers in specific areas of higher impact in FRANCHISEE's sole discretion two to three weeks before starting construction, and (3) small yard signs one to two weeks prior to passing houses and businesses. FRANCHISEE shall also send the CITY and County a list each morning that provides locations at which FRANCHISEE's contractors will be working that day. FRANCHISEE shall make adjustments in schedule to have minimum impact upon business operations, which may include work conducted after business hours. FRANCHISEE shall take pre-construction and post-construction photographs and videos along the construction route and submit to the CITY. Post-construction photographs and videos shall be submitted to the CITY after restoration of the construction route along with as-built drawings.

- (h) Restoration of Property. After the installation, removal, relocation, construction, or maintenance of the Fiber Optic or Other Cable and Related Facilities is completed, FRANCHISEE shall, at its own cost, repair and return the public streets, public rights-of-way, and any damaged property, to a minimum of the same or similar condition existing before such installation, removal, relocation, construction, or maintenance, in a manner that meets all SCDOT standards, and as may be reasonably specified by the CITY and to the reasonable satisfaction of the CITY. FRANCHISEE shall be responsible for damage to City street pavements, existing utilities, curbs, gutters, and sidewalks due to FRANCHISEE's installation, construction, maintenance, repair, or removal of its telecommunications facilities in the public streets, public rights-of-way, and shall repair, replace, and restore in kind, the said damaged property at its sole expense. Upon failure of FRANCHISEE to repair, replace and restore said damaged property, in a manner as may be reasonably specified by the CITY and to the reasonable satisfaction of the CITY, after thirty (30) days' notice in writing shall have been given by the CITY, the CITY may cause such necessary repairs to be made and may collect the costs incurred from FRANCHISEE, including but not limited to, exercising the CITY'S rights to draw on bonds. The CITY may collect such costs, and any expenses and attorney fees incurred in collecting such costs,

as debts owed to the CITY, by bringing an action in any court of competent jurisdiction or in any manner allowed by law.

Promptly after installation, repair or extension of the telecommunications system or any portion thereof or any pavement cut by FRANCHISEE in any public way of the City, the incidental trenches or excavations shall be refilled by FRANCHISEE in a manner acceptable to the City Manager. 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 FRANCHISEE at its own expense; however, where it is necessary, and if authorized by the CITY, in order to achieve the former conditions, FRANCHISEE shall use materials whose type, specification and quantities exceed or are different from those used in the installation, then FRANCHISEE at its own expense shall provide such different materials. Involving street cuts, FRANCHISEE shall remove excavated soil from the site and backfill the trench with flowable fill. Where a cut or disturbance is made in a section of sidewalk or paving, rather than replacing only the area actually cut, FRANCHISEE shall replace the full width of the existing sidewalk or appropriate sections of paving as determined by the City Engineer 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 City Engineer. FRANCHISEE shall protect poured concrete from weather, cracking, and public vandalism until the concrete has hardened. FRANCHISEE shall maintain, repair, and keep in good condition for a period of one (1) year following such disturbance all portions of public ways disturbed by FRANCHISEE, provided such maintenance and repair shall be necessary because of defective workmanship or materials supplied by FRANCHISEE.

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 work. All restoration work within the public ways or other areas shall be done in accordance with landscape plans approved by the CITY. FRANCHISEE shall be responsible for the protection of all Sprinkler Systems within the construction zone and shall take whatever actions necessary to assure system works as good or better after construction. If sod was removed during construction, FRANCHISEE shall replace the damaged area with sod. Seeding in such areas will only be considered temporary. In areas of sparse grass, seeding of the same type of grass is acceptable. Seeded areas must be protected from erosion and seed shall be properly covered. No bore holes shall be made within the drip line

of any tree larger than 12" in diameter without written permission from the tree's owner or the CITY.

- (i) Emergency Repair. In the event of an unexpected repair or emergency, FRANCHISEE shall commence such repair and emergency response work as required under the circumstances, provided FRANCHISEE 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. Such notice shall include the subcontractor's business name along with the name of the crew leader who shall be available and responsive to telephone calls from the CITY at any and all hours of the day or night, and a telephone number for this crew leader.
- (j) Proper Maintenance. FRANCHISEE shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements, laws, ordinances, and regulations.
- (k) Standard of Care. FRANCHISEE 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.
- (l) Permits. FRANCHISEE and its subcontractors shall obtain all required permits from the CITY and any other governmental entity having jurisdiction prior to commencing work of any nature and shall comply with all terms and conditions of any such permit. FRANCHISEE shall furnish detailed plans of the work along with the name of the FRANCHISEE'S project manager who shall be available and responsive to telephone calls from the CITY at any and all hours of the day or night, and a telephone number for this project manager, and other required information. FRANCHISEE shall comply with all applicable ordinances and permitting requirements.

A single permit may be issued for multiple excavations to be made in public streets and rights-of-way. 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 a public street or public right-of-way without a permit, FRANCHISEE shall make a report of each such excavation to the CITY within two (2) working days. Any permit application and inspection related to repair of excavations shall be promptly acted upon by the CITY so as not to unreasonably delay FRANCHISEE in efficiently discharging its public service obligation and in any event shall be granted or denied within

thirty (30) days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

- (m) Prompt Restoration or Removal; Remedy. FRANCHISEE shall promptly remove or correct any obstruction, damage, or defect in any public street or public right-of-way caused by FRANCHISEE in the installation, operation, maintenance, or extension of FRANCHISEE'S telecommunications system. Any such obstruction, damage, or defect which is not promptly removed, repaired, or corrected by FRANCHISEE after thirty (30) days' notice to do so, given by the CITY to FRANCHISEE, may be removed or corrected by the CITY, and the cost thereof shall be charged against FRANCHISEE and payable on demand. Any expense, cost, or damages incurred for repair, relocation, or replacement to City water, sanitary sewer, storm sewer, storm drainage, telecommunication facilities or other property resulting from construction or maintenance of FRANCHISEE telecommunications system shall be borne by FRANCHISEE and any and all expense and cost incurred in connection therewith by the City shall be fully reimbursed by FRANCHISEE to the CITY.

If weather or other conditions do not permit the complete restoration required by this Section, FRANCHISEE shall temporarily restore the affected property. Such temporary restoration shall be at FRANCHISEE's sole expense and FRANCHISEE shall only be required to make reasonable, temporary restorations based on the conditions. FRANCHISEE shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

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

- (n) No Liability; Exception. Except in the case of the CITY'S negligence or intentional or willful misconduct, the CITY, its officers, agents, or employees shall not be liable to FRANCHISEE for any damage to or loss of any of FRANCHISEE's telecommunications services or telecommunications facilities within the public ways or any other areas of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work or activity or lack of any activity of any kind by or on behalf of the CITY. Nothing in this subsection

shall be construed as any waiver of any protections and limitations of liability that the CITY enjoys under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.*

- (o) Coordination of Construction Activities. FRANCHISEE shall cooperate with the CITY in coordinating its construction activities as follows:
  - (i) FRANCHISEE shall provide the CITY with a schedule of its proposed construction activities prior to commencing any expansion of its backbone system;
  - (ii) Upon request, FRANCHISEE shall meet with the CITY and other users of the public ways to coordinate construction in the public ways; and
  - (iii) All construction locations, activities and schedules shall be coordinated, as directed by the City Engineer, to minimize public inconvenience, disruption, or damages. FRANCHISEE shall submit a written construction schedule to the City Engineer at least ten (10) working days before commencing any work in or about the public streets or public rights-of-way, along with the name and telephone number of the FRANCHISEE'S project manager and of the crew leader of FRANCHISEE'S subcontractor. If there are any businesses along the construction route, FRANCHISEE shall meet with any business along the construction route, where equipment or construction has the ability to impede or alter traffic flow in or near the business. FRANCHISEE shall further notify the City Engineer not less than five (5) working days in advance of such excavation or work and shall comply with the provisions of the South Carolina Underground Facility Damage Prevention Act, South Carolina Title 58, Chapter 36.

## **SECTION 5. MINIMUM INTERNET SPEED SERVICE PRODUCT OFFERING.**

FRANCHISEE shall offer, at a minimum, one internet service product of one (1) gigabit per second (Gbps) symmetrical upload and download speeds to each location passed. Franchisee may also offer other speed tiers of broadband services.

## **SECTION 6. MAPPING.**

- (a) Drawings and Maps. FRANCHISEE shall maintain an accurate map of its telecommunications facilities in the City. FRANCHISEE shall provide the CITY with "as built" drawings and an accurate map or maps showing the location of its

facilities, including pole lines and Conduit lines and any other facilities requested by the City, to include a digitized map(s) in both printed and electronic form. FRANCHISEE'S "as-built" drawings and maps shall show the depths of Conduits with distances shown from permanent structures every 200 feet. All boxes shall be located by measurements from permanent structures. FRANCHISEE shall, upon request, provide updated maps annually of telecommunications facilities in the City.

- (b) Procedure and Format. As for new installations, after the effective date of this franchise, FRANCHISEE shall submit the proposed mapping of its plans for new construction to the CITY prior to any construction. As-built drawings of any new construction of facilities shall be furnished to the CITY within sixty (60) days of completion of such construction. All as-built maps and drawings shall be drawn to scale and reference to a physical City benchmark to the extent the physical benchmark is in reasonable proximity to FRANCHISEE new installation. All mapping shall be provided in a format compatible to the City's present and future mapping systems. Alternatively, FRANCHISEE will pay for the cost of making the mapping compatible.
- (c) Certain Locations Excluded. Prior to its installation of any Telecommunications facilities in the public streets or public rights-of-way and after FRANCHISEE provides the CITY with its proposed plans for the Telecommunications facilities, the CITY may in its reasonable discretion designate certain locations to be excluded from use by FRANCHISEE for its Telecommunications facilities, including, but not limited to, ornamental or similar specially designed streets lights or other facilities or locations which, in the reasonable judgment of the City Engineer, do not have electrical service adequate for or appropriate for FRANCHISEE's facilities or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the City Engineer is incompatible with the proposed Telecommunications facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other facilities that have been designated or planned for other use or are not otherwise proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with reasonable requirements of FRANCHISEE, the CITY will cooperate in good faith with FRANCHISEE to attempt to find suitable alternatives, if available, provided that the CITY shall not be required to incur financial costs nor require the CITY to acquire new locations for FRANCHISEE. FRANCHISEE shall, prior to any excavation or installation within the public streets or public rights-of-way, provide sufficient notification and joint installation opportunity on a shared cost basis to potential users of the public streets or public rights-of-way as may be provided for by a separate City policy. Such notification and adopted policies shall be designed to maximize co-location of providers to minimize



the disturbance to the public streets or public rights-of-way and maximize its useable capacity.

## **SECTION 7. INSURANCE REQUIREMENTS.**

At all times during the term of this AGREEMENT and any renewal period, FRANCHISEE shall, at its expense, maintain the following insurance policies. Any required insurance shall be in a form and with an insurance company authorized to do business in South Carolina and have a rating of no less than A- VII by A.M. Best Co.

- (a) Commercial General Liability. 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 limit of liability for such coverage shall be Two Million Dollars (\$2,000,000) combined single limit for any one occurrence. However, the parties acknowledge that FRANCHISEE may meet the policy limit in this section by combination of FRANCHISEE's General Commercial Liability Policy and FRANCHISEE's Umbrella or Excess Liability Policy.
- (b) Contractual Liability. Broad form Contractual Liability insurance, including the indemnification obligations of FRANCHISEE set forth in this Agreement.
- (c) Workers' Compensation. Workers' Compensation insurance covering FRANCHISEE's statutory obligation under the laws of South Carolina and Employer's Liability insurance for all its employees engaged in work under this Agreement.
- (d) Automobile Liability. Automobile Liability insurance having minimum limits of liability of One Million Dollars (\$1,000,000) combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Agreement.
- (e) Pollution Liability Insurance. FRANCHISEE shall maintain during the life of this Agreement Pollution Liability Insurance in the amount of One Million Dollars (\$1,000,000) for each occurrence. Coverage shall be provided for bodily injury and property damage resulting from pollutants which are discharged suddenly and accidentally. Such insurance shall also provide coverage for cleanup costs.
- (f) Umbrella Coverage. The insurance coverages and amounts set forth in this Section may be met by an umbrella liability policy following the form of the underlying

primary coverage in a minimum amount of Five Million Dollars (\$5,000,000).

- (g) Certificates of Insurance. Prior to commencing construction pursuant to this Agreement or within ten (10) days after the granting of the franchise contemplated by this Agreement, whichever is sooner, FRANCHISEE shall provide the CITY with a memorandum certificate or certificates of insurance, showing the type, amount, effective dates, and date of expiration of the policies, and thereafter prior to the expiration of any such policy or change in the amount or conditions, of coverage. Such certificate or certificates and evidence of insurance shall include the CITY, its officers, agents, and employees as additional insureds. FRANCHISEE shall obtain a written obligation on the part of each insurance company to notify FRANCHISEE at least thirty (30) days before cancellation or a material change of any such insurance. Upon receipt of such notice from FRANCHISEE's insurance company, FRANCHISEE will immediately notify the CITY of any of the required coverages that are not replaced.

#### **SECTION 8. SURETY.**

- (a) Irrevocable Bond. Within ten (10) days after the Effective Date of this AGREEMENT, and prior to the commencement of any construction by FRANCHISEE, FRANCHISEE shall furnish and file with the CITY an irrevocable bond, in a form and by a surety authorized to do business in South Carolina, in the amount of Seventy-Five Thousand Dollars (\$75,000) securing its faithful performance of the terms and conditions of this AGREEMENT. FRANCHISEE shall maintain such bond for the duration of this AGREEMENT, unless otherwise agreed to in writing by the CITY. Failure to maintain the bond shall be deemed a material default by FRANCHISEE of this AGREEMENT.

The bond shall guarantee FRANCHISEE's faithful performance of the terms and conditions of this AGREEMENT, including, but not limited to: (1) the timely completion of construction; (2) compliance with applicable plans, permits, technical codes and standards; (3) proper location of the facilities as specified by the City; (4) restoration of the public ways and other property affected by the construction as required by this AGREEMENT; (5) the submission of "as-built" drawings after completion of the work as required by this Agreement; (6) timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work; and (7) the payment by FRANCHISEE of all lawful liens, taxes, damages, claims, costs or expenses which the CITY has been compelled to pay or has incurred by reason of any act or default of FRANCHISEE under this AGREEMENT and all other payments due the CITY from FRANCHISEE pursuant to this AGREEMENT.

- (b) Demand Upon Bond. Whenever the CITY determines that FRANCHISEE has violated one (1) or more terms, conditions, or provisions of this Agreement for which relief is available against the bond, a written notice shall be given to FRANCHISEE. The written notice shall describe in reasonable detail the violation so as to afford FRANCHISEE an opportunity to remedy the violation. FRANCHISEE shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the CITY may make demand upon the bond. Failure to maintain the bond shall be a martial default under this Agreement.
- (c) Nonexclusive Remedy. Such bond shall be in addition to any performance, defect bond, or other surety required by the CITY in connection with the issuance of any construction or any successor ordinance.

#### **SECTION 9. INDEMNIFICATION; LIMITATION OF LIABILITY.**

FRANCHISEE agrees to indemnify, defend and hold harmless the CITY, its officers, employees and agents from and against all third-party claims, demands, losses, damages, liabilities, fines, and penalties, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the losses), arising out of any breach by FRANCHISEE of the terms and conditions of this Agreement. In addition, FRANCHISEE shall indemnify, defend and hold harmless the CITY, its officers, agents, and employees, from any and all third-party demands for fees, claims, suits, actions, causes of action, or judgments arising out of FRANCHISEE'S use of the CITY'S public rights-of-way and public places, including but not limited to, all tort and premises liability claims.

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT.

#### **SECTION 10. HAZARDOUS SUBSTANCES.**

In its performance of this AGREEMENT, FRANCHISEE 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 FRANCHISEE 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. FRANCHISEE shall indemnify and hold the CITY, its officers, agents, employees, and volunteers harmless from all costs, claims, damages, causes of action, liabilities, fines, or penalties, including reasonable attorney's

fees, resulting from FRANCHISEE's violation of this section and agrees to reimburse CITY for all costs and expenses incurred by the CITY in eliminating or remedying such violations. FRANCHISEE also agrees to reimburse the CITY and hold the CITY, its officers, agents, employees, and volunteers harmless from any and all costs, expenses, attorney's fees and all penalties or civil judgments obtained against any of them as a result of FRANCHISEE's use or release of any hazardous substance or waste onto the ground, or into the water or air from, near or upon the CITY'S premises. For purposes of this Section, the following definitions shall apply:

"Hazardous Substances" means asbestos and any and all pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials and hazardous substances as referenced or defined in, or pursuant to, any federal, state, local or other applicable environmental law, statute, ordinance, rule, order, regulation or standard in effect on the date hereof including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C § 6901, *et seq.*), as amended, the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136, *et seq.*), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, *et seq.*), as amended, and the Toxic Substances Control Act (15 U.S.C. § 2601, *et seq.*), as amended.

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

#### **SECTION 11. PUBLIC BENEFITS.**

- (a) Public WiFi Service. FRANCHISEE shall offer free, high speed, state-of-the-art, fiber-fed WiFi service in those City parks and recreation centers as mutually agreed between FRANCHISEE and CITY. Such service shall be accessible to City residents and visitors, subject to FRANCHISEE'S terms of service and acceptable use policy (which shall be subject to City review). FRANCHISEE shall provide CITY with an updated copy of FRANCHISEE'S terms of service and acceptable use policy whenever there are changes. WiFi service will be installed and available no later than six (6) months after the Telecommunications Facilities passes the mutually agreed park or community center and will continue throughout the term of this AGREEMENT.
- (b) Areas in Need. FRANCHISEE shall use its best efforts to build out its Telecommunications Facilities to areas mutually agreed upon by the FRANCHISEE and CITY that are identified by the South Carolina State Broadband Office as areas with unserved housing units within the corporate limits of the CITY.
- (c) Affordable Housing Units. Within the first year of this Franchise, the CITY and

FRANCHISEE shall mutually agree upon a list of Eligible Properties to which FRANCHISEE shall build its Telecommunications Facilities for service. The Eligible Properties will comprise no more than five percent (5%) of the residential housing units existing in the CITY as of the Effective Date, and may include (1) some or all housing units owned or operated by the Columbia Housing Authority; (2) some or all affordable housing units where a certificate of occupancy was granted prior to the Effective Date of this AGREEMENT; and (3) some or all affordable housing units where a certificate of occupancy is granted subsequent to the Effective Date of this AGREEMENT. Franchisee and CITY may add to or subtract from the list of Eligible Properties by mutual agreement. In the event FRANCHISEE is unable to enter into access agreements or otherwise obtain permission to access, install, maintain, repair, replace, and upgrade its Telecommunications Facilities, inside wiring, and customer premises equipment on commercially reasonable terms with the manager or owner of an Eligible Property, such Eligible Property will be deemed no longer to be an Eligible Property and the FRANCHISEE and the CITY will cooperate to identify, if possible, alternative Eligible Properties that FRANCHISEE can serve.

- (d) Grants, Subsidies or Other Programs. CITY and FRANCHISEE shall reasonably cooperate to identify and apply for any federal or state grant programs, subsidies or other programs to offset the cost of construction or provision of internet services to areas of need or Eligible Properties as contemplated in subsections (b) and (c) above.
- (e) Local Presence. FRANCHISEE shall give preference to hiring individuals as employees or independent contractors who reside within the City. Where feasible, FRANCHISEE will procure goods and services from individuals and businesses located in the City.
- (f) Public Benefits Program Not Franchise Fees. FRANCHISEE agrees that the requirements of this Section shall in no way modify or otherwise affect FRANCHISEE'S obligations to pay a franchise fee or any other fees or taxes owed to CITY.

## **SECTION 12. GENERAL PROVISIONS.**

- (a) Authority. FRANCHISEE 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 telecommunications facilities and services it intends to provide within the City, and upon request by the CITY will provide evidence of such authority.
- (b) Other Remedies. Nothing in this AGREEMENT shall be construed as waiving or

limiting any rights or remedies that the CITY or FRANCHISEE may have, at law or in equity, for enforcement of this AGREEMENT.

- (c) **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.
- (d) **Non-Enforcement.** Neither party shall be excused from complying with any of the provisions of this Agreement by any failure of the other party, upon any one or more occasions, to insist upon strict performance of this Agreement or to seek the other party's compliance with any one or more of such terms or conditions of this Agreement.
- (e) **Conflicts of law.** If there is a conflict between the provisions of this AGREEMENT and any law, whether federal, state, or City, including all future laws and ordinances, the law and conflicting AGREEMENT provision will, to the extent reasonably possible, be construed so as to be consistent with each other and if such construction is not reasonably possible, the conflicting provision of this AGREEMENT shall be deemed superseded by such law and have no effect, notwithstanding the contract clause of the United States Constitution.
- (f) **Controlling law and venue.** By virtue of entering into this AGREEMENT, FRANCHISEE agrees and submits itself to a court of competent jurisdiction in the Fifth Judicial Circuit, Court of Common Pleas in the State of South Carolina, or in the United States District Court for the District of South Carolina, and further agrees that this AGREEMENT is controlled by the laws of South Carolina 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 South Carolina or any applicable federal laws or by any regulatory body with jurisdiction, including the Federal Communications Commission.
- (g) **Captions.** The section and subsection 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.
- (h) **Confidentiality.** The Parties agree that proprietary, trade secret and/or confidential information ("Confidential Information") is defined as: information in written, electronic or other tangible form that is: 1) clearly marked or labeled by FRANCHISEE to be "Proprietary" or "Confidential" or words of similar import; and 2) meets the definition of "trade secret" within S.C. Code Ann. § 30-4-40(a)(1). The labeling of any document as "Proprietary" or

"Confidential" or similar wordage is the sole responsibility of the FRANCHISEE. Unless required by law, Confidential Information submitted to the City by FRANCHISEE will not be disclosed, directly or indirectly, under any circumstances or by any means, to any third party. It is understood and agreed that this AGREEMENT is a public record as defined in S.C. Code Ann. § 30-4-20(c) and not a trade secret.

Information shall not constitute Confidential Information if it: (i) is or becomes publicly available through no fault or breach of this Agreement by either of the parties; (ii) was in the CITY's possession or was known to the CITY, without an obligation to keep it confidential, before such information was disclosed to the CITY by FRANCHISEE; (iii) is lawfully obtained from third parties without breaching any provision of any non-disclosure agreement; (iv) is previously known or developed by the CITY independently of the FRANCHISEE; or (v) must be disclosed pursuant to or as required by law, provided that the City provide adequate notice to FRANCHISEE prior to disclosure in order to enable FRANCHISEE the opportunity to seek a hearing or other relief.

- (i) Equal Opportunity Employer. During the performance of this AGREEMENT, FRANCHISEE agrees that it will not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, handicap, or national origin. FRANCHISEE agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. FRANCHISEE, in all solicitations or advertisements for employees placed by or on behalf of FRANCHISEE, will state that FRANCHISEE is an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements herein.
  
- (j) Notices. Notices given pursuant to this AGREEMENT shall be in writing and addressed as follows:

To the City:                      City Manager  
   1737 Main Street  
   Columbia, South Carolina 29201

With a Copy to:                City Attorney  
   Post Office Box 667  
   Columbia, South Carolina 29202

To FRANCHISEE:                Chief Network Officer  
   One Lumos Plaza  
   Waynesboro, Virginia 22980

With a Copy to: General Counsel  
4100 Mendenhall Oaks Parkway  
Suite 300  
High Point, North Carolina 27265

Either party may change the address at which it will receive notices by providing written notice of the change to the other party.

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

**LUMOS FIBER OF SOUTH CAROLINA, LLC**

A limited liability company

By: David Smith

Name: David Smith

Title: Chief Network Officer

State of Virginia  
City/County of Waynesboro

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of July, 2023, by David Smith, on behalf of Lumos Fiber of South Carolina LLC, a South Carolina company.

Breanna Elaine Grandstaff  
Notary Public

My commission expires: September 30, 2025  
My registration number: 7688294

BREANNA ELAINE GRANDSTAFF  
NOTARY PUBLIC  
REG. #7688294  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES SEPTEMBER 30, 2025



APPROVED AS TO FORM

*[Signature]*

Legal Department City of Columbia, SC

05/05/2023

CITY OF COLUMBIA

a South Carolina municipal corporation

*[Signature]*

Teresa Wilson

City Manager, City of Columbia

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2023, by Daniel J. Rickenmann on behalf of the City of Columbia.

*[Signature]*

Notary Public

Notary Public for the State of South Carolina

My commission expires: August 17, 2030

Approved as to Legal Form:

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