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**LICENSE AGREEMENT
CITY OF ALEXANDRIA
AND
HARBOR LINK VIRGINIA, LLC**

LICENSE AGREEMENT

THIS **LICENSE AGREEMENT** (the “Agreement”) is made this ____ day of _____, 2022, by the City of Alexandria ("Licensor"), a municipal corporation of Virginia, and Harbor Link Virginia, LLC ("Licensee"), a limited liability company.

WHEREAS, the Licensee is in the business of providing, communications network infrastructure, including conduit and dark fiber facilities, by means of which third parties transport fiber optic communications signals; and

WHEREAS, the Licensee desires to occupy the Licensor's Public Rights-of-Ways by installing the Licensee Conduit (as hereinafter defined) along the route depicted and further defined in Exhibit A; and

WHEREAS, upon installation of the Licensee Conduit, the Licensee desires to install the Licensee Fiber (as hereinafter defined) within certain of the Licensee Conduit, with the intent of leasing the Licensee Fiber to its customers; and

WHEREAS, the Licensee does not intend to provide telecommunications service or cable service to any person within the City of Alexandria; and

WHEREAS, the Licensee and the Licensor anticipate that the Licensee shall apply for a franchise authorizing the Licensee to use the Public Rights-of-Way for a period greater than five years; and

WHEREAS, the Licensor is willing to permit the Licensee to occupy the Public Rights of Ways for the limited purpose of installing and maintaining the Licensee Conduit, the Licensee Fiber, and associated facilities, in accordance with the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions.

(a) “Affiliate” means any Person controlling, controlled by, or under common control with, another Person.

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(b) "Construction" means the installation and construction of the Facilities within the Public Rights-of-Way.

(c) "Dark Fiber" means optical fiber without lasers, electronics, optronics, power, or any other equipment that would function to light the fiber or otherwise transmit data or communications.

(d) "Director" means any director of the Alexandria Department of Transportation and Environmental Services, or the Director's designee.

(e) "Effective Date" means the specified in Section 14.

(f) "Facilities" shall mean the Licensee Conduit, the Licensee Fiber, and all other cables, lines, wires, conduit, handholes, pedestals, boxes and other similar equipment and devices owned by the Licensee and installed within the Public Rights-of-Way pursuant to this Agreement. The Facilities do not include the IRU Fibers, the MFN Conduit, or the Supplemental Conduit.

(g) "IRU Agreement" means the agreement attached as Exhibit D, pursuant to which Licensee grants Licensor an indefeasible right to use certain strands of Dark Fiber.

(h) "IRU Fiber" means four strands of Dark Fiber, as further described in Section 3(c) and the IRU Agreement.

(i) "License" means the right to occupy the Public Rights-of-Way granted by this Agreement.

(j) "Licensee Conduit" shall mean a bank of no more than twelve (12) high density polyethylene conduit suitable for the installation of fiber optic cable, each one and one-quarter inches (1.25") in diameter, as further described in Section 4(a) and Exhibit B.

(k) "Licensee Fiber" means any Dark Fiber installed within the Licensee Conduit.

(l) "Maintenance" means the maintenance, repair, and replacement (without any upgrade or expansion), and removal of the Facilities.

(m) "MFN Conduit" means a bank of two (2) high density polyethylene conduit suitable for the installation of fiber optic cable, each two inches (2") in diameter, that Licensee shall construct for and convey to the Licensor, and certain conduit, handholds, and related facilities, that comprise a portion of the MFN Network to be constructed by Licensee, as further described in Sections 3(b), 4(b), and Exhibit C.

(n) "MFN Construction Contract" means the contract for the construction of a fiber network within the City of Alexandria issued by the Licensor pursuant to ITB No. 938.

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(o) “MFN Contractor” means the prime contractor engaged by the Licensor to construct the City Network pursuant to the MFN Construction Contract.

(p) “MFN Network” means the fiber optic network being constructed by the Licensor to connect government facilities within the City of Alexandria pursuant to the MFN Construction Contract.

(q) "Person" means a natural person or an association, partnership, corporation, or other legally recognized entity.

(r) “Project Special Provisions” means Attachment J-13 of the MFN Construction Contract, titled “Project Special Provisions,” and dated October 2020.

(s) “Public Rights-of-Way” means the surface, the areas below the surface, and the air space above the surface of any and all of the following rights-of-way owned by or dedicated to the City of Alexandria which, during the term of this Agreement, are located within the corporate limits of the City of Alexandria: highways, roads, streets, lanes, alleys, curbs, sidewalks, bridges, overpasses, underpasses, and other similar rights-of-way.

(t) “Supplemental Conduit” means a bank of four (4) high density polyethylene conduit suitable for the installation of fiber optic cable, each two inches (2”) in diameter, and certain associated conduit, handholds, and related facilities, that Licensee shall construct for and convey to the City, as further described in Section 3(a) and Exhibit B. The Supplemental Conduit does not include the MFN Conduit.

2. Grant and Term of License.

(a) Grant. In exchange for the consideration described herein, the Licensor grants to the Licensee permission to use the Public Rights-of-Way, in accordance with the provisions, terms and conditions in this Agreement, for the Construction and Maintenance of the Facilities. The permission granted by this subsection is non-exclusive, and nothing in this Agreement shall affect the right of the Licensor to permit other Persons to use the Public Rights-of-Way.

(b) Scope. The Public Rights-of-Way to which the Licensor is granting the Licensee access pursuant to this Agreement are shown on the “Final Construction Plan,” as defined in Section 4(a) of this Agreement and attached as Exhibit A hereto. Exhibit A is hereby incorporated into this Agreement.

(c) Purpose. The Licensor understands that the Licensee intends to install the Facilities for the purpose of leasing the Licensee Conduit and Licensee Fiber to one or more other Persons. This Agreement does not grant the Licensee the authority to provide telecommunications service, cable service, or any other form of communications service, nor to conduct any other business by means of the Public Rights of-Way. The Licensee acknowledges

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that, subject to applicable law, the consent of the Licensors may be required before the Licensee or any customer of the Licensee may engage in any such activities.

(d) Licensors' Authority. This Agreement and the License shall be subject to the police power of the City of Alexandria, and to all ordinances heretofore or hereafter enacted by the Alexandria City Council, to all regulations promulgated by Alexandria City officials, and to other applicable laws and regulations established by the Commonwealth of Virginia or the United States.

(e) Term. The term of this Agreement shall be five years, beginning on the Effective Date, unless sooner terminated. This Agreement shall not be renewed.

3. Compensation.

(a) Supplemental Conduit. As consideration for the License, the Licensee shall perform all construction required to install, and shall install, the Supplemental Conduit along the route depicted and further described in Exhibit B, at the Licensee's sole expense and at no cost to the Licensors. The Supplemental Conduit shall include all handholes, manholes, and other ancillary improvements described in Exhibit B. Exhibit B shall be prepared as described in Section 4(b). The Supplemental Conduit shall be installed by the Licensee at the same time as the Licensee constructs its Facilities. Upon acceptance by the Licensors of the Supplemental Conduit pursuant to Section 4(c) of this Agreement, ownership of the Supplemental Conduit shall pass to and thereafter be held by the Licensors and the Licensors shall have the right to use the Supplemental Conduit without restriction.

(b) MFN Conduit. As consideration for the License, the Licensee also shall perform all construction required to install, and shall install, the MFN Conduit in accordance with Exhibit C, at the Licensee's sole expense and at no cost to the Licensors. The MFN Conduit shall include all handholes, manholes, and other ancillary improvements described in Exhibit C. Exhibit C is hereby incorporated into this Agreement. Upon acceptance by the Licensors of the MFN Conduit pursuant to Section 4(d) of this Agreement, ownership of the MFN Conduit shall pass to and thereafter be held by the Licensors and the Licensors shall have the right to use the MFN Conduit without restriction.

(c) IRU Fiber. As additional consideration for the License, the Licensee shall grant the Licensors an indefeasible right to use the IRU Fiber, commencing on the Completion Date, for a term of forty (40) years. The termination points of the IRU Fiber shall be a point within the City of Alexandria, and a data center in Ashburn, Virginia, as more specifically designated in the IRU Agreement. The Parties shall enter into the IRU Agreement no later than the effective date of any successor agreement between the Licensee and the Licensors that authorizes the Licensee to maintain the Facilities in the Public Rights-of-Way for a term longer

than five years. The execution of the IRU Agreement shall be a condition precedent to the grant of any rights by the Licensor to the Licensee under such a successor agreement.

4. Construction and Operations.

(a) Construction Coordination. The Licensee acknowledges that a segment of the proposed route of the Licensee Conduit coincides with the planned location of the MFN Conduit. Licensee has therefore agreed to construct the MFN Conduit, as described in Section 3(b) and Section 4(c). The parties also agree that construction of the Facilities and the MFN Conduit shall be coordinated with the construction of the MFN Network by the MFN Contractor.

(b) Licensee Conduit Construction Plan. No later than thirty (30) days after the Effective Date, the Licensee shall submit to the Licensor a system design and construction plan showing (i) the proposed location of the Facilities, the Supplemental Conduit, and the MFN Conduit within the Public Rights-of-Way; and (ii) the proposed timeline for construction of the Facilities, the Supplemental Conduit, and the MFN Conduit (the “Initial Construction Plan”). The Licensor shall review the Initial Construction Plan and may propose changes as required to conform the plan to the Licensor’s planned activities along the proposed route of the Licensee Conduit, including without limitation, to the proposed location of the Facilities and the Supplemental Conduit, and construction phasing, within sixty (60) days of receiving the Initial Construction Plan. The Licensee shall revise the Initial Construction Plan in light of the Licensor’s comments and shall submit a final plan (the “Final Construction Plan”) to the Licensor within fifteen (15) days after receiving the Licensor’s recommendations. The Final Construction Plan shall be attached to this Agreement as Exhibit A. The Final Construction Plan shall also include a separate description of the location of the Supplemental Conduit and the components of the Supplemental Conduit, which shall constitute Exhibit B. Unless otherwise directed by the Licensor, the Licensee shall commence construction of the Facilities and the Supplemental Conduit within thirty (30) days of completion of construction of the MFN Conduit, as described in Section 4 (c) (the “Commencement Date”). The Licensee shall complete construction of the Facilities and the Supplemental Conduit no later than September 30, 2023 (the “Completion Date”).

(c) MFN Conduit Construction Schedule. The Licensee acknowledges that the construction of the MFN Conduit must be completed in sufficient time to allow the MFN Contractor to meet its contractual obligations to Licensor. Therefore, the Licensee shall (i) complete the work described in Exhibit C before it performs any other work required or anticipated by this Agreement; and (ii) shall complete the work described in Exhibit C no later than February 28, 2023.

(d) Installation of Facilities. The Licensee shall install the Facilities, the Supplemental Conduit, and the MFN Conduit in accordance with the Final Construction Plan.

All Construction, Maintenance, or other activities in the Public Ways by the Licensee shall be subject to the City's general permit requirements and comply with all applicable laws and regulations. The Licensee shall obtain all permits required to perform any work necessary to install the Facilities, the Supplemental Conduit, or the MFN Conduit. The Supplemental Conduit and MFN Conduit shall terminate only at dedicated Licensor junction boxes. Upon completion of construction and acceptance of the Supplemental Conduit and the MFN Conduit, the Licensor shall not be required to coordinate with the Licensee for access to the Supplemental Conduit or the MFN Conduit. The Licensee also shall comply with all reasonable requirements established by the Director.

(e) Acceptance of MFN Conduit and Supplemental Conduit. The Licensee shall promptly notify the Licensor in writing of the completion of construction of the MFN Conduit and the Supplemental Conduit. Inspection and acceptance of the MFN Conduit and the Supplemental Conduit shall be performed in accordance with Exhibit E.

(f) Coordination of Construction. Until construction of the Facilities proposed in the Final Construction Plan has been completed, the Parties shall meet at least monthly to discuss permitting, design, construction timelines, coordination with the MFN Contractor, and other matters of mutual concern.

(g) Discretion of the Director. The Director shall have the discretion, which is to be reasonably exercised, to determine the timing of the proposed construction, taking into account the dates requested by the Licensee and other planned and/or on-going construction work in the affected Public Rights-of-Way. The Licensee agrees that construction of the Facilities in the 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 the Licensor or by any provider of telecommunications service, cable service, or any utility service.

(h) Maintenance by Licensee. The Licensee may perform Maintenance 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 equipment or workers involved in such Maintenance, are located on the travel, parking, curb or sidewalk portion of the Public Rights-of-Way, or any other portion of the Public Rights-of-Way. At least thirty (30) days prior to performing Maintenance while located on the travel, parking, curb or sidewalk portion of the Public Rights-of-Way, or any other portion of a Public Rights-of-Way, the Licensee (i) shall inform the Director in writing of the location at which it intends to perform such Maintenance, (ii) shall provide whatever other information the Director requests, and (iii) shall obtain either a permit or other written approval of the Maintenance from the Director. In performing Maintenance, the Licensee shall comply with all requirements established by the Director. In addition to and notwithstanding the provisions of this subsection (h), the Licensee shall maintain in good and

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safe condition all Facilities it places within the Public Rights-of-Way, and shall, in connection with any Maintenance activity it undertakes, comply with all applicable laws and regulations.

(i) Maintenance by Licensor. The Licensor shall exercise best efforts to provide the Licensee with at least forty-eight (48) hours' notice before performing any planned maintenance in locations where the Supplemental Conduit or the MFN Conduit are placed in the same bore as the Licensee's Facilities.

(j) Emergency Maintenance. If either party finds it necessary to perform emergency repair work in any location where conduit of both parties has been placed in the same bore, the party performing the work shall exercise best efforts to give the other party prompt advance notice of the emergency maintenance work. If advance notice is not practical under the circumstances, the party performing the work shall notify the other party as soon as practical after completing the work.

(k) Removal. The Licensee may, at any time, in the exercise of its sole and absolute discretion, effect the removal of any or all of the Facilities from the Public Rights-of-Way. The Supplemental Conduit and MFN Conduit may be removed by the Licensee only upon the mutual agreement of the Parties. Removal of Facilities shall not terminate this Agreement. When performing any aspect of removal where the Facilities being worked on or any of the equipment or workers involved in the removal is located on the travel, parking, curb or sidewalk portion of a street, or any other portion of a Public Way, the Licensee shall comply with all procedures applicable to Maintenance, as set forth above in subsection (g). In addition to and notwithstanding the provisions of this subsection (h), the Licensee shall, in connection with any removal activity, comply with all applicable laws and regulations.

(l) Undergrounding. Chapter 3 of title 5 of the City Code contains undergrounding requirements that apply, inter alia, to the installation, repair and replacement of "customer utility services" and "transmission and distribution lines." The Licensee acknowledges that it is subject to these requirements and, consequently, that it will be required to install its Facilities underground. Nothing herein shall limit the Licensee's ability to seek a waiver of the undergrounding requirement for subsequent builds pursuant to the procedures set forth under Chapter 3 of Title 5, Section 27 of the City Code.

(m) Relocation. The Licensee shall remove from or relocate within the Public Rights-of-Way, at its own expense and within 60 days of written notice provided by the Licensor, or any such longer time as reasonably requested by the Licensee and consented to by the Licensor, any Facilities identified by the Licensor in said written notice, whenever the Licensor, in its sole discretion, determines that (i) the Facilities interfere, disturb or conflict with the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys or other Public Rights-of-Way, public grounds, storm drainage systems, sewer systems, water mains, other public facilities or private utility systems which were in operation at the time the facilities were constructed, or (ii) the Facilities interfere, disturb or

conflict with any public communications system or equipment (including but not limited to AM/FM radio, shortwave radio and two-way radio systems), or with any private communications system which was in operation at the time the facilities were constructed. Any relocation of Facilities shall be subject to all the provisions, terms and conditions of this Agreement, and to all applicable laws and regulations.

(n) No Interference. When engaged in Construction pursuant to this Agreement, Licensee shall not cause any inconvenience to the general public or the Licensor's work forces, except as authorized by the Director. When performing Maintenance, Licensee shall not hinder or impede the flow of traffic to any greater extent than is reasonably necessary. Licensee shall strictly abide by any requirements imposed by the Director, including requirements relating to time limitations and the submission of a traffic control plan.

5. Licensee's Documentation. The Licensee shall prepare as-built drawings depicting the location of the Licensee Conduit, the Supplemental Conduit, and the MFN Conduit in accordance with Exhibit F.

6. Damage to Public Rights-of-Way and Other Property by Licensee.

(a) Restoration by Licensee. If, in the course of Construction or Maintenance or otherwise dealing with any of the Facilities, the Supplemental Conduit, or the MFN Conduit, the Licensee damages any pavement, street, alley, sidewalk, sewer, water or other pipe, in the Licensor's Public Rights-of-Way or any other public property, real or personal, belonging or dedicated to the Licensor, the Licensee shall promptly repair the same at its own cost and expense consistent with applicable Licensor standards. If the Licensee shall default in this obligation, the Licensor may cure the default itself, and may charge to the Licensee the reasonable cost it incurs in curing the default; provided, that prior to performing any work to cure a default, the Licensor shall give the Licensee written notice of the default and a period of five business days from the date of the notice in which to initiate action to cure the default and a period of 30 days in which to complete the cure; provided further, that these 5-day and 30-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 periods respectively, and the Licensee has diligently pursued commencement of, or completion of, a cure during the period, as applicable.

(b) Restoration by Licensor. Notwithstanding the provisions of subsection (a), if the Director determines, in his sole discretion consistent with applicable law, that damage, as described in subsection (a), threatens the public health or safety, the Licensor may commence the repair of the damage and assess its costs upon the Licensee, as provided in subsection (a); provided, that, prior to commencing such repair work, the Licensor shall make a

reasonable effort to provide the Licensee with telephonic notice and an opportunity to immediately repair the damage itself. In the event the Licensee is unable to, or otherwise fails to, immediately repair the damage and the Licensor performs the repair work, the Licensor shall, immediately upon completion of the work, provide the Licensee with written notice of the work it has performed, and also shall, reasonably soon after the completion of the work, provide the Licensee with a statement of the reasonable cost the Licensor incurred in performing the work.

(c) Resurfacing. The Licensee shall repave or resurface the Public Rights-of-Way in accordance with the then current standards set forth by the Director if there are any street cuts or other disturbances of the surface of the Public Rights-of-Way as a result of any installation by the Licensee of any Facilities or the Supplemental Conduit under this Agreement. The Licensee shall replace removed or damaged pavement in accordance with the pavement details provided within the construction plan details of the MFN Construction Contract, which are attached as Exhibits C-1 through C-4, provided that if such pavement details have been superseded, the Licensee shall repave or resurface the Public Rights-of-Way in accordance with the then-current standards set forth by the Director.

(d) Payment of Costs. Any costs assessed upon the Licensee under this section shall be paid to the Licensor within thirty (30) days of the assessment.

7. Unauthorized Use. In the event of any use by the Licensee of any portion of the Public Rights-of-Way or any other property owned by or dedicated to the Licensor that is not authorized by this Agreement, the Licensee shall, immediately upon notice by the Licensor, cease the use and remove all Facilities associated with the use. In addition, the Licensee shall pay to the Licensor a sum of five hundred dollars (\$500) for each day that the unauthorized use occurs.

8. Insurance. The Licensee shall obtain and maintain throughout the term of this Agreement the following insurance coverages :

(a) Commercial general liability insurance in an amount not less than \$1,000,000 combined single limit coverage with \$1,000,000 general aggregate coverage, covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors and products liability; and

(b) Virginia statutory workers compensation coverage, including Virginia benefits and employers' liability with limits of \$100,000/\$100,000/\$500,000. The general aggregate limits shall apply to all any Individual Conduit to which the Licensee retains title and Facilities and activities under this Agreement. The Licensor shall be named an additional insured on the liability policy. Prior to the start of any Construction, the Licensee shall provide

to the Director a certificate of insurance that demonstrates, to the satisfaction of the Director, that the Licensee has in force the coverages required above, including contractual liability coverage, and that the Licenser is an additional insured for purposes of the commercial general liability coverage.

9. Indemnification.

(a) Licensee to Indemnify Licenser. The Licensee shall indemnify and hold harmless the Licenser and all of its elected officials, officers, employees and agents from and against all suits, actions, causes of action, damages, claims, liability and expenses (including court costs and attorney's fees) resulting from or arising out of any bodily injury, death or property damage (including injury, death or damage, or other losses, sustained by the Licenser or any of its officials, employees and agents) caused, in whole or in part, by any act or omission of the Licensee or its employees, officers, contractors, agents or servants relating to or involving the Construction or Maintenance of any Facilities, or otherwise under this Agreement, or by any other act or omission by such persons under this Agreement, except to the extent that such bodily injury, death or property damage, or losses, are caused by the gross negligence or willful misconduct of the Licenser or any of its officers, employees and agents.

(b) Indemnification Pertaining to MFN Construction Contract. The Licensee shall indemnify and hold harmless the Licenser and all of its elected officials, officers, employees and agents from and against all suits, actions, causes of action, damages, claims, liability and expenses (including court costs and attorney's fees) brought by or asserted by the MFN Contractor as resulting from or arising out of, in whole or in part, the failure of Licensee to complete construction of the MFN Conduit by February 28, 2023, in accordance with the standards and procedures set forth in Exhibit C and Exhibit E.

(c) Duty to Defend. If a suit or action for which Licenser and its officers, employees and agents are entitled to be indemnified and held harmless under subsection (a) shall be brought against the Licenser or one or more of its officers, employees or agents, either individually or jointly with Licensee, Licensee shall defend, indemnify and hold harmless the Licenser and the sued officers, employees and agents at the sole cost and expense of Licensee. The Licenser shall promptly provide the Licensee with written notice of the commencement of any such suit or action. The Licensee shall conduct the defense of such suit or action, subject to the Licenser's approval, which shall not be unreasonably withheld or delayed. The Licenser may also participate in this defense directly, at its own expense.

(d) Payment of Judgment. If a final judgment is obtained against the Licenser or one or more of its officers, employees or agents in a suit or action, either independently or jointly with the Licensee, for which the Licenser and its officers, employees and agents are entitled to be indemnified and held harmless under this section, the Licensee

shall pay every judgment, including all costs and attorneys' fees, entered against the Licensor and any of its officers, employees and agents.

(e) Settlement. The Licensee shall be entitled to settle a claim brought in a suit or action for which the Licensor and its officers, employees and agents are entitled to be indemnified and held harmless under subsection (a), provided that the Licensee must obtain the prior written approval of the Licensor for any settlement of such claims against the Licensor, which approval shall not be unreasonably withheld or unreasonably delayed.

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

10. 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.

11. Replacement, Termination and Expiration.

(a) Replacement. This Agreement shall terminate without further action by either party upon the effective date of a grant of a franchise by the Licensor that authorizes the Licensee to maintain the Facilities in the Public Rights-of-Way for a term longer than five years.

(b) Termination by Licensee. At any time after acceptance by the Licensor of the Supplemental Conduit and the MFN Conduit, this Agreement may be terminated by the Licensee, at its election and without cause, by delivering written notice of termination to the Director at least 60 days prior to the effective date of such termination.

(c) Termination for Default. If the Licensee fails to comply with any material term or condition of this Agreement, the Licensee shall be considered in default. If such default continues for thirty (30) days after the Licensee has received written notice of the default from the Licensor, the Licensor may terminate the Agreement, effective immediately; provided, however, that such 30-day period will be extended for an additional period of time as is reasonable under the circumstances if the Licensee's violation cannot reasonably be cured within the initial 30-day period and if the Licensee has commenced a cure within such period and continues to diligently pursue such cure. The obligation to complete construction of the MFN Conduit by the February 28, 2023, shall be deemed a material term of this Agreement.

(d) Removal. The Licensee, at its sole expense, shall remove its Facilities from all Public Rights-of-Way within 180 days after the termination or expiration of this Agreement, or within such later time as may be prescribed by the Director, unless a new agreement shall have been entered into before such expiration date under which the Licensee may continue to maintain its Facilities in the Public Rights-of-Way.

(e) Failure to Remove. If the Licensee fails to remove any of its Facilities as required by subsection (d), such Facilities shall be considered to have been abandoned and conveyed to the Licenser by the Licensee, in which case they shall be thereafter become the property of the Licenser.

12. Assignment, Leasing, and Transfer.

(a) Notice to Sale. If the Licensee enters into an agreement to sell or otherwise convey ownership of any or all of its Facilities to another Person, the Licensee shall immediately notify the Licenser. No such sale shall be consummated except pursuant to Section 12(c) until such time as the prospective purchaser has entered into a license agreement or franchise agreement with the Licenser to occupy the Public Rights-of-Way.

(b) Notice of Lease. If the Licensee enters into an agreement to lease any or all of its Facilities to another Person, the Licensee shall immediately notify the Licenser.

(c) Consent Required. This Agreement may not be assigned by the Licensee without the prior written consent of the Licenser, which consent may or may not be given at the sole discretion of the Licenser, and which may require action by the City Council. Notwithstanding the foregoing, the Licensee may assign its rights, without the consent of the Licenser, to any Affiliate of Licensee, or to any successor-in-interest acquiring fifty-one percent (51%) or more of Licensee's stock, provided the Licenser is given notice of the assignment before it becomes effective. Any successor of the Licensee shall be bound by all of the provisions, terms and conditions of this Agreement and shall be subject to all the obligations, stipulations and penalties herein prescribed.

(d) Consent Not Required. Nothing in this Agreement shall be construed to require the Licensee to obtain approval from the Licenser in order to lease or grant an indefeasible right of use in any or all of the Facilities to a third party, as long as (i) such lease or grant does not purport to require or permit any entity other than the Licensee to place Facilities or otherwise conduct activities within the Public Rights-of-Way; and (ii) the Licensee remains responsible for all Facilities, and all activities, within the Public Rights-of-Way under such lease or grant.

(e) Conduit Leasing. The Licensee acknowledges that the placement by a third party of fiber optic cable or other equipment that is not the property of the Licensee within any of the Licensee Conduit requires the prior written consent of the Licenser. The Licensee shall notify any prospective lessee of the Licensee Conduit of that requirement in writing before entering into any agreement with such a third party for a lease of the Licensee Conduit. The Licensee shall also deliver to the Licenser a copy of the notice to the prospective lessee at the same time the notice is delivered to the prospective lessee.

13. Condemnation. Nothing in this Agreement is intended to or shall affect the Licensors authority to acquire Facilities located in the Public Rights-of-Way pursuant to condemnation proceedings or otherwise pursuant to law.

14. Effective Date. This Agreement and the rights and privileges hereby conferred shall not become effective until the Licensee files with the Director (i) a copy of the Agreement executed by an authorized officer, and (ii) a \$250,000 surety bond , with a good and sufficient surety reasonably acceptable to the Alexandria City Attorney. The date of such delivery shall be the “Effective Date.” The surety bond shall guarantee the performance of the Licensee under this Agreement, including without limitation that the Licensee will maintain in good and safe condition all Facilities it places in Public Rights-of-Way throughout the term of the Agreement, will remove any such Facilities from the Public Rights-of-Way in accordance with Section 4 of the Agreement, and will comply with the provisions, terms and conditions of this Agreement in all respects.

15. Representations. By the signature below of its authorized legal representative, the Licensee accepts this Agreement and the License. This Agreement constitutes the entire agreement between the Licensors and the Licensee, and it supersedes any prior agreements (if any) between the parties. The Licensors and the Licensee each represents that no representation by either party or its officials or employees has induced the other party to execute this agreement. The parties agree that there are no representations, inducements, promises or agreements, oral or otherwise, between them which are not embodied in this Agreement, which are of any force. No amendment of this Agreement shall be binding on either party unless set forth in a written document duly executed by authorized representatives of both parties.

16. Applicable Law. This Agreement was accepted in the Commonwealth of Virginia, and shall be interpreted and construed under Virginia law and any applicable federal law, which law shall prevail in any conflict of laws.

17. Waivers.

(a) Waiver in Writing. Subject to the foregoing, any waiver of this Agreement or any of its provisions shall be effective and binding upon the parties only if it is made in writing and duly signed by the parties.

(b) No Waiver. If either party fails to enforce any right or remedy available under this Agreement, that failure shall not be construed as a waiver of any right or remedy

with respect to any breach or failure by the other party. Nothing herein shall be construed as a waiver of any rights, privileges or obligations of the Licensor or the Licensee, nor constitute a waiver of any remedies available at equity or at law.

18. Severability. The Licensee and the Licensor shall comply with any applicable federal law regarding the use of the Public Rights-of-Way. If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, such provision shall thereupon return to full force and effect without further action by the parties and shall thereafter be binding on the Licensee and the Licensor. If the terms of this Agreement are materially altered due to changes in governing law, then the parties shall negotiate in good faith to reconstitute this Agreement in a way consistent with then applicable law in a form that, to the maximum extent possible, is consistent with the original intent of the parties and preserves the benefits bargained for by each party.

19. Force Majeure. Neither the Licensee nor the Licensor shall be liable for any delay or failure in performance of any party of this Agreement from any cause beyond its control and without its fault or negligence, which may include, without limitation, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

20. Notice. All notices or other communications which are required or permitted herein shall be in writing and sufficient if (i) delivered personally, (ii) sent by email or facsimile transmission followed by written confirmation of receipt, (iii) sent by a nationally recognized overnight commercial air courier, (iv) or sent by registered or certified mail, postage prepaid, return receipt requested, to the party at its physical or email addresses or facsimile number set forth below or to such other address or party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered, if delivered personally, on the same day as an email or facsimile transmission (or the first business day thereafter if sent on a Saturday, Sunday or legal holiday), on the first business day after dispatch if sent by overnight commercial air courier, or on the fifth business day after posting if sent by mail.

To Licensee: Harbor Link Virginia, LLC
211 East Lombard Street, Suite 133
Baltimore, Maryland 21202

DRAFT – 4-11-22

Attention: Felix Dialoiso

To Licensor:

Director
Department of Transportation and Environmental Services
301 King Street
Suite 4100
Alexandria, Virginia 22314

With copy to:

City Attorney
301 King Street
Suite 1300
Alexandria, Virginia 22314

21. Incorporation by Reference. Exhibits A, B, C, D, E, and F are hereby incorporated by reference and made a part of this Agreement. The Project Special Provisions are also incorporated by reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License.

CITY OF ALEXANDRIA, a municipal
corporation of Virginia

HARBOR LINK VIRGINIA, LLC

By: _____
James F. Parajon
City Manager

By: _____

Print Name: _____

Title: _____

Dated: _____

Dated: _____

Approved as to form:

DRAFT – 4-11-22

Senior Assistant City Attorney

EXHIBIT A

LICENSEE CONDUIT FINAL CONSTRUCTION PLAN

[To include a route map, list of handholes, list of all other facilities to be installed in the ROW, and all other details needed to define Harbor Link's planned construction.]

EXHIBIT B

SUPPLEMENTAL CONDUIT

[To include a route map, list of handholes, and all other details needed to define what HarborLink is to build for the City.]

EXHIBIT C

MUNICIPAL FIBER PROJECT CONTRACT MODIFICATIONS DESCRIPTION OF MFN CONDUIT

- A. The Licensee has agreed to perform certain tasks that were previously the responsibility of the MFN Contractor under the terms of the MFN Construction Contract, and which have been removed by the Licenser and the MFN Contractor from that contract. Those tasks, which comprise the installation of the MFN Conduit as required by Section 3(b) of this Agreement, are described below. Any work to be provided by the MFN Contractor on behalf of the Licensee is not included in this Agreement or in the MFN Construction Contract. The Licenser will not be a party to the negotiation or coordination of any agreement between the Licensee and the MFN Contractor.
- B. In accordance with paragraph A of this Exhibit C, above, the Licensee shall perform the following work:
- a. The Licensee shall place the directional bore conduit per the requirements provided in section 4.1.1.1 of the Project Special Provisions, to include, without limitation, the placement of mule tape in one of the 2" MFN Conduits and mule tape and tracer wire in the second 2" MFN Conduit.
 - b. City of Alexandria West:
 - o The Licensee shall be responsible for ten thousand feet (10,000') of directional drilling, new conduit, and the placement of thirty (30) 2x3x3 hand holes and one (1) 4x4x4 hand hole, running parallel to Duke Street, as described on the following sheets, which are attached as part of Exhibit C-4, as defined hereinafter:
 - SP-23, certain conduit, handholds, and related facilities, SP-46, SP-47, SP-48, SP- 49, SP-50, and SP-51.
 - c. City of Alexandria Central:
 - o The Licensee shall be responsible for two thousand nine hundred sixty-three feet (2,963') of directional drilling, new conduit, and the placement of six (6) 2x3x3 hand holes and one (1) 4x4x4 hand hole, running parallel to Duke Street, as described on the following sheets which are attached as part of Exhibit C-1, as defined hereinafter:
 - SP-44, SP-45, SP-46, SP-47.

- d. The Licensee shall construct specified elements of the MFN Construction Contract in accordance with the provisions included in the following:
 - 1. MFN Construction Contract, Construction Plans:
 - a. Attachment J-9, City of Alexandria Central, dated August 18, 2020 (attached hereto as Exhibit C-1);
 - b. Attachment J-10, City of Alexandria East, dated August 17, 2020 (attached hereto as Exhibit C-2);
 - c. Attachment J-11, City of Alexandria North, dated August 18, 2020; (attached hereto as Exhibit C-3); and
 - d. Attachment J-12, City of Alexandria West, dated August 18, 2020 (attached hereto as Exhibit C-4).
 - 2. MFN Construction Contract, Project Special Provisions.

- C. The Licensee shall place the directional bore conduit in accordance with the documents listed above and in collaboration with the MFN Contractor. The Licensee shall coordinate construction operations and scheduling with the MFN Contractor. The MFN Contractor shall be responsible for providing and installing in the MFN Conduit one (1) 288-fiber cable as required by the MFN Construction Contract.

EXHIBIT D

IRU AGREEMENT

IRU to address the following, as applicable:

As-Built Drawings

Route Map

Acceptance testing

Demarcation Point Locations

Fiber Assignments

Circuit IDs [if applicable]

Rack Panel and Port Assignments [if applicable]

EXHIBIT E

INSPECTION AND ACCEPTANCE

Section 1: Inspection by Licenser.

Inspection and acceptance of the work to be furnished hereunder shall be made by the Licenser. Periodic and daily site visits may be made by the Licenser. Until deliverance and acceptance, and after any rejection, risk of loss will be on the Licensee unless loss results from negligence of Licenser. The Licenser reserves the right to perform periodic spot inspections of equipment at any time during construction.

Section 2: Inspection by Licensee.

Licensee shall assume all responsibility for guaranteeing the quality of all material and construction work. Additional requirements for Licensee inspection and testing are provided in Section 3.2.4 of the Project Special Provisions.

A. The Licensee shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by the Agreement conforms to the contract specifications. The Licensee shall maintain complete inspection records and make them available to the Licenser. All work shall be conducted under the general direction of the Licenser and is subject to Licenser inspections and tests, at all places and at all reasonable times before acceptance, to ensure strict compliance with the terms of the Agreement.

B. Licenser inspections and tests are for the sole benefit of the Licenser and do not:

1. Relieve the Licensee of responsibility for providing adequate quality control measures;
2. Relieve the Licensee of responsibility for damage to or loss of the material before acceptance;
3. Constitute or imply acceptance; or
4. Affect the continuing rights of the Licenser after acceptance of the completed work.

C. The presence or absence of a Licenser inspector does not relieve the Licensee from any requirement of the Agreement, nor is the inspector authorized to change any term or condition of the specification without the Licenser's written authorization.

DRAFT – 4-11-22

D. The Licensee shall, without charge, replace or correct work found by the Licenser not to conform to the Agreement requirements unless, in the public interest, the Licenser consents to accept the work. The Licensee shall segregate and promptly remove rejected material from the premises.

E. If the Licensee does not replace or correct rejected work promptly, the Licenser may, by contract or otherwise, replace or correct the work and charge the cost to the Licensee; or terminate the Agreement.

F. If, before acceptance of the entire work, the Licenser decides to examine already completed work by removing it or tearing it out, the Licensee, on request, shall furnish promptly all necessary facilities, labor and material. If the work is found to be defective or non-conforming in any material respect due to the fault of the Licensee or a subcontractor of the Licensee, the Licensee shall defray the expenses of the examination and satisfactory reconstruction. However, if the work is found to meet the requirements of the Agreement, the Licenser shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if the completion of the work was thereby delayed, an extension of time.

G. Unless otherwise specified in the Agreement, the Licenser shall accept, as promptly as practicable after completion and inspection, all work required by the Agreement or that portion of the work the Licenser determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Licenser's rights under any warranty or guarantee.

Section 3: Claims for Damages.

A. The risk of loss will be on the Licensee until completion and acceptance and after any rejection, unless loss results from negligence of Licenser.

B. Should a party to the Agreement suffer injury or damage to person or property because of any act or omission of Licensee or any of their employees, subcontractors, agents, or others for whose acts the Licensee is legally liable, a claim for damages shall be made in writing within a reasonable time after the first observance of such injury or damage. The liability for such actions is borne by the Licensee.

C. Should damage to person or property result from an act of omission; accident; or third party, the Licensee shall promptly notify the Licenser of the incident; and pursue a claim for compensation against the appropriate insurance of third party or Licensee. This does not include damages related to force majeure.

EXHIBIT F

ENGINEERING DOCUMENTATION

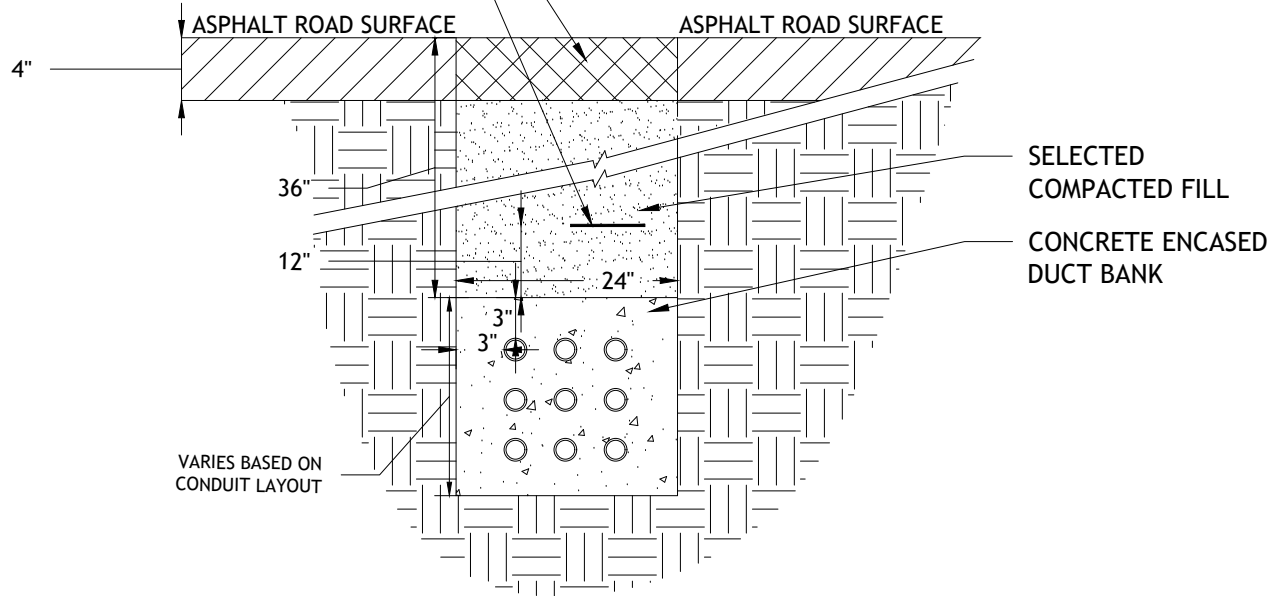
The Licensee shall collect detailed as-built data during construction. All such documentation shall be provided to the Licensor and any designated engineering personnel on a weekly basis. A complete set of final as-builts for the MFN Conduit shall be provided within three months of completing the installation of conduit and junction boxes as provided by Exhibit C. A complete set of final as-builts for the Supplemental Conduit shall be provided within three months of completing the installation of conduit and junction boxes as described in Exhibit B.

Electronically collected data and/or markups of engineering documents shall consist of the following, per agreed-upon formats with the Licensor:

- Precise GPS coordinates (+/- 1 ft accuracy) indicating the lateral placement of conduit at intervals not to exceed 50 feet;
- Precise GPS coordinates (+/- 1 ft accuracy) at the center of each junction box and splice enclosure;
- Markups identifying fiber cable footage sequential numbers at each splice and at both ends of each slack coil; and
- Depth of conduit at intervals no greater than 50 feet, whether measured manually (open trench) or log data collected from the directional bore guidance system used during construction.

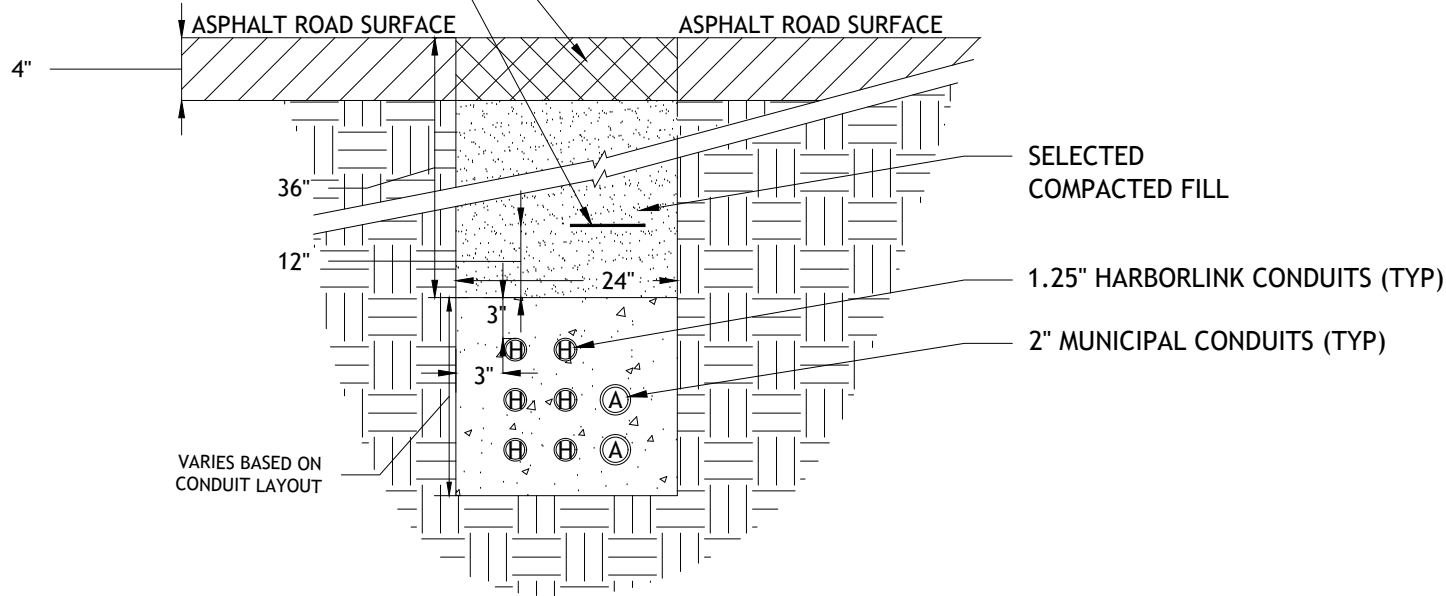
Construction may not deviate from Licensor-supplied engineering drawings without prior approval from the Licensor.

FINAL RESTORATION OF THE PAVEMENT SHOULD BE DONE IN ACCORDANCE WITH CURRENT STANDARDS SET FORTH BY THE DIRECTOR OF T&ES.
WARNING TAPE



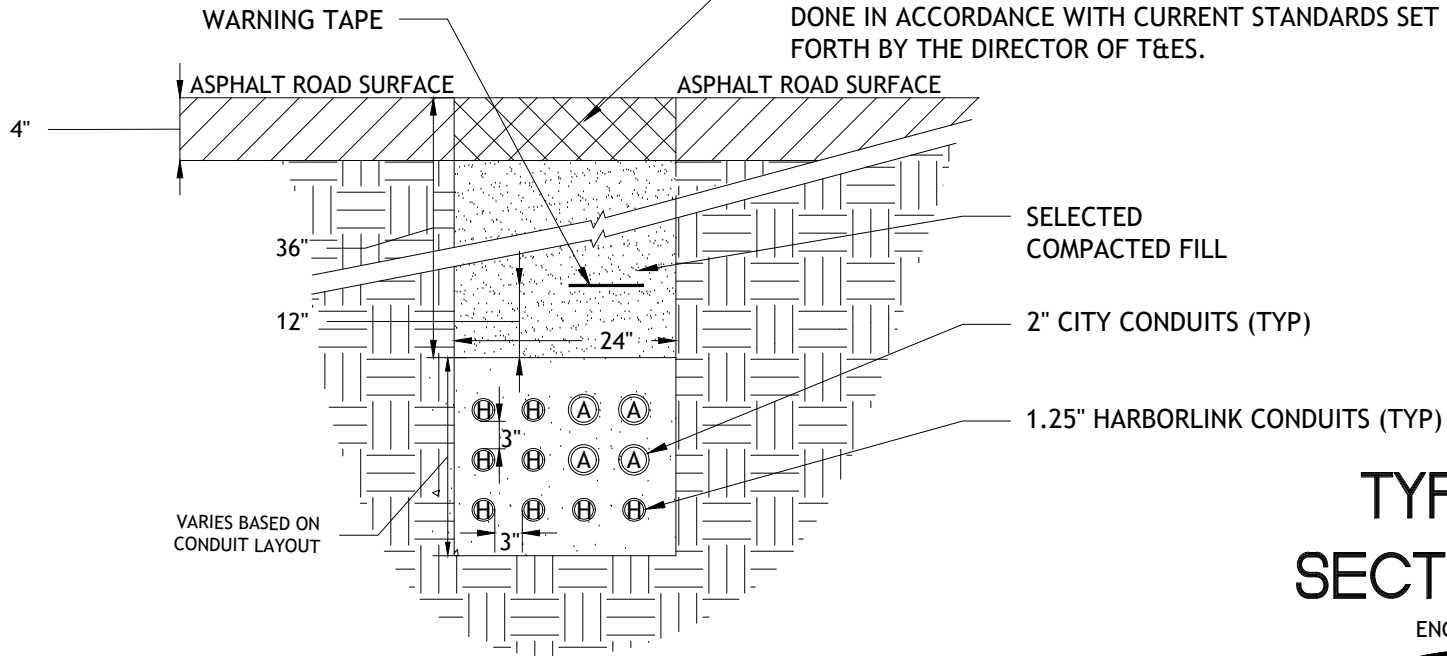
HARBORLINK ONLY CONDUITS
N.T.S.

FINAL RESTORATION OF THE PAVEMENT SHOULD BE DONE IN ACCORDANCE WITH THE PAVEMENT DETAILS PROVIDED ON THE MNF CONTRACT OR WITH CURRENT STANDARDS SET FORTH BY THE DIRECTOR OF T&ES
WARNING TAPE



HARBORLINK AND MUNICIPAL CONDUITS
N.T.S.

FINAL RESTORATION OF THE PAVEMENT SHOULD BE DONE IN ACCORDANCE WITH CURRENT STANDARDS SET FORTH BY THE DIRECTOR OF T&ES.



HARBORLINK AND CITY SUPPLEMENT CONDUITS TO BE PLACED AT WATER CROSSINGS, RAILROAD CROSSINGS AND BRIDGE CROSSINGS
N.T.S.

TYPICAL DUCTBANK CROSS SECTION DETAILS- ALEXANDRIA

ENGINEERED BY:



AN MBE CERTIFIED COMPANY
PHONE: (434) 352-0287
OPERATIONS@JJBDC.COM

