

USE OF PUBLIC RIGHT-OF-WAY LICENSE AND RENEWAL AGREEMENT

THIS LICENSE AND RENEWAL AGREEMENT (the Agreement) is dated this _____ day of _____, 2026, by and between the TOWN OF VIENNA, VIRGINIA, a Virginia municipal corporation (Town or Licensor) and the UNITED STATES OF AMERICA (Government or Licensee).

WHEREAS the Government is the successor in interest to a telecommunication system previously installed and operated by Qwest and Lightwave Spectrum, Inc., and

WHEREAS the Government is not a commercial telecommunications services provider as defined under Virginia Code Section 56-484.12; and

WHEREAS, the Town has the authority and statutory obligation to regulate the use of the Public Rights-of-Way within its territorial boundaries and is willing to permit such use subject to the terms and conditions of this License; and

WHEREAS, Article 7, Section 9 of the Constitution of the Commonwealth of Virginia provides for approval by the local governing body of any franchise, lease or right of any kind to use any public property or any other public easements; and

WHEREAS, THE Town and the Government executed a “USE OF PUBLIC RIGHT-OF-WAY LICENSE RENEWAL AGREEMENT AND ACKNOWLEDGEMENT OF ASSIGNMENT” agreement (Agreement) on June 1, 2021; and

WHEREAS, term of the Agreement was for five (5) years; and

WHEREAS the Government is the sole operator of a private telecommunications system identified herein; and

WHEREAS, this License is granted subject to any and all lawful and applicable zoning conditions and conditional use permits required the Vienna Town Code; and

WHEREAS, the License is not a grant of any special private privilege or sale of public property; the parties hereby agree to the following terms and conditions; and

WHEREAS, Government and the Town are desirous of renewing and extending the Agreement for an additional term of five (5) years;

THEREFORE, the Government and the Town hereby agree to the following:

Section 1. In consideration of the terms hereof, the payment of the previously required right-of-way user fees to the Town, the Town awards to Licensee, for the term of five (5) years and subject to the conditions and limitations described herein, a nonexclusive license to use the streets, alleys, rights-of-way, and public places of the Town as shown on Schedule A, attached and incorporated by reference. The purpose of this grant is to allow Licensee's location, operation, maintenance, alteration, repair and patrol of underground fiber optic utility cable; together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines along, across, beneath, and over the right-of-way.

Section 2. If the Licensee proposes to construct additional facilities within the right of way, such shall be located underground. Prior to construction in and under the streets, alleys, rights-of-way, and public places of the Town, Licensee shall obtain approval from the Town of Licensee's plans, showing the location of the proposed facilities. Any approval shall be in the form of an excavation permit. If such facilities by the Licensee are already in existence, Licensee is authorized to use those facilities. When such plans have been approved, the plans, and any subsequent modifications to them agreed to by the

Town, shall be effective and binding to the same extent as if they were set out fully in this Agreement.

Section 3. Licensee agrees to relocate, at its own expense, within one hundred and twenty (120) days of written notification from the Town, all facilities which, in the reasonable discretion of the Town using recognized engineering standards, interfere, disturb or conflict with the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, rights-of-way, public grounds, storm drainage systems, sewer systems, water mains or other public facilities.

Licensee shall relocate the facilities using like construction, or better, if technological advances warrant such, to such places designated by the Town. The Town shall use reasonable good faith efforts to designate locations for any relocated facilities that will permit Licensee to continue to serve its existing customers. Any Town permits needed as a result of a relocation request by the Town, however, shall be at no cost to Licensee.

Section 4. In the event Licensee permits any unaffiliated third party telecommunications provider to connect Access Lines, as defined in § 56-468.1A of the Code of Virginia, to Licensee's facilities located in the Town's rights-of-way for the purpose of providing telecommunications service, whether by capacity agreement, joint use agreement, common use agreement or any other method whatsoever, Licensee shall notify the Town as soon as reasonably practical of the date on which and the party to which such permission was given in such manner so as to enable Town to assess such third party with access fees to which Town may be entitled. In the event Licensee rents or leases its Access Lines to a third party user and fails to notify Town to the end that Town is

unable to collect access fees to which it is otherwise entitled, Licensee will be responsible for payment to the Town of the Public Right-of-Way Use Fee (as defined in § 56-468.1 of the Code of Virginia) on such rented or leased Access Lines.

Section 5. If Licensee shall, in the construction, operation, replacement, maintenance, removal or repair of its facilities, damage any pavement, street, alley, sidewalk, sewer, water or other pipe or other public property (collectively Public Facilities) belonging to the Town, Licensee shall promptly repair the same at its own cost and expense. Licensee shall immediately notify the Town Manager and the appropriate public safety agency (e.g., fire department) of any damage or injury to any Public Facilities caused by work authorized pursuant to the License.

If Licensee shall default in this obligation, the Town may cure such default and shall charge the work to the Licensee in accordance with the Town's then current standard rates for such work. The Licensee's liability under this clause may not exceed appropriations available for such payment and nothing contained in this Agreement may be considered as implying that Congress will, at a later date, appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Town may have to make a claim under applicable laws for any other damages than provided herein. However, prior to performing any such work the Town will give Licensee written notice of the default and a period of thirty (30) days after receipt of such notice within which to cure the default. The Town shall extend the thirty-day period for a reasonable time if such default cannot reasonably be cured within such period and Licensee has commenced and is diligently pursuing such cure. If Licensee does not so cure the default, the Town will provide Licensee with a written notice advising Licensee of

the expiration date of the cure period and stating the date (which date shall be no less than ten (10) business days after Licensee's receipt of such notice) on which the Town intends to commence the work on Licensee's behalf.

Notwithstanding the foregoing, if such default in the opinion of the Town threatens the public health or safety, the Town shall make a reasonable effort to provide Licensee with telephonic notice and an opportunity to immediately cure such default. If the Town is unable to reasonably provide such notice or Licensee fails to immediately cure the default, the Town may commence the cure on Licensee's behalf. In any event, the Town shall immediately thereafter provide Licensee with written notice of Town's performance of such emergency work.

Prior to commencing work on any street, alley, right-of-way, or public ground, Licensee shall exercise reasonable judgment in order to avoid any inconvenience to the general public or the Town's work forces. Licensee shall not impede the flow of traffic to any greater extent than is reasonably necessary in performing any maintenance, removal, replacement, construction or repairs. Licensee shall strictly abide by the permit or approval requirements, including those requirements relating to time limitations. Licensee is bound by all applicable lawfully enacted police power measures now or in the future adopted by the Town, in addition to the terms of this Agreement.

Section 6. To the extent permitted by law and regulation, the Government will seek to cooperate and coordinate with Licensor in the performance of any work. The Government will use reasonable efforts to ensure contractors provide proof of insurance naming Licensor as an additional insured for a contract impacting work within the Licensed Area and/or provide any required bonds or sureties required in connection with

the Licensed Area prior to the issuance of any local building/construction permits. All contractors performing such Work must be otherwise licensed, qualified and reputable. In the event that a contractor does not meet the aforesaid requirements, upon 30 days notice, Licensor shall have the right to terminate the license agreement.

The Government shall perform and complete (or cause to be performed and completed) such Work in a safe and workmanlike manner.

Subject to the doctrine of sovereign immunity and federal supremacy, the Government shall perform (or cause to be performed) all such Work in a manner that complies with required permits, approved plans and all other applicable laws, rules, orders, regulations and ordinances, including in compliance with any rules, regulations and requirements that Licensor may establish from time-to-time.

The Government shall use the License Area in such manner as shall occasion the least practicable damage and inconvenience to Licensor; and, the Government shall and shall cause its contractors to take all commercially reasonable steps necessary to preserve and protect the Property and all work shall be performed in accordance with established standards and conditions.

Absent Licensor's negligence or misconduct, in no event shall Licensor be liable or responsible to the Government for any loss or damage or expense which the Government may sustain or incur if the Fiber Equipment shall fail or otherwise cease operation for their intended purposes or are no longer available or suitable for the Government's requirements.

Nothing in the foregoing Section shall require a violation of the Anti-Deficiency Act, 31 U.S.C. 1341(a)(1)(A), or any other law or regulation relating to appropriated funds of the United States.

Section 7. This Agreement, with the rights and privileges granted herein, shall be subject to cancellation or termination by mutual agreement of the parties, or in the event the Licensee abandons the use of the premises for the purposes granted, or in the event the Licensee acquires title or other necessary interest. In the case of cancellation by mutual agreement of the parties, cancellation may be effected by either party hereto upon thirty (30) days written notice to the other; and upon expiration of the said thirty (30) days after service of such notice, this Agreement and the rights and privileges hereby granted, as well as the obligations hereby imposed upon the parties, shall absolutely cease and terminate. If Licensee does not comply with the terms of this Agreement within thirty (30) days after receipt of written notice of such non-compliance from the Town, the Town, at its option, may terminate the License. However, such thirty-day period will be extended for an additional period of time as is reasonable under the circumstances if Licensee's non-compliance cannot reasonably be cured within the thirty-day period and if Licensee has commenced a cure within such period and continues to diligently pursue such cure.

Section 8. This License is not otherwise assignable or transferable to a non-governmental entity without the express written permission of the Town. However, Licensee may assign, transfer or sublet its rights, without the consent of the Town, to any person or entity that controls, is controlled by or is under common control with the Licensee, provided the Town is advised of the action within thirty (30) days form the date of assignment, transfer or sublet. Any successor(s) or assignees in whole or in part of

Licensee shall be bound by all of the terms and conditions of this Franchise and shall be subject to all provisions, obligations, stipulations and penalties here prescribed.

Section 9. The rights, privileges and duties here granted shall continue for five (5) years after the effective date. The effective date shall be the date of the Town's adoption of the required ordinance approving this License. Prior to the expiration of this Agreement, the parties may make a good faith effort to negotiate and enter into a new License Agreement upon reasonable terms and conditions. Unless released by the Town, Licensee shall remove all its facilities from the streets, alleys and public places of the Town at the expense of Licensee as soon as possible after the expiration, termination or abandonment of this Agreement, or by such reasonable time to be prescribed by the Town Council. The Town may abandon such facilities without removal upon approval. If Licensee fails to remove its facilities, the Town may, in its discretion, seek damages for the cost of removal.

Section 10. This Agreement was accepted in the Commonwealth of Virginia and shall be governed by the laws thereof, unless otherwise provided by Federal law.

Section 11. Any notice to be given under this Agreement shall be mailed or delivered to the following:

Town of Vienna
Attention: Town Manager
127 Center Street, South
Vienna, Virginia 22180

and to

U.S. Army Corps of Engineers
Attention: Chief, Real Estate
2 Hopkins Plaza
Baltimore, Maryland 21201

Registered or certified mail, if mailed, return receipt requested, with postage prepaid, or by courier service, if delivered, with signed evidence of receipt; and shall be deemed delivered when received or refused by the addressee. The parties may change these addresses by like notice.

Section 12. Notwithstanding the foregoing, the parties and each of them shall be excused from performing hereunder so long as performance is prevented or delayed by *Force Majeure*.

Section 13. The Licensee's liability under this Agreement may not exceed appropriations available for such payment and nothing contained in this Agreement may be considered as implying that Congress will, at a later date, appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Town may have to make a claim under applicable laws for any other damages than provided herein.

UNITED STATES OF AMERICA

By: _____
LESLEY M. LOGUE
Real Estate Contracting Officer
Baltimore District
U.S. Army Corps of Engineers

Date of Acceptance: _____, 2026

TOWN OF VIENNA, VIRGINIA

By: _____
Mayor Linda J. Colbert

ATTEST:

Shelley M. Kozlowski, CMC
Town Clerk

APPROVED AS TO FORM:

Steven D. Briglia, Town Attorney

SCHEDULE A

