

**BROADBAND FRANCHISE AGREEMENT**

THIS BROADBAND FRANCHISE AGREEMENT (the “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”), by and between the City of Alexandria, Virginia, a municipal corporation and a political subdivision of the Commonwealth of Virginia (“City”), and Lumos Telephone, Inc. (“Lumos”), a Delaware Limited Liability Corporation (“Franchisee”).

**RECITALS**

A. City is responsible for management of the Public Rights-of-Way (as hereinafter defined) and performs a wide range of vital tasks necessary to preserve the physical integrity of Public Rights-of-Way, to control the orderly flow of vehicles, to promote the safe movement of vehicles and pedestrians, and to manage the extensive gas, water, sewer, electric, cable television, telephone, telecommunications, and other facilities that are located in the Public Rights-of-Way.

B. City has the authority to grant franchises authorizing the occupancy of the Public Rights-of-Way, to obtain fair and reasonable compensation for the use of public property, and to regulate the activities of occupants of the Public Rights-of-Way to provide for the safe, orderly, and efficient use of the Public Rights-of-Way, which includes the authority to regulate the time, location, and manner of attachment, installation, operation, and maintenance of Facilities (as hereinafter defined) located in the Public Rights of-Way, subject to Applicable Law (as hereinafter defined).

C. Franchisee desires to install, maintain, operate, and control an FTTP Network (as hereinafter defined) in Public Rights-of-Way for the purpose of offering broadband Internet access service to its customers.

D. Subject to Applicable Law, Franchisee is willing to compensate City for use and occupancy of the Public Rights-of-Way for the installation of Franchisee’s Facilities.

E. City is willing to permit Franchisee to enter and occupy the Public Rights-of-Way upon the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein and for other of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE 1 DEFINITIONS

**1.1. Definitions.** The following terms, as used in this Agreement, have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

(a) “Additional Surety” has the meaning set forth in Section 11.2 of this Agreement.

(b) “Affiliate” means any legal entity directly or indirectly controlling, controlled by, or under common control with Franchisee.

(c) “Agreement” has the meaning set forth in the preamble.

(d) “Applicable Law” means any or all federal, state, or municipal statutes, ordinances, rules, regulations, standards, and other laws, including City laws and federal, state and local final, non-appealable judicial and administrative decisions, that are now existing or hereafter adopted or amended from time to time, which apply to Franchisee’s services or other matters covered by this Agreement.

(e) “Arterial Rights-of-Way” has the meaning set forth in Section 5.10 of this Agreement.

(f) “Broadband Services” means the offering of broadband Internet access services to customers.

(g) “City” has the meaning set forth in the preamble.

(h) “City Code” means the Code of the City of Alexandria, 1981, as amended, and as it may be amended from time to time.

(i) “City Council” means the city council of the City of Alexandria.

(j) “Code of Virginia” means the 1950 Code of Virginia, as amended, and as it may be amended from time to time.

(k) “Communications System” means the Facilities (including the FTTP Network), real property (including interests in real property), and all other tangible personal property of Franchisee located in, on, over, or under the Public Rights-of-Way, and related intangible property of Franchisee associated with the Facilities and the FTTP Network.

(l) “Director” means any director of City’s Department of Transportation and Environmental Services, or the Director’s designee.

(m) “Effective Date” has the meaning set forth in the preamble.

(n) “Emergency” means a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential services.

(o) “Extended Term” has the meaning set forth in Section 2.4 of this Agreement.

(p) “Facilities” means the tangible components of the Communications Systems and the FTTP Network, including without limitation all cables, optical fiber, poles, wires, customer service connections, electrical conductors, conduits, ducts, manholes, fixtures, appliances, and appurtenances that are placed or maintained by Franchisee within the Public Rights-of-Way and used for purposes permitted by this Agreement.

(q) “FTTP Construction Surety” has the meaning set forth in Section 5.5 of this Agreement.

(r) “FTTP Network” means a fiber-to-the-premises network to be constructed by Franchisee, capable of providing high-speed broadband Internet access service.

(s) “Franchise” means the authorization to occupy and use the Public Rights-of-Way granted by this Agreement.

(t) “Franchise Fee” has the meaning set forth in Section 3.1 of this Agreement.

(u) “Franchisee” has the meaning set forth in the preamble of this Agreement.

(v) “General Surety” has the meaning set forth in Section 11.1 of this Agreement.

(w) “Gross Broadband Revenues” means any and all consideration of any kind or nature, including cash, credits, property, and in-kind contributions (services or goods) arising from or attributable to Franchisee’s provision of Broadband Services over the FTTP Network within City to Subscribers (including fees attributable to Broadband Service when sold individually or as part of a package or bundle, with services other than Broadband Services), without regard to the billing address of the Subscriber. The term “Gross Broadband Revenues” shall not include the following:

(i) Any revenue not actually received, even if billed, provided that uncollectible fees written off as bad debt which are subsequently collected shall be included in gross revenues in the period collected;

(ii) Refunds, rebates, credits or discounts to Subscribers or City to the extent not already offset by (i) immediately above and to the extent such refund, rebate, credit, or discount is attributable to Broadband Service;

(iii) Any revenues received by Franchisee or its Affiliates from the provision of services other than Broadband Service;

(iv) Any revenues received by Franchisee or its Affiliates for the provision of Internet advertising, including banner advertisement and electronic publishing;

(v) Any amounts attributable to the provision of any service to customers at no charge, including the provision of such service to public institutions without charge;

(vi) Any tax of general applicability imposed on the customer or the transaction (but not on Franchisee) by a federal, state, or local government or any other governmental entity, collected by Franchisee, and required to be remitted to the taxing entity, including, to the extent applicable to Broadband Services, sales and use taxes, and utility user taxes (the Franchise Fee imposed herein is not such a tax);

(vii) Any forgone revenue from the provision of service at no charge to any Person, except that any forgone revenue exchanged for trades, barter, services, or other items of value shall be included in gross revenue;

(viii) Sale of capital assets or surplus equipment;

(ix) The sale of Broadband Service for resale to the extent the purchaser thereof certifies to Franchisee in writing that it will resell the Service and pay a fee to City with respect thereto; and

(x) Any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Broadband Services.

(x) “Initial Term” has the meaning set forth in Section 2.3 of this Agreement.

(y) “Like-for-Like” means the installation or relocation of Facilities in a like or similar manner of construction when compared to previously installed Facilities. For example, placement of Facilities underground, in locations where existing Facilities are constructed underground, are “Like-for-Like”; in the case of underground Facilities, conduit installations are to be replaced by conduit, and direct burial installations (where permitted) are to be replaced by direct burial.

(z) “Person” means an individual, corporation, limited liability company, partnership, association, trust or any other entity or organization, including a governmental or political subdivision, including City, or an agency or instrumentality thereof.

(aa) “Proprietary Information” has the meaning set forth in Section 8.3 of this Agreement.

(bb) “Public Rights-of-Way” means space in, upon, above, along, across, over, and below the public streets, roads, lanes, courts, ways, alleys, and boulevards, including all public street easements, and other City-owned property that is used as a public right-of-way, as the same now exist or may hereafter be established, that are under the legal jurisdiction and physical control of City. The term “Public Rights-of-Way” excludes all City parks, private property, and private easements.

(cc) “Street Improvement” means the erection, construction, reconstruction, repair, upgrade, replacement, installation, maintenance, removal, widening, or related work performed in connection with streets, sidewalks, alleys, avenues, lanes, boulevards, or roads.

(dd) “Structures” includes buildings, signs, fences, tanks, poles, lines, fixtures, facilities, and any other tangible property or appurtenances owned or maintained by City.

(ee) “Subscriber” means any Person who is lawfully receiving Broadband Services provided by Franchisee within the territorial limits of Alexandria, Virginia.

(ff) “Term” has the meaning set forth in Section 2.3 of this Agreement.

(gg) “Transfer” means any transaction in which: (1) there is any change, acquisition, or transfer of Control of Franchisee; or (2) the Franchise or any of the rights and/or obligations held by Franchisee under the Franchise are transferred to another Person. “Control” for purposes of this subsection means (i) ownership of more than 50% of the outstanding voting stock of a corporation or the voting equity interests of any other form of entity or (ii) the possession of the power to direct or cause the direction of the management of Franchisee, whether by contractual agreement, ownership of shares or other equity, or by statute.

## **ARTICLE 2**

### **GRANT OF AUTHORITY**

**2.1. Grant of Franchise.** City grants to Franchisee a Franchise to install, place, construct, maintain, operate, upgrade, repair, and replace Facilities within the Public Rights-of-Way subject to the conditions of this Agreement. This Agreement does not authorize Franchisee to sublicense or sublease to any Person the right to occupy the Public Rights-of-Way for any purpose. Nothing in this Section 2.1 is intended to prevent Franchisee from leasing its Facilities to any Person, provided that such Person is otherwise authorized under Applicable Law to engage in the activities for which such Person is leasing the Facilities. Franchisee shall have no obligation under the preceding sentence to verify such authorization or monitor the activities of such Person, so long as Franchisee has promptly notified City in writing of the lease.

**2.2. Scope of Franchise.** The Franchise authorizes Franchisee to install, place, construct, maintain, operate, upgrade, repair, and replace a Communications System as necessary to provide Broadband Services. This Franchise does not grant authority to Franchisee to provide any other service, including cable service (as defined in Section 602(6) of the Cable Communications Policy Act of 1984), video programming service (as defined in 47 U.S.C. § 522 (20)), or telecommunications service (as defined in 47 U.S.C. § 153(53)) within City. Franchisee shall have the right to provide additional services, other than those listed in the preceding sentence, provided that City reserves the right, in its sole discretion, to require a separate fee for any such other services, to the extent consistent with Applicable Law; provided, however, that City shall charge Franchisee no more than it charges all similarly situated Persons using wireline facilities in City’s Public Rights-of-Way to provide any services within City that are the same as, or substantially similar to, the services for which City imposes such fee(s) with respect to Franchisee.

**2.3. Term of Franchise.** The Franchise commences on the Effective Date and expires twenty (20) years after the Effective Date (the “Initial Term”), unless the Franchise is renewed as provided in Section 2.4 of this Agreement or the Franchise is terminated as provided in Section 13.1 of this Agreement. The period of time that the Franchise is in effect is referred to as the “Term.”

**2.4. Renewal.** Provided that Franchisee is not then in default under the terms of this Agreement, Franchisee shall have the option to request renewal of this Franchise for three (3) consecutive renewal terms of five (5) years each (each, an “Extended Term”). Franchisee shall notify City of its desire to exercise any such renewal option at least six (6) months in advance of the expiration date set forth in Section 2.3 of this Agreement or the expiration date of the then-applicable Extended Term, as the case may be, at which time the parties will meet in a timely manner to discuss renewal and renewal terms in good faith. If the parties have not reached agreement on the terms of renewal before the end of the Term or Extended Term, as the case may be, this Agreement shall go month-to-month, unless and until Franchisee provides City with written notice of termination at least ninety (90) days prior to the requested date of termination. Notwithstanding the foregoing, this Agreement shall remain in effect during any period after the end of the Term or any Extended Term, for so long as the parties are engaged in good faith negotiations or proceedings related to the renewal of such franchise, and shall not be terminated until such franchise has been renewed, but in no event shall this Agreement continue more than twenty-four (24) months after its expiration (the “Final Termination Date”) without the mutual written agreement of the parties. During any Extended Term, all of the terms and conditions of this Agreement shall remain in full force and effect, unless the parties hereto otherwise mutually agree in writing to modifications.

**2.5. Non-Exclusive Franchise.** Nothing in this Agreement affects the right of City to grant any other Person a franchise to occupy and use the Public Rights-of-Way for the purpose of providing Broadband Services, or to engage in any other activity in the Public Rights-of-way.

**2.6. Right of City to Use Public Rights-Of-Way.** Nothing in this Agreement affects the right of the City to occupy or use the Public Rights-of-Way in any fashion, except as otherwise expressly provided in this Agreement.

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

**2.8. Franchise Subject to Rights of City and of Others; No Property Interest.** The permission granted to Franchisee pursuant to this Agreement shall be: (a) exercised by Franchisee at Franchisee’s sole risk and expense; (b) subject to, and subordinate to, the rights of City to use the Public Rights-of-Way and City facilities exclusively or concurrently with any other Person; and (c) subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, claims of title, and rights (whether recorded or unrecorded) of others, and also including all recorded or unrecorded rights of City. Nothing in this Agreement shall be deemed to grant, convey, create, or vest any real property interest in Franchisee, including any fee or leasehold interest, easement, or vested right. Nothing herein contained shall be construed to require or compel City to maintain any portion of the Public Rights-of-Way for a period longer

than that required by City's needs. Nothing herein shall restrict City from exercising its authority to vacate, abandon, or discontinue use of any portion of the Public Rights-of-Way and request the relocation or removal of Franchisee's Facilities therefrom subject to the procedures, time periods, and remedies established herein.

**2.9. Compliance with Laws.** Except as specifically provided in this Agreement, Franchisee shall comply with all local laws, rules, and regulations, and with all orders or other directives of City issued pursuant to this Agreement or with respect to City's management of its Public Rights-of-Way, subject to Applicable Law, including the obligation by City to ensure that its grant and administration of the Franchise is nondiscriminatory and competitively neutral. City has the right to oversee, regulate and inspect the installation, upgrade, construction, repair, maintenance, and removal of Facilities in the Public Rights-of-Way in accordance with the provisions of this Agreement and Applicable Law. City reserves the right to adopt or issue such rules, regulations, orders, or other directives governing Franchisee or Facilities as it shall find necessary or appropriate in the lawful exercise of its police power, and such other lawful orders as City shall find necessary or appropriate relating to management of the Public Rights-of-Way. No rule, regulation, order, or other directive issued pursuant to this section shall constitute an amendment to this Agreement.

**2.10. Street Improvements.** Franchisee shall remove or relocate its Facilities within a Public Right-of-way, at its own expense and within thirty (30) days of written notice provided by City, or such longer time as reasonably necessary given the scope of the relocation work, whenever City, in its sole discretion, determines, after consultation with Franchisee, that the Facilities disturb or interfere or conflict with (i) any Street Improvement; (ii) the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, avenues, roadways, bridges, or storm or sanitary sewer systems; or (iii) any other work performed by the City on City property adjacent to the Public Rights-of-Way. City shall provide, at no cost to Franchisee, permits and alternative space in the Public Rights-of-Way for such relocation of Facilities, provided that such alternative space need not be in the exact same Public Right-of-way but shall be in reasonable proximity to the previous location, and such space shall be reasonably economically and technologically feasible for the relocation of such Facilities. City shall work with Franchisee to modify designs as reasonably necessary to minimize the need to relocate Franchisee Facilities. Any relocation of Facilities shall be in a Like-for-Like manner. City shall reimburse Franchisee for any such relocation expense if required by any Applicable Law. If Franchisee refuses or neglects to relocate its Facilities within thirty (30) days of written notice, or such longer time as reasonably necessary given the scope of the relocation work, after a second written notice from City, City may relocate the Facilities and Franchisee shall pay to City the reasonable, actual costs incurred in the relocation of Franchisee Facilities.

**2.11. Requested Relocation of Franchisee Facilities.**

(a) Except for Street Improvement relocation of Facilities as specified above, within sixty (60) days, or such longer time as reasonably necessary given the scope of the relocation work, following the written request of any Person with the legal right to occupy the Public Rights-of-Way and a demonstrated need for Franchisee to relocate in order that such Person may occupy the Public Rights-of-Way or move, repair, or perform alterations to existing facilities in the Public Rights-of-Way, Franchisee shall remove, alter, or relocate Facilities.

(b) Franchisee shall temporarily raise or lower aerial Facilities within sixty (60) days following the written request of any Person that has obtained a permit from the City for work that requires such temporary raising or lowering of above-ground cables or wires.

(c) Franchisee may impose a reasonable charge for any movement of its Facilities performed pursuant to this Section 2.11 and may require advance payment. Franchisee is under no obligation to relocate its Facilities pursuant to this Section 2.11 if relocation would reasonably be expected to result in any impairment of Franchisee's ability to provide Broadband Services to City residents following completion of the requested removal, alteration, or relocation of Facilities.

**2.12. Emergency Removal or Relocation by City.** If the Director, in the Director's reasonable discretion, determines that removal, relocation, or reconfiguration of any portion of the Franchisee's Facilities is necessary in order to protect the public health, safety, or welfare, then the Franchisee shall, at its sole cost and expense, remove, relocate, or reconfigure such portion of Franchisee's Facilities subject to the procedures, time periods, and remedies established in Section 2.10. Should the Director determine that the public health, safety or welfare requires that the City undertake immediate maintenance, repair or other action as to the Franchisee's Facilities, then the City may do so and the Franchisee shall be responsible for all reasonable expenses. In such circumstances, the Director may take the measures required under this Section 2.12 without prior notice to Franchisee, provided that the Director will (i) make reasonable efforts to provide prior verbal notice to the Franchisee of such measures; and (ii) provide written notice to Franchisee within 10 days of City's taking such measures.

**2.13. Right-of-Way Closings.** Nothing in this Agreement waives or releases the right of City in and to the Public Rights-of-Way. If all or part of the Public Rights-of-Way is eliminated, discontinued, closed or demapped, the Franchisee shall cease with respect to such part of the Public Rights-of-Way upon the later to occur of (a) the effective date that such part of the Public Rights-of-Way becomes eliminated, discontinued, closed or demapped and any conditions specified by City are met; or (b) in the case of any transfer of title to such part of the Public Rights-of-Way to a private Person, the closing date of such transfer. City shall condition its consent to the elimination, discontinuance, closing or demapping on the agreement of any Person to (x) grant an easement with rights of ingress and egress, at no additional charge, to Franchisee providing the right to continue to occupy and use the real property being eliminated, discontinued, closed or demapped from the Public Rights-of-Way, and/or (y) reimburse Franchisee for the reasonable costs of supporting, protecting, or relocating the affected Facilities.

**2.14. Unauthorized Use.** In the event of any use by Franchisee of any property owned by or dedicated to City that is not authorized by this Agreement, Franchisee shall, immediately upon notice by City, cease the use and remove all Facilities associated with such use.

### **ARTICLE 3 COMPENSATION**

**3.1. Franchise Fee.** For and in consideration of the Franchise, and as fair and reasonable compensation to City for the occupation of the Public Rights-of-Way by Franchisee's



Communications System for the purpose of providing Broadband Service, Franchisee shall pay City throughout the Term of this Franchise an amount equal to three percent (3.0%) of Franchisee's Gross Broadband Revenues ("Franchise Fee"). Such payments shall be made quarterly in arrears and are due within forty-five (45) days after the end of each calendar quarter.

**3.2. Pass-Through.** Franchisee may identify and collect, as a separate item on the regular bill of any Subscriber whose Broadband Services are provided over the FTTP Network located at least in part in Public Rights-of-Way, that Subscriber's pro rata amount of the Franchise Fee.

**3.3. Allocation of Fees.** Franchisee shall not allocate revenue between Broadband Service subject to the Franchise Fee and services not subject to the Franchise Fee for the purpose of evading or reducing Franchisee's Franchise Fee obligations to City. Revenue of an Affiliate of Franchisee shall be included in the calculation of Gross Broadband Revenues if the treatment of such revenue as revenue of the Affiliate rather than as revenue of Franchisee has the effect (whether intentional or unintentional) of evading the payment of fees herein which would otherwise be paid on Broadband Service revenues.

**3.4. No Credits or Deductions.** The Franchise Fee shall not be deemed to be in the nature of a tax and shall be in addition to any and all taxes or other fees or charges that Franchisee is required to pay to City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of Franchisee. Franchisee agrees that the Franchise Fee constitutes a fee for the privilege of occupying the Public Rights-of-Way and is not a tax on the provision of Internet access service or Internet access as those terms are used in the Internet Tax Freedom Act.

**3.5. Report.** Each Franchise Fee payment shall be accompanied by a written report to City containing an accurate statement in summarized form of Franchisee's Gross Broadband Revenues, the basis for the computation of the payment amount, and such other information relevant to determining compliance with this Agreement as may reasonably be required by City pursuant to Section 8.1.

**3.6. Inspection and Audit.** City shall have the right to audit, upon reasonable written notice but no more than once per calendar year, at any time up to five (5) years from the date that the payment was due or actually paid, whichever is later, those financial statements and financial books and records of Franchisee, related solely to the business operations arising from the Franchise, in the format customarily kept by Franchisee necessary to verify Franchisee's compliance with the Franchise Fee or other payment requirements of this Agreement. The Franchisee shall be responsible for providing all documents and information requested by City in connection with the audit, provided that the Franchisee shall not be obligated to provide documents or information that are not in the possession of Franchisee or for which access is controlled by any Person other than an Affiliate. Any additional amount due to City as a result of the audit shall be paid by Franchisee within forty-five (45) days after Franchisee receives a written notice from City accompanied by a copy of the audit report and any other supporting documentation necessary to determine the alleged amount due is correct. In the event Franchisee and City disagree as to the alleged amount due, the parties agree to undertake good faith discussions toward a mutually acceptable solution. Each party shall pay its own costs and

expenses incurred in connection with any such audit; provided, however, that if (a) the Franchisee has underpaid the Franchise Fee in any twelve (12) month period by five percent (5%) or more, but not less than Five Thousand Dollars (\$5,000.00), and (b) Franchisee has had a reasonable opportunity to cure, then in addition to paying the underpayment amount, Franchisee shall reimburse City for all of the reasonable costs associated with the audit, including all reasonable out-of-pocket costs for attorneys, accountants and other consultants. City may not retain any Person for performing any such audit whose compensation is dependent in any manner upon the outcome of any such audit, including the audit findings, the recovery of fees, or the recovery of any other payments. Any person retained by City to perform such audit must be a certified public accountant.

**3.7. Change in Law.** Notwithstanding anything to the contrary herein, in the event of a change in Applicable Law or any interpretation of Applicable Law by a final, non-appealable order or decision of a court or administrative agency of competent jurisdiction that (a) prohibits collection by City of any franchise fee or in-kind compensation from all providers of broadband Internet access services, or (b) reduces the percentage of revenue on which any franchise fee paid by any provider of broadband Internet access occupying the Public Rights-of-Way is based to a percentage that is lower than the percentage on which the Franchise Fee is based, or (c) mandates a different basis for a franchise fee imposed on a provider of broadband Internet access service that is an occupant of the Public Rights-of-Way, or (d) restricts or limits the type of in-kind compensation City may receive from a provider of broadband Internet access service that is an occupant of the Public Rights-of-Way, then the Parties shall meet and confer in good faith to determine whether they can agree on the form and amount of an alternative and equivalent form of compensation that may be permitted by Applicable Law at that time.

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

**3.9. Continuing Obligation and Holdover.** If Franchisee continues to use Facilities for any purpose after the Term, then Franchisee and City shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the Franchise, nor as a limitation on the remedies, if any, available to City as a result of such continued operation after the Term, including, but not limited to, damages and restitution, through the Final Termination Date. Upon the day following the Final Termination Date, Franchisee shall cease operation of the Communications System in the City and shall promptly commence removal of the Facilities from the Public Rights-of-Way, if such removal has been ordered by City pursuant to Section 13.3. If this Agreement terminates for any reason whatsoever before the expiration of the Term, Franchisee shall cease operation of the Communications System in the City on the effective date of the termination and shall promptly commence removal of the Facilities from the Public Rights-of-Way, if such removal has been ordered by City pursuant to Section 13.3.

**ARTICLE 4**  
**PUBLIC BENEFITS**

**4.1. Digital Inclusion Initiatives.** Recognizing the importance of equitable access to communications services and related technological innovations, and of the broad benefits such access will bring throughout the City of Alexandria, Franchisee shall engage in digital inclusion initiatives intended to benefit the residents of the City of Alexandria. Franchisee’s digital inclusion initiatives may focus on increasing access to Broadband Services, improving digital literacy, and bridging the digital divide. Franchisee further agrees to use good faith efforts to consult with City in designing and implementing such initiatives.

**4.2. Living Wage; Prevailing Wage.** Franchisee shall comply with all applicable living wage requirements.

**4.3. Public WiFi Service.** Franchisee shall offer free, state-of-the-art, fiber-fed WiFi service in those City parks and community centers as mutually agreed between Franchisee and City. Such service shall be accessible to 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 FTTP Network passes the mutually agreed park or community center and will continue throughout the Term of this Agreement.

**4.4. Service to Non-Profits.** Franchisee and City will together develop a list of non-profit organizations operating in the City of Alexandria and providing services to vulnerable populations in the City of Alexandria as described in the City of Alexandria Coordinated Community Recovery Plan that may be eligible to receive subsidized Broadband Services from Franchisee. Eligible organizations must provide direct services to residents of City and shall not include administrative offices that do not serve the local population; eligible organizations shall be mutually agreed by City and Franchisee.

**4.5. Digital Equity.** Franchisee and City shall reasonably cooperate to provide Broadband Services to residents of affordable housing at equivalent speeds and service levels to other residents at the same multiple dwelling unit (“MDU”) properties not included in any digital equity program (the “Digital Equity Broadband Program” or “Program”). City and Franchisee shall also reasonably cooperate to identify and apply for any governmental or other subsidies or funding grants for providing Broadband Services to affordable housing residents at no or reduced cost. “Affordable housing” shall be as defined by City with reference to the Area Median Income ((AMI) for the Washington Metropolitan Area as measured by the U.S, Department of Housing and Urban Development.

(a) Franchisee will build out the FTTP Network to multi-dwelling unit properties identified by City as containing eligible affordable housing units (each an “Eligible Property” and collectively the “Eligible Properties”). The Eligible Properties will comprise no more than five percent (5%) of the residential housing units existing in the City of Alexandria as of the Effective Date, and may include (i) some or all housing units owned or operated by the Alexandria Redevelopment and Housing Authority or any of its related entities; and (ii) some or

all affordable housing units where a certificate of occupancy was granted prior to the Effective Date. 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 FTTP Network, 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 under the Digital Equity Broadband Program to ensure up to five percent (5%) of residential housing units are included in such program. City will co-invest with Franchisee for 50% of the costs of installation of facilities to Eligible Properties.

(b) An “Eligible Subscriber” means a resident of the City of Alexandria who is eligible to live in an Eligible Property. For the purposes of this section, Franchisee’s obligations shall be conditioned on Eligible Subscribers (i) agreeing to Franchisee’s standard terms and conditions of service and acceptable use policies; (ii) applying for, diligently pursuing, and complying with the requirements of any and all applicable federal, state, and local subsidies (a “Subsidy Program”) to which such resident is or may be eligible including, without limitation, the Federal Emergency Broadband Benefit Program; and (iii) agreeing to apply a benefit of an applicable Subsidy Program to the Program in the event the Subsidy Program is limited to one (1) benefit per household. Subject to consideration of annual appropriation, the City agrees to fund at least one full time navigator position to assist Eligible Subscribers to apply for applicable federal and state subsidies.

(c) Franchisee will offer Eligible Subscribers residing in an Eligible Property a home Internet service plan at no cost to the Eligible Subscriber through a combination of credits from Franchisee and applicable Subsidy Programs until the later of five (5) years from the date that Franchisee is able to provide Internet services to at least one customer (which may or not be an Eligible Subscriber) at such Eligible Property, or the expiration or termination of any applicable Subsidy Program, unless there is a successor Subsidy Program providing benefits that are, in the aggregate, at least as generous to the recipient as the expired or terminated Subsidy Program. If the benefits provided by any successor Subsidy Program are less generous to recipients than the expired or terminated Subsidy Program, the City may elect to institute its own supplemental subsidy program, to ensure that subscribers remain eligible for Franchisee’s no-cost Internet service plan. Franchisee may invoice Eligible Subscribers for the service plan as long as such invoices reflect the credits, subsidies, and discounts.

(d) Franchisee will build out the FTTP Network to any new eligible affordable housing units constructed after the Effective Date of this Agreement for which Franchisee has entered into a bulk billing agreement with the manager or owner of such property (a “New Eligible Property”) and offer Eligible Subscribers in such New Eligible Property a home Internet service plan at no cost to the Eligible Subscriber through a combination of credits from Franchisee and applicable Subsidy Programs. Franchisee will provide service to a New Eligible Property through the later of five (5) years from the date that Franchisee is able to provide Internet services to at least one customer at a New Eligible Property, or the expiration or termination of any applicable Subsidy Program, unless there is a successor Subsidy Program providing benefits that are, in the aggregate, at least as generous to the recipient as the expired or terminated Subsidy Program. City

will co-invest with Franchisee for 50% of the costs of installation of facilities to New Eligible Properties.

(e) Franchisee will use commercially reasonable efforts to participate in any subsidy program developed or adopted by City pursuant to which City subsidizes Internet service to Eligible Subscribers who do not reside in an Eligible Property or New Eligible Property.

**4.6. Local Presence.** Franchisee shall invest in hiring and, where feasible, procurement of products and services from individuals and businesses located in City.

**4.7. Annual Reports.** Franchisee shall provide to City, on or before September 30 of the first year after construction commences and annually thereafter, a report by a duly authorized officer of Franchisee, which describes in full the steps that were taken to deliver the community benefits discussed above including the number of beneficiaries in the community.

**4.8. Public Benefits Program Not Franchise Fees.** Franchisee agrees that the requirements of this Article shall in no way modify or otherwise affect Franchisee's obligations to pay Franchise Fees or any other fees or taxes owed to City.

## **ARTICLE 5 FTTP NETWORK CONSTRUCTION**

**5.1. Scope of System.** Franchisee shall commence construction of the Communications System in accordance with the Final Construction Plan (as defined below), subject in all respects to the grant by City or other governmental entities of any necessary authorizations or permits for commencement of construction. Construction of the Communications System shall be at Franchisee's sole cost and expense and at no cost to City. No later than 48 months after the Commencement Date, Franchisee shall have completed sufficient construction so that the Communications System shall then pass at least 75% of residential and commercial street addresses, in the aggregate, in the City of Alexandria. The Communications System shall be completed no later than 72 months after the Commencement Date (the "Completion Date"). Upon completion, the Communications System shall pass, in the Public Rights-of-Way, all residential and commercial street addresses in the City of Alexandria, provided that Franchisee shall have no obligation to physically pass any address in the City of Alexandria that is located on a private road, that is not directly accessible from the Public Rights-of-Way, or where construction would be technically or economically infeasible because of City's historic preservation requirements. Notwithstanding the foregoing, before excluding any address because of any historic preservation requirement, Franchisee shall consult with City. City and Franchisee shall meet and confer to review documentation provided by Franchisee reasonably demonstrating that the cost of construction needed to pass such address would be, in Franchisee's reasonable discretion, economically infeasible. Franchisee and City shall engage in good faith discussions regarding alternative means of serving any such addresses. No later than the last day of each calendar month, Franchisee shall provide City with (i) GIS polygons indicating those areas of the City of Alexandria that it plans to pass with new construction during the following month and (ii) a report detailing the percentage of completed construction work in previously-identified GIS polygons in which construction had not been completed as of the date of the prior report, such report to be in a form to be agreed between City and Franchisee. No later than sixty

(60) days after the end of each calendar quarter, Franchisee shall provide City with GIS polygons indicating where new construction has been completed during the preceding calendar quarter. Upon completion of the construction of the Communications System in accordance with this Section 5.1 and Section 5.3, Franchisee shall give City written notice of such completion.

**5.2. Placement of FTTP Facilities.** Franchisee shall comply with all requirements of the City Code and City policies that govern the placement of Facilities in the Public Rights-of-Way. In placing its Facilities underground, Franchisee shall also comply with the microtrenching and other construction techniques described in Exhibit A, which shall be agreed between Franchisee and City and incorporated as part of this Agreement no later than 30 days following the Effective Date of this Agreement. In the event of any conflict between any applicable provision of the City Code or a City policy and Exhibit A, Exhibit A shall control, provided, however, that in the event of such a conflict, the City reserves the right to require that Lumos propose one or more alternative methods or designs the City to consider and approve. All Facilities in the Public Rights-of-Way shall be placed underground, except for certain cabinets, as provided in Exhibit B, which shall be agreed between Franchisee and City and incorporated as part of this Agreement no later than 30 days following the Effective Date of this Agreement. Franchisee shall maintain and repair or replace all elements of the Communications System installed in the Public Rights-of-Way, including the microtrenched areas of the Public Rights-of-Way, for as long as the FTTP Network remains in the Public Rights-of-Way.

**5.3. Construction Plan.** No later than sixty (60) days after the Effective Date, Franchisee shall submit to City a written description of its planned construction, including a preliminary schedule for construction and the planned location of Facilities in the Public Rights-of-Way (the "Initial Construction Plan"). City shall review the Initial Construction Plan and may propose changes in the location of Facilities and construction phasing within forty-five business (45) days of receiving the Initial Construction Plan. City will review and provide comments within thirty (30) business days on any subsequent submission until Final Construction Plans are deemed approved. Franchisee shall consider City's proposed changes in developing a final construction plan (the "Final Construction Plan") and shall submit the Final Construction Plan to City within ninety (90) days after receiving City's recommendations. Franchisee shall commence construction as soon as reasonably practicable following submission of the Final Construction Plan (the "Commencement Date"), subject in all respects to the grant by the City of all necessary permits for the commencement of construction. Notwithstanding the foregoing, Franchisee may apply for and be granted permits and commence construction in its initial work zones prior to submission of the Final Construction Plan. The Final Construction Plan shall include maps showing the proposed route of the FTTP Network, in both hard copy and a standard electronic format to be designated by the Director. In addition, all construction plans are to include locations of all underground and above-ground facilities; the methods of attachment to culverts and bridges, with any structural calculations needed to enable City's review of appropriateness, construction details, and specifications; E&S control plans; and restoration details.

**5.4. Construction Coordination.** Before commencement of any construction, Franchisee and its construction contractor shall provide a schedule of construction to City and request a pre-construction meeting with staff to closely coordinate all activities within the Public Rights-of-Way. Following the commencement of construction, Franchisee and City shall hold

construction coordination meetings weekly until construction as proposed in the Final Construction Plan is completed, unless Franchisee and City determine that any such meeting is not required. At each such meeting, Franchisee shall provide City with an update on the progress of construction as proposed in the Final Construction Plan, and the parties shall discuss matters of mutual concern related to construction of the Communications System, such as permitting, design, construction methods and progress, and buildout timelines. In addition, Franchisee shall make commercially reasonable efforts to respond to any request for information on progress in construction by City within ten (10) days of such request.

**5.5. FTTP Construction Surety.** Prior to commencing any construction, excavation, or installation under this Agreement, Franchisee shall furnish City with a form of surety to ensure faithful performance of Franchisee's construction obligations under this Agreement in the amount of five hundred thousand dollars (\$500,000.00) (the "FTTP Construction Surety"). The form of the surety shall be in a form reasonably satisfactory to the City Attorney. Franchisee shall maintain the FTTP Construction Surety in place until Franchisee has completed construction of the FTTP Network. For the avoidance of doubt, construction of the FTTP Network does not include construction or maintenance of customer service connections or "drops." Upon completion of construction of the FTTP Network, Franchisee shall provide City with written notice, and City shall return or release the FTTP Construction Surety within thirty (30) days thereafter, provided that Franchisee shall thereupon provide any other form of surety otherwise required by this Agreement or Applicable Law. The FTTP Construction Surety shall be deemed to satisfy any requirements of this Agreement or City Code that would otherwise apply to the construction of the FTTP Network.

**5.6. Publicizing Proposed Construction and Other Work.** Franchisee shall publicize scheduled work related to the construction of the FTTP Network by providing written notice of such work to the Director at least thirty (30) days before the commencement of such work. No later than ten (10) days prior to beginning construction along any portion of the Public Rights-of-Way, Franchisee shall provide a first notification to those Persons affected by such construction. Franchisee shall provide a second notification not less than three (3) days prior to construction. In providing such notice to all affected Persons, Franchisee may, in its discretion, deliver flyers or door hangers, or use direct mail or bill inserts. Upon the request of the Director, Franchisee shall hold community meetings, which shall be scheduled with the assistance of the Director and other City agencies, as reasonably necessary to provide the community notice of such planned construction work. In addition, Franchisee shall establish and maintain a website with general updates for residents to provide adequate notice to affected Persons. Any notification must provide adequate information to notify the affected Persons of the construction work that is to be undertaken, as well as the name and telephone number of a contact person designated by Franchisee to respond to questions that affected Persons may raise.

**5.7. FTTP Network Construction Permits.**

(a) At any time during which Franchisee is engaged in construction expected to pass more than 75% of addresses located in City ("Major Project"), City shall make available to Franchisee a streamlined process for obtaining construction permits, as set forth on Exhibit C hereto. The requirements in Exhibit C, which shall be agreed between Franchisee and City and incorporated as part of this Agreement no later than 30 days following the Effective Date

of this Agreement, shall be in effect at all times during which Franchisee is engaged in a Major Project. At all other times, Franchisee shall be subject to City's general permit requirements. At all times, Franchisee shall pay the established fee for all such permits.

(b) City will work diligently and in good faith with Franchisee to ensure an effective and efficient construction permit approval process. City shall respond to Franchisee's permit applications as soon as practicable and not more than fifteen (15) business days from the date of submission by Franchisee. If the permit is approved, Franchisee may proceed with construction. If a permit is denied, City shall describe in writing why the permit was reasonably denied and specify any required plan modifications or additional information necessary for approval. City shall respond to the resubmission of a previously denied construction permit within five (5) business days of the resubmission. All construction permits shall remain open for one hundred and eighty (180) days, and City shall grant reasonable sixty (60) day extensions for good cause shown. Construction permits, along with any required traffic control plans, shall be approved within the time frames above, and there shall be no separate approval process for traffic control plans.

(c) Franchisee agrees that construction of Facilities in Public Rights-of-Way shall be done in such locations and in such manner so as not to unreasonably interfere with existing water, gas, sewer pipes, traffic signal, street light and other utilities and conduits in the Public Rights-of-Way, or with the public's use of the Public Rights-of-Way, and shall, to the maximum degree feasible, be coordinated with any construction being simultaneously undertaken at the same location by a provider of telecommunications, cable service, or utilities.

(d) Franchisee may request permission to install Facilities within City parks and other City property outside of the Public Rights-of-Way on an individual, case-by-case basis. The City reserves the right to reject such requests, in its sole discretion. If any such request is granted, Franchisee shall obtain all required permits and City may impose conditions on the location, appearance, and manner of installation of the Facilities subject to the grant of permission.

**5.8. Parking Permits for FTTP Network Construction.** City shall provide Franchisee with parking permits at specific locations for FTTP construction work, at the established fee for such permits.

**5.9. Geographic Area for FTTP Permits.** City shall approve single FTTP construction permits for a distance of up to four hundred thousand (400,000) feet, as reasonably necessary, to install longer fiber-optic spans between network connection points.

**5.10. Maintenance in Arterial Rights-of-Way.** Franchisee may perform maintenance on Facilities located in or along Arterial Rights-of-Way (as defined below) from time to time without prior approval of the Director as long as neither the component of the Facilities being worked on, nor any of the Facilities or workers involved in such maintenance, are located on the travel, parking, curb or sidewalk portion of the Arterial Rights-of-Way. "Arterial Rights-of-Way" are designated by City and City has provided Franchisee with a current listing of designated Arterial Rights-of-Way. City shall provide updates to the listing upon Franchisee request. At least thirty (30) days prior to performing maintenance on any Facilities located on



the travel, parking, curb or sidewalk portion of the Arterial Rights-of-Way, Franchisee shall (a) inform the Director in writing of the location at which it intends to perform such maintenance, (b) provide reasonable information the Director requests, and (c) obtain either a verbal or written approval of the maintenance from the Director or their designee. In performing maintenance, Franchisee shall comply with all reasonable requirements established by the Director. Notwithstanding the foregoing, Franchisee must obtain appropriate permits from City for any work that involves excavation, and for any activity that affects motorized or pedestrian traffic within the Public Rights-of-Way, or when required by the Director.

**5.11. Maintenance in Non-Arterial Rights-of-Way.** Franchisee may perform maintenance on Facilities located in the Public Rights-of-Way, other than Arterial Rights-of-Way, without prior approval of the Director. In performing maintenance, Franchisee shall comply with all reasonable requirements established by the Director. Notwithstanding the foregoing, Franchisee must obtain appropriate permits from City for any work that involves excavation, and for any activity that affects motorized or pedestrian traffic within the Public Rights-of-Way, or when required by the Director.

**5.12. Customer Service Connections.** Franchisee may construct or maintain customer service connections, which provide connectivity between Franchisee Facilities located in the Public Rights-of-Way and customer premises located on private property, without prior approval of the Director.

**5.13. Removal.** Franchisee may, at any time, in the exercise of its sole and absolute discretion, remove any or all of the Facilities from the Public Rights-of-Way. When performing any aspect of removal where the Facilities being worked on or any of the equipment or workers involved in the removal are located on the travel, parking, curb or sidewalk portion of a street, or any other portion of the Public Rights-of-Way, Franchisee shall comply with all procedures applicable to maintenance, as set forth above in Sections 5.10 and 5.11.

**5.14. Damage to and Restoration of the Public Rights-of-Way and Other Property.**

(a) Subject to subsection (b) (in the case of repavement or resurfacing), if, in the course of construction or maintenance or otherwise dealing with any of the Facilities, Franchisee damages any pavement, street, alley, sidewalk, sewer, water or other pipe, in or adjacent to the Public Rights-of-Way, or any other public property, real or personal, including any Structure, belonging or dedicated to City, Franchisee shall promptly replace, repair or restore any damaged property to its prior condition at its own cost and expense. Notwithstanding the foregoing, Franchisee shall not be obligated to install or provide any unreasonable betterment or upgrade that would exceed the characteristics of such Public Right-of-Way or City-owned Structure prior to the disturbance or damage by Franchisee, unless otherwise required by Applicable Law, or applicable historic preservation requirements. If winter weather conditions or the availability of materials delay permanent pavement restoration, Franchisee shall make an acceptable temporary patch. When weather conditions permit or materials become available, Franchisee shall make permanent restoration as noted above. Franchisee shall also maintain such temporary patches until a permanent repair is completed. If Franchisee shall default in this obligation, City may cure the default itself, and may charge to Franchisee the reasonable cost it incurs in curing the default; provided, that prior to performing

any work to cure a default, City shall give Franchisee written notice of the default and a period of ten (10) business days from the date of the notice in which to initiate action to cure the default and a period of forty-five (45) days in which to complete the cure; provided further, that these ten (10) and forty-five (45) day periods will be extended by the Director for a reasonable amount of time if a cure of the default cannot reasonably be commenced, or the default cannot reasonably be cured, within such respective periods, and Franchisee has diligently pursued commencement of, or completion of, a cure during the period as applicable. Notwithstanding the foregoing, if the Director determines, in the Director's sole discretion consistent with Applicable Law, that the damage threatens the public health or safety, City may commence the repair of the damage and assess its costs upon Franchisee; provided, that, prior to commencing such repair work, City shall make a reasonable effort to provide Franchisee with telephonic notice and an opportunity to immediately repair the damage itself. In the event Franchisee is unable to, or otherwise fails to, repair the damage within the time frames noted above and City performs the repair work, City shall, immediately upon completion of the work, provide Franchisee with written notice of the work it has performed, and also shall, reasonably soon after the completion of the work, provide Franchisee with a statement of the reasonable costs City incurred in performing the work.

(b) Unless otherwise provided in the construction specifications set forth in Exhibit A, if there are any street cuts or other disturbances of the surface of the Public Rights-of-Way as a result of any construction or maintenance by the Franchisee under this Agreement, Franchisee shall repave or resurface the Public Rights-of-Way in accordance with the then-existing standards set forth by the Director.

(c) Franchisee shall warrant for two (2) years, commencing on the date any work performed under this Section 5.14 is approved by City, that any such replacement or repair (excluding trees, grass and other plantings) conforms to written City specifications and requirements made available to Franchisee. If Franchisee does not commence such replacement or repair after thirty (30) days' notice or reasonable time frame given the scope of work and availability of materials, the City may make such replacement or repair and the Franchisee shall pay the reasonable cost of the same.

(d) Any costs assessed upon Franchisee under this Section 5.14 shall be paid to City within sixty (60) days of the assessment.

**5.15. Safety Precautions.** Franchisee shall maintain in good and safe condition all Facilities it places within Public Rights-of-Ways. Franchisee shall, at its own cost and expense, undertake to prevent accidents at its work sites in, at or on the Public Rights-of-Way, including the placing and maintenance of proper guards, fences, barricades, watchmen and suitable and sufficient lighting, in accordance with federal and state law.

**5.16. Quality.** All work involved in the placement and maintenance of Facilities shall be performed in a safe, thorough, and reliable manner in accordance with industry, professional, state, and federal mandated standards and using materials of good and durable quality. The Communications System shall also be maintained in accordance with the highest industry standards and procedures, using materials of good and durable quality. Materials used in restoration and repair of the Public Rights-of-Way shall comply with the Virginia Department of

Transportation Road and Bridge Inspections Specifications (2020) and Details (2016, revised May 2020 with Revisions) and the Virginia Department of Transportation approved materials list. If, at any time, it is determined by City or any other agency or authority of competent jurisdiction that any Facilities violate in any material respect any health or safety law or regulation, then Franchisee shall, at its own cost and expense, promptly correct all such conditions.

**5.17. No Obstruction.** Except for Emergencies, routine maintenance in a non-Arterial Right-of-way, and work related to customer service connections, Franchisee shall not obstruct traffic to any street, road, or other Public Rights-of-Way within the corporate limits of City without the prior consent of City. Facilities of Franchisee in the Public Rights-of-Way shall be located so as to cause minimal interference with any use of the Public Rights-of-Way and adjoining property.

**5.18. Emergency.** During an Emergency, Franchisee may take all reasonable measures to restore service and alter its Facilities as necessary to ensure the safety of the residents of City. As soon as practicable, Franchisee shall notify the Director or their designee of any emergency necessitating an obstruction. Franchisee shall coordinate its activities in responding to the emergency with the Director or its designee.

**5.19. Protection of the Public Rights-of-Way.** In connection with the construction and maintenance of Facilities by Franchisee, Franchisee shall, at its own cost and expense, protect the Public Rights-of-Ways and any City-owned Structures thereon, thereunder or thereover, and shall obtain the prior approval of City, pursuant to this Agreement, before altering the Public Rights-of-Way or any such Structures. Any such alteration shall be made by Franchisee, at its sole cost and expense, in a manner prescribed by City to protect the Public Rights-of-Way and any City-owned Structures thereon.

**5.20. Private Property.** Franchisee agrees to restore all private property affected by construction of the Communications System to the condition it was in prior to commencement of construction, at no expense to the affected property owner. Franchisee also shall repair any and all damage to any private property resulting from the installation, maintenance, or operation of the Communications System at no expense to the affected property owner and to the reasonable satisfaction of the property owner.

**5.21. Public Safety.** In the case of fire, disaster or other emergency, or to correct an unsafe work condition as determined by City in its sole discretion, City may cut or move Franchisee's Facilities as reasonably necessary to protect public health or safety. City will make every reasonable effort to consult with Franchisee prior to any such cutting or movement of Facilities and Franchisee shall be given the opportunity to perform such work itself. City shall have the obligation to protect Franchisee's Facilities to the maximum extent reasonable under the circumstances. All costs to repair or replace Facilities shall be borne by Franchisee.

## **ARTICLE 6 FRANCHISEE'S SERVICES**

**6.1. Scope of Services.** Franchisee shall begin offering services to residential and business subscribers during construction of the Communications System as it becomes

commercially practicable to do so. After the Completion Date, Franchisee shall provide Broadband Services to the occupant of any residence or any commercial address passed by the Communications System that requests such service, subject to Franchisee's standard terms of service and the terms of this Agreement. Nothing in this section shall require Franchisee to offer service where such offering requires access to private property or through any easement where the owner of such property or easement declines to grant Franchisee access on commercially reasonable terms. Franchisee shall offer Broadband Services with a minimum speed tier of up to 1 (one) symmetrical gigabit per second (Gbps) to residential and other end users within the City. Franchisee may also offer other speed tiers of Broadband Services.

**6.2. Non-Discrimination; Provision of Service.** 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. Following construction and activation of the FTTP Network 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.

**6.3. Customer Service.** All Broadband Services shall be backed by technical support provided 24 hours a day, seven days a week. Franchisee shall maintain commercially reasonable systems and procedures for receiving, and promptly responding to and resolving, Subscriber complaints and customer service issues. Franchisee shall make information available to its Subscribers regarding customer service and how they may submit service complaints or inquiries. Franchisee shall consult with City and establish a process for working with City to address resident complaints received by City. Such information will include provisions for escalation for time sensitive issues.

**6.4. Public Relations Contact.** Franchisee shall (i) designate a public relations contact; (ii) provide a phone number and email for that contact to City; and (iii) post the contact information prominently on its website on a page on which Franchisee's Alexandria fiber project and services are being advertised. The contact will be responsible for responding to any and all questions, complaints and concerns from the general public during construction of the Communications System.

**6.5. Regulatory Approvals.** Franchisee shall obtain all necessary federal and state approvals to offer Broadband Services by means of Facilities, if any, and shall, upon the City's request, submit evidence of such approvals to the City.

## ARTICLE 7

### PERFORMANCE REVIEWS; TECHNOLOGY UPDATES

**7.1. Triennial Performance Reviews.** Franchisee and City shall conduct triennial performance reviews. The purpose of these reviews is to evaluate the performance of Franchisee, and to discuss the integration of future technologies and any other plans or operations of Franchisee. Franchisee shall fully cooperate with City in any such reviews. Topics that may be discussed in a review will be determined by City and will include, but are not limited to, system performance and construction, system capacity, customer service and complaint response, and applications of new technologies. In the event such review indicates any material non-compliance with this Agreement by Franchisee, Franchisee shall have one (1) year, or such other amount of time as is reasonable, to correct the non-compliance, unless Franchisee was earlier given notice of the noncompliance outside the triennial review process, in which case the procedures otherwise applicable under the Code or this Agreement shall control. If, after such time, Franchisee has not remedied the non-compliance, City may take appropriate actions.

## ARTICLE 8

### REPORTS AND RECORDS

**8.1. General Reports.** Franchisee shall cooperate with City with respect to administration of this Agreement. To that end, and subject to the provisions of this Article concerning Proprietary Information, Franchisee will make available to City upon request such records, reports, books of account, documents, and other information (“Records”), as Franchisee maintains in the ordinary course of business and that may be reasonably necessary for the administration or enforcement of this Agreement and in such form and manner, and at such place, as reasonably requested by City. Franchisee shall make such Records available to City for inspection and copying within thirty (30) days after receipt of written notice.

**8.2. Documentation and Maps.** Franchisee shall provide City with as-built maps for each permit within sixty (60) days following completion of construction and final inspections, in a standard electronic format to be designated by the Director. Franchisee shall provide an up-to-date strand map of its facilities annually, within thirty (30) days following the anniversary of the Effective Date, to assist City in monitoring compliance and assessing areas for possible expansion of the Communications System. Franchisee shall also provide maps upon request in connection with the City’s evaluation of specific requests for service from residents.

**8.3. Treatment of Proprietary Information.** Access by City to any of the documents, records or other information covered by this Agreement shall not be denied by Franchisee on grounds that such documents, records, or information are alleged by Franchisee to contain Proprietary Information. For purposes of this Agreement, “Proprietary Information” means that portion of documents, records or other information which is in the possession of Franchisee which is not generally available to the public and which Franchisee desires to protect against unrestricted disclosure or competitive use. If Franchisee claims that documents, records, or other information requested by City contain Proprietary Information, City agrees to review the Proprietary Information at Franchisee’s premises and, in connection with such review, to limit access to the Proprietary Information to those individuals who require the Proprietary

Information in the exercise of City's rights under this Agreement. City will not remove any Proprietary Information from Franchisee's premises or record any Proprietary Information, by making copies or written notes containing verbatim information, and, to the extent permitted by Applicable Law, City will not disclose Proprietary Information to any Person. All documents, records or other information which is disclosed by Franchisee to City and which Franchisee claims is Proprietary Information shall be labeled as "Proprietary" if such information is in writing, and if such information is oral, it shall be identified as "Proprietary" prior to disclosure. The labeling of documents, records, or other information as "Proprietary" shall be the sole responsibility of Franchisee. The protections offered to Franchisee by this Section 8.3 shall not apply to documents, records or other information which: (a) are made public or become available to the public other than through a disclosure by City or its representatives; (b) are already in the possession of City prior to the Effective Date; (c) are received from a third party who has the right to make such disclosure without any obligation of confidentiality to Franchisee or other restriction on disclosure; (d) are independently developed by City; or (e) are disclosed pursuant to a valid court order or Applicable Law, provided that City shall provide prompt written notice to Franchisee prior to disclosure (as allowed by Applicable Law) in order that Franchisee may seek a protective order or challenge such disclosure.

**8.4. Survival.** The provisions of Section 8.3 shall survive expiration, termination, or revocation of this Agreement for a period of five (5) years.

## **ARTICLE 9 LIABILITY AND INSURANCE**

**9.1. Coverage Limits.** Franchisee, at its sole expense, shall obtain and maintain the types of coverages and limits indicated below throughout the Term of this Agreement, providing coverage for claims arising from the exercise of the permission granted hereunder by City. These amounts of coverage will not constitute any limitations or cap on Franchisee's indemnification obligations under this Agreement. City, its officers, agents, and employees make no representation that the limits of the insurance specified to be carried by Franchisee pursuant to this Agreement are adequate to protect Franchisee. If Franchisee believes that any required insurance coverage is inadequate, Franchisee will obtain such additional insurance coverage, as Franchisee deems adequate, at Franchisee's sole expense.

(a) Commercial General Liability Insurance. \$2,000,000 per occurrence for bodily injury and property damage and with \$5,000,000 general aggregate, including premises and operations, personal and advertising, products and completed operations, contractual liability, and independent contractors.

(b) Automobile Liability. \$2,000,000 combined single-limit per accident for bodily injury and property damage for each owned, non-owned, and hired vehicle.

(c) Workers' Compensation and Employer's Liability. Virginia Statutory Workers' Compensation coverage, including Virginia benefits and employer's liability with limits of \$500,000 per accident for Bodily Injury by Accident and \$500,000 policy limit/\$500,000 each employee for Body Injury by Disease.

**9.2. Contractors' Coverage.** Franchisee shall require all contractors who will perform work in connection with the installation, construction, operation or maintenance of Franchisee's Facilities, including without limitation customer service drops, to procure and maintain Virginia statutory limits of Worker's Compensation insurance. Franchisee shall provide City satisfactory evidence of such coverage before each contractor begins work.

**9.3. Certificates; Noncancellation; Additional Insureds.** Prior to the beginning of the Term, and annually thereafter, Franchisee shall furnish City with certificates of insurance and blanket additional insured endorsements as required by this Agreement. Each policy shall provide, among other things, that the actions or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under the policy. The insurance required to be carried by Franchisee herein shall be with an insurance company licensed, authorized or permitted to do business in the Commonwealth of Virginia and rated not lower than A:VII in the A.M. Best Rating Guide. Upon receipt of notice from its insurer(s), Franchisee shall provide City with at least thirty (30) days' prior written notice to City of cancellation of any required coverage. City, its elected and appointed officials, officers, and employees shall be included as additional insureds as their interest may appear under this Agreement under all coverage maintained by Franchisee hereunder except workers' compensation and employer's liability. If the policy requires an endorsement to include the indicated Persons as additional insureds, the blanket additional insured endorsement must accompany the certificate of insurance. Coverage afforded under this Section 9.2 shall be primary as respects City, its elected and appointed officials, officers, and employees.

## **ARTICLE 10 INDEMNIFICATION**

### **10.1. Hold Harmless and Indemnification.**

(a) Franchisee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless City, and its officers, employees, and agents, from and against any and all losses and any and all claims, suits, actions, liability and judgments for damages or other relief arising out of property damage, bodily injury, or death arising from the installation, construction, operation or maintenance of Franchisee's Facilities, and against any liability arising out of or in connection with the acts or omissions of Franchisee or any officer, employee, or agent thereof, in the installation, construction, operation or maintenance of Franchisee's Facilities or the provision of services by means of the Facilities. The indemnity obligation of Franchisee under this section shall include, but is not limited to, providing legal representation and otherwise defending City and City officers, employees and agents against any claim, suit, or action covered by this indemnification. If a suit or action for which City or its officers, employees and agents are entitled to be indemnified and held harmless shall be brought against City or one or more of its officers, employees or agents, either individually or jointly with Franchisee, or City receives any demand or notice threatening any such suit or action, City shall promptly provide Franchisee with written notice of such demand, notice, claim, suit, or action. City may participate in Franchisee's defense directly, at its own expense.

(b) If a final judgment is obtained against City or one or more of its officers, employees or agents in a suit or action, either independently or jointly with Franchisee, for which City and its officers, employees and agents are entitled to be indemnified and held harmless under this section, Franchisee shall pay every judgment, including all costs and attorneys' fees, entered against City and any of its officers, employees, and agents.

(c) Franchisee shall be entitled to settle a claim brought in a suit or action for which City and its officers, employees and agents are entitled to be indemnified and held harmless under subsection (a). Franchisee must obtain the prior written approval of City for any settlement of such claims against City, which approval shall not be unreasonably withheld, conditioned, or delayed; provided, however, that City shall not withhold consent to settlement when the settlement imposes no continuing obligations on City and includes a release of City from all claims.

(d) The indemnities in this section shall survive the expiration of or earlier termination of this Agreement for a period of five (5) years.

**10.2. Liability Not Limited.** The legal liability of Franchisee to City and any Person for any of the matters that are the subject of the liability insurance policies or other evidence of insurance required above, including, without limitation, Franchisee indemnification obligations as set forth in this Agreement, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by Franchisee.

**10.3. Liability of City.** City and its officers, employees and agents shall have no liability to Franchisee pursuant to this Agreement or Applicable Law, arising from the exercise by City of the rights of City to approve or disapprove the grant, termination, amendment, renewal or Transfer of the Franchise, or to otherwise modify all or any part of this Agreement. Neither City nor its officers, employees, or agents shall be responsible for any liability of Franchisee, any Affiliate or any other Person, arising out of or in connection with acts or omissions of Franchisee or any employee, agent or subcontractor thereof, in the construction or maintenance of Facilities or the provision of services by means of the Facilities. City shall not be liable to Franchisee or to any other Person for any interruption in Franchisee's services or for any interference with the operation of Franchisee's Facilities arising from City's use of any City-owned property, whether or not affixed to the land, or the Public Rights-of-Way or from any other action of the City, its officers, agents, and employees, provided that the foregoing is not caused by the negligence, willful misconduct, or breach of this Agreement by City.

**10.4. Consequential Damages.** Notwithstanding any other provision contained in this Agreement, in no event shall either party be liable for any special, incidental, consequential, indirect, or exemplary damages.

## **ARTICLE 11 SURETY**

**11.1. General Surety.** Upon the release of the FTTP Construction Surety, Franchisee shall furnish City with a surety bond to ensure faithful performance under this Agreement, in the



amount of two hundred fifty thousand dollars (\$250,000.00) (“General Surety”). The General Surety shall be written by a corporate surety or bank reasonably acceptable to City and authorized to do business in the Commonwealth of Virginia. Within sixty (60) days after the date of any notice of cancellation of the General Surety, Franchisee shall obtain and deposit with City a replacement surety that complies with the requirements of this Section 11.1 and that is reasonably acceptable to City. Such replacement surety shall show continuous coverage as required by this Section 11.1 from the effective date of cancellation of the prior surety forward. City shall return or release the General Surety within twelve (12) months following the termination of this Agreement.

**11.2. Additional Surety.** In addition to the General Surety, the Director may also require Franchisee to submit reasonable additional surety in connection with specific construction or maintenance, in accordance with Applicable Law and City’s standard permitting procedures (“Additional Surety”). Franchisee shall only be required to maintain such Additional Surety for the duration of such specific construction or maintenance.

**11.3. Changed Amount.** At any time during the Term, City may, acting reasonably, require Franchisee to increase the amount of the General Surety, and Franchisee may request that City decrease the amount of the General Surety, if City finds (whether through its own investigation or by request of Franchisee) that new factors applicable to Franchisee’s activities in the Public Rights-of-Way exist that reasonably necessitate or justify a change in the amount of the General Surety. Such new facts may include, but are not limited to, such matters as material changes in Franchisee’s activities in the Public Rights-of-Way; material changes in the amount and location of Facilities; Franchisee’s recent record of repeated non-compliance with the terms and conditions of this Agreement; and material changes in the amount and nature of construction, maintenance, or other activities to be performed by Franchisee in the Public Rights-of-Way pursuant to this Agreement.

**11.4. Purpose of FTTP Construction Surety, General Surety and Additional Surety.** The FTTP Construction Surety, General Surety and Additional Surety shall serve as security for:

- (a) The faithful performance by Franchisee of all material terms, conditions and obligations of this Agreement;
- (b) Any expenditure, damage, cost, or loss incurred by City occasioned by Franchisee’s failure to comply with its obligations pursuant to this Agreement and/or with all rules, regulations, orders, permits and other directives of City relating to construction or maintenance of the Facilities, or management of the Public Rights-of-Way; and
- (c) Any loss or damage to the Public Rights-of-Way or any property of City during the installation, upgrade, construction, repair, maintenance, or removal of Facilities, during any time in which such surety remains in place.

**11.5. Claims against the FTTP Construction Surety or the General Surety.** City shall provide not less than thirty (30) days’ notice of City’s intent to make a claim against the FTTP Construction Surety or General Surety. Claims against the bond shall be governed by the terms of the bond, which shall be satisfactory to the City Attorney. Payment to the City under the terms

of the FTTP Construction Surety or the General Surety shall not be deemed a cure of the default(s) that led to the claim and payment. City may not seek recourse against either the FTTP Construction Surety or the General Surety for any costs or damages for which City has previously been compensated through a payment under the FTTP Construction Surety or the General Surety or otherwise by Franchisee. Payment of any claim under the FTTP Construction Surety or the General Surety shall constitute a credit against the amount of the applicable liability of Franchisee to City, but only to the extent of such payment.

**11.6. Replenishment of the FTTP Construction Surety or the General Surety.** The terms of the FTTP Construction Surety and the General Surety shall provide that, if a claim is paid under the FTTP Construction Surety or the General Surety, the full amount of the respective surety shall remain in effect as surety for any subsequent claims that may be made by City.

**11.7. Not a Limit on Liability.** The obligation to perform and the liability of Franchisee pursuant to this Agreement shall not be limited by the acceptance of either the FTTP Construction Surety or the General Surety required by this Article.

**11.8. Parental Guarantee.** EQT Group, shall provide a Parent Company Guarantee (“Guarantee”) in substantially the form attached hereto as Exhibit D, and reasonably acceptable to the City Council, assuring compliance by Franchisee with all the obligations of Franchisee under this Agreement, as it may be hereafter amended. The signed Guarantee must be provided within ten (10) business days of the Effective Date.

## **ARTICLE 12 ASSIGNMENT OR TRANSFER OF FRANCHISEE’S FRANCHISE**

**12.1. Restriction on Sale or Transfer of Franchise.** Franchisee may, at any time, following written notice to City, consummate a Transfer:

- (a) that is an assignment or Change of Control (whether through merger, acquisition, sale of assets, or otherwise) of all or substantially all of the broadband Internet access business of Franchisee together with the broadband Internet access business of all its Affiliates;
- (b) that is a Change of Control of Franchisee’s ultimate parent company; or
- (c) to any Affiliate of Franchisee.

Consent of City shall be required for any sale, assignment, or transfer (whether through merger, acquisition, sale of assets, or otherwise) of Franchisee’s operations or Facilities in Alexandria, Virginia, or this Agreement solely to the extent such sale, assignment, or transfer is separate from a sale, assignment, or transfer of all or substantially all of the broadband internet access business of Franchisee, together with the broadband Internet access business of its Affiliates.

**12.2. Requirements of Sale or Transfer.** In the event Franchisee requests consent for a Transfer pursuant to Section 12.1, Franchisee shall provide City in such request for consent with reasonable evidence that the successor in interest or purchaser has the resources and ability to fulfill the obligations of this Agreement. No Transfer, whether subject to the consent of City

or not, shall be valid unless the assignee or transferee has agreed in writing that it will abide by and accept all terms of this Agreement and all other agreements between City and Franchisee, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this Agreement. Each transferee or assignee shall deliver to City a signed Assumption Agreement to that effect in form and substance acceptable to the City Attorney, within thirty (30) days after the consummation of the Transfer. Failure to deliver the Assumption Agreement by that date shall be a material breach of this Agreement.

**12.3. Transfer Review Process.** At least one hundred (120) days prior to the contemplated effective date of a sale, transfer, or assignment requiring City consent, or such longer or shorter period that the Parties agree is necessary given the circumstances of the sale, transfer, or assignment, Franchisee shall deliver to the City notice of the proposed transaction. The notice shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the proposed transferee. If the sale, transfer, or assignment requires consent of City, City shall acknowledge such notice within forty-five (45) days of receipt of notice. City may request additional information of Franchisee that is relevant to City's review of the proposed Transfer and Franchisee shall cooperate with any such request. No sale, transfer, or assignment shall be approved unless Franchisee is not in default of any provision of this Agreement as of the date of the City Council's decision.

**12.4. Permitted Encumbrances.** Nothing in this Article shall be deemed to prohibit any assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the Facilities or any right or interest therein, for financing purposes, provided that City's rights under this Agreement are in no way adversely affected or diminished. The consent of City shall not be required with respect to any transfer to, or taking of possession by, any banking or lending institution which is a secured creditor of Franchisee of all or any part of the Communications System pursuant to the rights of such secured creditor under the laws of the Commonwealth of Virginia, provided further that City's rights under this Agreement are in no way adversely affected or diminished.

## **ARTICLE 13 REMEDIES; REMOVAL OF FACILITIES**

**13.1. Enforcement.** Subject to applicable federal and state law and the terms and conditions of this Agreement (including any cure periods), City may apply one or a combination of the following remedies if City asserts that Franchisee is in default of any provision of the Franchise: (i) seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages, or seek other equitable relief; (ii) commence an action at law for monetary damages; (iii) terminate the Franchise in accordance with Section 13.3; or (iv) apply any other remedy provided for in this Agreement or applicable federal or state laws.

**13.2. Termination Events.** City, at its option, may terminate this Agreement upon any material breach of this Agreement by Franchisee that is not cured within thirty (30) days after Franchisee receives notice from City, or such longer period of time as may be reasonable under the circumstances, provided the cure is commenced within the thirty (30) day period after notice

from City and Franchisee is proceeding with reasonable diligence to complete such cure. A material breach shall include, but shall not be limited to, the following:

(a) the condemnation by public authority, other than City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the Facilities, the effect of which would materially frustrate or impede the ability of Franchisee to carry out its obligations and the purposes of this Agreement, if Franchisee fails to demonstrate to the reasonable satisfaction of City, within the thirty (30) day notice period provided above, that such condemnation, sale or dedication would not materially frustrate or impede such ability of Franchisee;

(b) any denial, forfeiture or revocation by any federal or state governmental authority having regulatory jurisdiction over Franchisee of any authorization required by law or the expiration without renewal of any such authorization, if such events, either individually or in the aggregate, have a material adverse effect on the installation, upgrade, construction, repair, maintenance or removal of the Facilities and Franchisee has failed to take steps, within the thirty (30) day notice period provided above, to obtain or restore such authorization, and to diligently pursue such steps;

(c) an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within one hundred twenty (120) days after such assignment or appointment: (1) such assignment, receivership, or trusteeship has been vacated; or (2) such assignee, receiver, or trustee has fully complied with the terms and conditions of the City Code and this Agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this Agreement and the City Code;

(d) except as may be otherwise provided in this Agreement, any failure of Franchisee to maintain the insurance as required by ARTICLE 9 of this Agreement, provided Franchisee has been given notice of thirty (30) days to cure such failure, or to commence a cure if a cure cannot reasonably be accomplished within such time;

(e) any failure of Franchisee to maintain any form of surety required by this Agreement, provided Franchisee has been given notice of thirty (30) days to cure such failure, or to commence a cure if a cure cannot reasonably be accomplished within such time;

(f) any failure of Franchisee to comply with the provisions governing Transfers set forth in ARTICLE 12 of this Agreement;

(g) any abandonment of the entire Communications System or FTTP Network;

(h) failure of Franchisee to pass all residential and commercial street addresses in the City of Alexandria by the Completion Date, subject to the exclusions stated in Section 5.1, provided that such failure shall not be attributable to the *force majeure* events set forth in Section 15;

(i) any persistent failure of Franchisee, after notice and an opportunity to cure with respect to substantially all such failures of Franchisee, to comply with any term, condition or provision of this Agreement or any ordinance, law, regulation, rule or order of City (subject in all respects to Sections 14.2 and 15.13) relating to management of the Public Rights-of-Way in connection with installation, upgrade, construction, repair, maintenance and removal of Facilities; and

(j) any other material breach by Franchisee under this Agreement, provided Franchisee has been given notice of thirty (30) days to cure such material breach, or to commence a cure if a cure cannot reasonably be accomplished within such time.

**13.3. Removal Upon Termination or Expiration.** Upon termination or expiration of the Agreement, the City shall have the right to direct Franchisee to remove all or any portion of the Facilities from the Public Rights-of-Way, at Franchisee's sole cost and expense. Franchisee shall have the right to request that City allow Franchisee to abandon all or any portion of the Facilities in place, either of Franchisee's own accord or in response to a directive from the City to remove Facilities. If Franchisee submits such a request, City may, in its sole discretion, allow Franchisee to abandon in place all or any portion of the Facilities that were the subject of Franchisee's request. If Franchisee seeks authorization from City to abandon the Facilities in place, any such abandoned Facilities shall become property of City effective as of the date of City's written notice to Franchisee providing such authorization. Franchisee shall remove all Facilities that are not deemed abandoned in accordance with Section 13.4.

**13.4. Conditions of Removal.** In the event City directs Franchisee to remove any Facilities from the Public Rights-of-Way following the expiration of the Term or a notice of termination from City to Franchisee, Franchisee shall undertake such removal subject to the following:

(a) in removing the Facilities, or part thereof, Franchisee shall refill and compact, at its own cost and expense, any excavation that shall be made by it and shall leave, in all material aspects, all Public Rights-of-Way and other property in as good condition as that prevailing prior to Franchisee's removal of the Equipment from the Public Rights-of-Way and without affecting, altering or disturbing in any way any electric or other cables, wires, structures or attachments;

(b) City shall have the right to inspect and approve the condition of such Public Rights-of-Way within one hundred twenty (120) days after notice such removal is completed, and, to the extent that City determines that said Public Rights-of-Way and other property have not been left in materially as good condition as that prevailing prior to Franchisee's removal of the Facilities, Franchisee shall be liable to City for the cost of restoring the Public Rights-of-Way and other property to said condition;

(c) all of the surety, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all Public Rights-of-Way, and for not less than one hundred twenty (120) days thereafter;

(d) removal shall be commenced within sixty (60) days of the removal order by City.

**13.5. Failure to Commence Removal.** If Franchisee has failed to commence removal of the Facilities within sixty (60) days after City has ordered their removal, then, to the extent not inconsistent with Applicable Law, City shall have the right to authorize removal by another Person of the Facilities in the Public Rights-of-Way at the Franchisee's cost and expense.

**13.6. Title to Facilities.** To the extent consistent with Applicable Law, any portion of the Facilities designated by City for removal and not timely removed by Franchisee, or permitted by City to be abandoned in place following a request by Franchisee for City's consent to abandonment of Facilities, shall belong to and become the property of City without payment to Franchisee, and Franchisee shall execute and deliver such documents in form and substance reasonably acceptable to City, to evidence such ownership by City. Determination of whether removal of Facilities is timely shall account for other planned and/or on-going construction work in the affected Public Rights-of-Way and Franchisee's ability to obtain any necessary permits from City.

## **ARTICLE 14 SUBSEQUENT ACTIONS**

**14.1. Franchise Approval and Terms Consistent with Applicable Law; Covenant not to Bring Certain Claims.** By acceptance of the terms and conditions of this Agreement, the Parties acknowledge and agree that the processes and procedures pursuant to which this Agreement was entered into and the Franchise was granted are consistent with Applicable Law as of the Effective Date of this Agreement. Franchisee covenants and agrees that it shall not bring any suit or action or otherwise assert any claim or defense against City before any court or administrative agency asserting that any obligations of Franchisee under this Agreement violate Applicable Law as of the Effective Date of this Agreement.

**14.2. Procedures in Event of Subsequent Invalidity.** In the event that, after the Effective Date, any court, agency, commission, legislative body, or other governmental authority of competent jurisdiction (other than City) (a) declares this Agreement invalid, in whole or in part, or (b) requires Franchisee either to (i) perform any act that is inconsistent with any provision of this Agreement or (ii) cease performing any act required by any provision of this Agreement, except with respect to any obligations with respect to compensation or other financial obligations pursuant to this Agreement, which shall be governed by Section 3.7, then Franchisee shall promptly notify City of such fact and, upon receipt of such notification, City and Franchisee, acting in good faith, shall each determine whether such declaration or requirement will materially frustrate or impede the ability of Franchisee to carry out its obligations pursuant to, and the purposes of, this Agreement. Regardless of City's or Franchisee's determination or the length of time that such determination may take, Franchisee may comply with such declaration or requirement, and such compliance will not be considered a breach or default of this Agreement. If City and Franchisee, acting in good faith, agree that such declaration or requirement does not have a material and adverse effect on this Agreement, then Franchisee shall continue to comply with such declaration or requirement. If either City or Franchisee, acting in good faith, determines that such declaration or requirement does have such an effect or that

compliance with such declaration or requirement by Franchisee would materially frustrate or impede the ability of Franchisee to carry out its obligations pursuant to, and the purposes of, this Agreement, then Franchisee and City shall enter into good faith negotiations to amend this Agreement.

## **ARTICLE 15 MISCELLANEOUS**

**15.1. Force Majeure.** Notwithstanding any other provision of this Agreement, Franchisee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement provided that such delay or failure shall not be attributable to events that are not within the reasonable control of, nor the result of the negligence of, Franchisee, and which, by the exercise of commercially reasonable efforts, Franchisee is unable to overcome or avoid or cause to be avoided, including but not limited to acts of God, fire, explosion, flood, storm or other similar catastrophe, war, revolution, civil commotion, labor strikes, labor or materials shortages affecting the communications industry as a whole, delays by government (or any department, agency, commission, court, or bureau of government) in providing authorization necessary for Franchisee to complete performance under this Agreement, acts of public enemies, pandemic, terrorism, or national emergency, or any law, order, or regulation of the government (or any department, agency, commission, court, or bureau of a government) resulting from the above. If such delay in performance or failure to perform affects only part of Franchisee's capacity to perform, Franchisee shall perform to the maximum extent it is able to do so and shall take all reasonable steps within its power to correct such cause(s). Franchisee agrees that in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible.

**15.2. Notices.** Any notice provided for under this Agreement shall be effective if in writing and: (a) delivered personally to the addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (b) sent by overnight or commercial air courier; or (c) sent by electronic mail with record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded or printed. Notice will be deemed to have been adequately given three (3) days following the date of mailing, or immediately if personally served. For service by electronic mail, service will be deemed effective at the beginning of the next business day. Notices shall be addressed as follows, or to such other address as the receiving party specifies in writing:

If to City:

Alexandria City Hall  
301 King Street  
Alexandria, VA 22314  
Attention: City Manager  
Facsimile:  
Electronic mail:

With a copy to:

Alexandria City Hall  
301 King Street  
Alexandria, VA 22314  
Attention: City Attorney  
Facsimile:  
Electronic mail:

If to Franchisee:

Lumos Telephone, Inc.  
[address]  
Attention:  
Electronic mail:

With a copy to:

Lumos Telephone, Inc.  
[address]  
Attention: Chief Legal Officer and General Counsel  
Electronic mail:

**15.3. Additional Representations and Warranties.** In addition to the representations, warranties, and covenants of Franchisee to City set forth elsewhere in this Agreement, Franchisee represents and warrants to City (which representations and warranties shall not be affected or waived by any inspection or examination made by or on behalf of City) that, as of the Effective Date:

(a) Organization, Standing, Power, Authorization and Enforceability. Franchisee is incorporated in the State of Delaware, is duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and is duly authorized to do business in the Commonwealth of Virginia and the City of Alexandria. Franchisee has all requisite power and authority to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. Franchisee also has all requisite power and authority to own or lease its properties and assets and to conduct its businesses as currently conducted except as would not have an adverse effect on Franchisee's performance of its obligations under this Agreement or restrict or limit Franchisee from taking any action required of Franchisee by this Agreement.

(b) The execution, delivery and performance of this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of Franchisee, and this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly executed and delivered by Franchisee and constitute (or upon execution and delivery will constitute) the valid and binding obligations of Franchisee.



(c) Consent. No consent, approval or authorization of, or declaration or filing with any public, governmental or other authority (including without limitation, the FCC or any other federal agency or any state, country, or municipal agency, authority, commission or council and, if applicable public utility commissions) on the part of Franchisee is required for the valid execution and delivery of this Agreement or any other agreement or instrument executed or delivered in connection herewith.

(d) No Coercion: Full Disclosure. Franchisee enters into this Agreement willingly and without coercion, undue influence or duress. In addition, Franchisee has not entered into this Agreement with the intent to act contrary to the provisions herein.

(e) Compliance with Law. Franchisee is in material compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the installation, upgrade, construction, repair, maintenance, and removal of the Communications System in the City of Alexandria.

(f) Litigation: Investigations. Except as disclosed in writing to City prior to the execution of this Agreement, there is no civil, criminal, administrative, arbitration or other proceeding, investigation or claim, pending or threatened against Franchisee, at law or in equity, or before any foreign, federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, including, without limitation, matters involving the granting of a temporary or permanent injunction against Franchisee that, if granted would have a material effect on the ability of Franchisee to comply with this Agreement or to take any action to be taken by Franchisee pursuant to this Agreement.

**15.4. Additional Covenants.** Until the termination of this Agreement and the satisfaction in full by Franchisee of its obligations under this Agreement, in consideration of the Franchise, Franchisee agrees that it will comply with the following affirmative covenants, unless City otherwise consents in writing:

(a) Compliance with Laws; Licenses and Permits. Franchisee shall comply with: (i) all applicable federal and state laws, rules, regulations, orders, writs, decrees and judgments relating to the installation, upgrade, construction, repair, maintenance and removal of the Facilities and (ii) all local laws and all reasonable rules, regulations, orders, or other directives of City issued pursuant to this Agreement relating to the installation, upgrade, construction, repair, maintenance and removal of Facilities. Franchisee shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to install upgrade, construct, repair, maintain and remove Facilities.

(b) Ability to Perform. In the event City reasonably identifies a material risk that Franchisee will be unable to perform its material obligations under this Agreement, including the installation, upgrade, construction, repair, maintenance and removal of the Facilities, City may request in writing, and Franchisee shall provide to City, a report addressing such matters and containing such detail and substance to reasonably demonstrate that it can perform on a timely basis, all material obligations pursuant to this Agreement. Franchisee shall supplement any such report as the City may reasonably request.

**15.5. Survival.** All representations and warranties contained in this Agreement shall survive the Term. Franchisee acknowledges that certain of the obligations to be performed under this Agreement are to be performed after the Franchise terminates or expires.

**15.6. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of City and Franchisee and their respective successors and permitted transferees and assigns.

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

**15.8. Interference with Contracts; Third-Party Beneficiary Rights.** Nothing in this Franchise is intended to interfere with any contracts or other arrangements between Franchisee and a third party. Nothing in this Franchise is intended to create any third-party beneficiary rights.

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

**15.10. No Waiver; Cumulative Remedies.** No failure on the part of City or Franchisee to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, all subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of City or Franchisee under Applicable Law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by City or Franchisee at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by City or Franchisee at any other time. In order for any waiver of City or Franchisee to be effective, it must be in writing.

**15.11. Delegation of City Rights.** City reserves the right to delegate and redelegate, from time to time, any of its rights or obligations under this Agreement to any body, organization or official of City. Upon any such delegation or redelegation, references to “City” in this Agreement shall refer to the body, organization or official to whom such delegation or redelegation has been made. Any such delegation by City shall be effective upon written notice by City to Franchisee of such delegation. Upon receipt of such notice by Franchisee, Franchisee shall be bound by all terms and conditions of the delegation not in conflict with this Agreement.

Any such delegation, revocation or redelegation, no matter how often made, shall not be deemed an amendment to this Agreement or require any consent of Franchisee.

**15.12. Claims Under Agreement.** City and Franchisee agree that any and all claims asserted by or against City arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in the City of Alexandria or in any court of the Commonwealth of Virginia located in the City of Alexandria.

**15.13. Reservation of Rights.** City reserves the right to adopt or issue such rules, regulations, orders or other directives governing Franchisee and the Facilities as it shall find necessary, appropriate and within the exercise of its police power or such other power or authority as City may have, and such other orders as City shall find necessary or appropriate relating to management of the Public Rights-of-Way, and Franchisee expressly agrees to comply with all such lawful rules, regulations, orders or other directives, provided that such rules, regulations, orders or other directives are of general applicability. No rule, regulation, order or other directive issued pursuant to this Section 15.13 shall constitute an amendment to this Agreement, provided that such rule, regulation, order or other directive is not inconsistent with this Agreement. The parties agree to undertake discussions toward achieving mutually acceptable solutions to issues identified by either party and related to this Franchise.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by duly authorized representatives of the parties on the dates written below.

**CITY:**

**THE CITY OF ALEXANDRIA, VIRGINIA, a  
municipal corporation of Virginia**

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

Name:

Title:

Date:

APPROVED AS TO FORM:

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

Senior Assistant City Attorney

**FRANCHISEE:**

**LUMOS TELEPHONE, INC.**

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

Name:

Title:

Date:

**EXHIBIT A**  
**UNDERGROUND CONSTRUCTION SPECIFICATIONS**  
**[to be attached]**

**EXHIBIT B**

**ABOVE-GROUND CABINET INSTALLATIONS**

**[to be attached]**

**EXHIBIT C**  
**PERMITTING PROCEDURES**

**[to be attached]**





**EXHIBIT D**  
**PARENT COMPANY GUARANTEE**

**[attached]**

## **GUARANTEE OF PERFORMANCE**

WHEREAS, the City Council of the City of Alexandria, Virginia (the “Council”), has granted Lumos Telephone, Inc. (the “Franchisee”), a nonexclusive franchise (the “Franchise”), granting the Franchisee the right to occupy the Public Rights-of-Way of the City of Alexandria (the “City”), for an initial term of twenty (20) years and for the purpose of providing broadband services, in the form of that certain Broadband Franchise Agreement dated \_\_\_\_\_, 2022 (the “Agreement”); and

WHEREAS, Parent Company (“Guarantor”) is the ultimate corporate parent of the Franchisee and will have a substantial indirect interest in the Franchise, in the conduct of the affairs of the Franchisee, and in the Agreement, which is incorporated herein by this reference.

NOW, THEREFORE, the Guarantor hereby unconditionally guarantees the due and timely performance of any and all obligations of the Franchisee required by the Agreement, subject to the following terms.

1. This Guarantee of Performance (the “Guarantee”) shall be effective as of the effective date of the Agreement. This Guarantee, unless terminated, substituted, or canceled as hereinafter provided, shall remain in full force and effect for the term of the Agreement, including all renewals and extensions. Upon the Council's prior written approval of a substitute guarantor, which approval shall not be unreasonably withheld, conditioned, or delayed, this Guarantee may be terminated, substituted, or canceled after written notice from the Guarantor to the City and the Franchisee of its desire to terminate, substitute or cancel this Guarantee. Any substitution of the Guarantor will be implemented in a manner that ensures that the substitute guarantee is in place and effective prior to or contemporaneously with the termination, substitution, or cancellation of this Guarantee so that there is no breach in coverage. Such

termination shall not affect any liability incurred or accrued under this Guarantee prior to the effective date of such termination or cancellation.

2. Any notice to be given by Guarantor hereunder shall be addressed to the City Manager with a copy to the Franchisee.

3. This Guarantee shall be legally binding upon Guarantor and its successors whether by merger, consolidation, conversion, or other lawful means, and any assignee of all or substantially all of the assets of Guarantor. This Guarantee shall inure to the benefit of the City and its successors. Guarantor hereby waives any acceptance of this Guarantee by the City, and this Guarantee shall immediately be binding upon Guarantor.

4. This Guarantee shall remain in full force and effect without regard to, and shall not be released, discharged, or in any way impaired by: (a) any amendment or modification of, or supplement to, or extension or renewal (pursuant to an option granted, holding over, or otherwise) of the Agreement (whether material or otherwise) or any assignment or transfer thereof, all of which Guarantor hereby consents to; (b) any exercise or non-exercise of any right, power, remedy, or privilege under or in respect of the Agreement or this Guarantee or any waiver, consent, or approval by the City with respect to any of the covenants, terms, conditions, or agreements contained in the Agreement or any indulgences, forbearance, or extensions of time for performance or observance allowed to the Franchisee from time to time and for any length of time; (c) the voluntary or involuntary liquidation or dissolution of the Franchisee, the sale of substantially all of the assets of the Franchisee, the marshaling of assets on liabilities, receiverships, conservatorship, insolvency, bankruptcy, assignment for the benefit of creditors, reorganizations, arrangement, composition or readjustment of, or other similar proceeding affecting the Franchisee or any of the Franchisee's assets; (d) any limitation on the liability or

obligation of the Franchisee under the Agreement or its estate in bankruptcy or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the United States Bankruptcy Code or other statute or from the decision of any court; or (e) any extension, forbearance or leniency extended by the City to the Franchisee. For the purposes of this paragraph, "Franchisee" means Lumos Telephone, Inc. and any successor to or assignee of Lumos Telephone, Inc. that assumes the obligations of Lumos Telephone, Inc. under the Agreement.

PARENT COMPANY

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_