

## INTERIM AGREEMENT

This Interim Agreement (“Agreement”) is entered as of \_\_\_\_\_, 2023, by and among the **SOUTHSIDE NETWORK AUTHORITY**, a public body corporate and politic and a political subdivision of the Commonwealth of Virginia under the Wireless Service Authorities Act (the “Authority”), and **MANAGEMENT INFORMATION SYSTEMS, INC.**, doing business as **Global Technical Systems (GTS)**, a Virginia corporation, and **SMART CITY CAPITAL, LLC**, a [state] limited liability company (collectively the “Consortium”). The Authority and the Consortium are referred to individually as a “Party” or collectively as the “Parties.” For their Agreement, the Parties state:

### Recitals

R-1 On July 30, 2020, the Authority adopted its Guidelines for Implementation of the Public-Private Education Facilities & Infrastructure Act of 2002, which establish procedures for the entry of public-private partnerships by the Authority. The procedures in the Guidelines satisfy the requirements of the Public-Private Education Facilities and Infrastructure Act of 2002.

R-2 On May 14, 2021, the Authority adopted a resolution setting forth the terms of a solicitation under the PPEA for the purpose of finding a private partner for the development and operation of an approximately 120-mile fiber optic connectivity ring through the Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach. The RFP was subsequently advertised, and the deadline for submission of conceptual proposals was August 24, 2021.

R-3 The Authority received four conceptual proposals in response to the RFP. The PPEA Selection Committee recommended to the Board of Directors of the Authority to move to the detail phase of consideration of the conceptual proposals with the proposal from the Consortium. On November 12, 2021, the Board of Directors elected to move to the detail phase of consideration of the Consortium’s proposal.

R-4 Concurrently with the response period for the RFP and conceptual phase consideration of the Proposal, the Authority sought financing and issued an invitation for bids (IFB) for construction of the RCR. On February 11, 2022, the Authority entered a Project Participation Agreement with the Cities to fund construction of the RCR. On March 11, 2022, the Authority awarded a construction contract for the RCR to Danella Construction, Inc. Construction is anticipated to be completed by May 31, 2024.

R-5 On \_\_\_\_\_, the Board of Directors held a public hearing concerning the Proposal and the Authority’s entry of this Agreement in accordance with the Guidelines and the PPEA.

R-6 The Parties have negotiated this Agreement consistent with the PPEA, the Guidelines, and other applicable law, the Proposal, and the course of negotiations between the Parties during the Detail Phase. The Parties agree that this Agreement will function as the Interim Agreement for the Project.

R-7 Having considered this Agreement and other information, the Authority has determined that the Project will serve the public purpose of the PPEA under the criteria of Section

56-575.4 of the *Code of Virginia* and posted this Agreement for public inspection in accordance with the PPEA and the Guidelines.

### **Agreement**

Now, for and in consideration of the foregoing recitals, which are expressly incorporated herein, and the mutual promises and undertakings below set forth, the Parties agree as follows:

#### **Article I – Definitions**

1.1 **Definitions.** As used in this Agreement, the following terms, when capitalized, have the following meanings:

*Agreement* means this Agreement.

*Authority* means the Southside Network Authority.

*Cities* means the Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach, each a Virginia municipal corporation. *City* means one of the Cities, without differentiation.

*Code of Virginia* means the Virginia Code of 1950. If used without the words “as amended,” the phrase *Code of Virginia* means the *Code of Virginia* as it existed on the date of this Agreement. If used with the words “as amended,” the phrase *Code of Virginia* means the Code as it may be amended or superseded in the future.

*Communication Service* includes, but is not limited to broadband Internet access service, data transmission service, Internet Protocol transport, Voice over Internet Protocol service, telecommunications service, or video service, or other services that transmit or receive digital or analog information, regardless of technology used.

*Comprehensive Agreement* is used in the same manner that it is used in the PPEA, and will follow this Interim Agreement once the contingencies set forth herein are resolved.

*Conceptual Phase* means the conceptual phase of consideration of the Proposal, and has the same meaning as in the PPEA, the Guidelines, and the PPEA RFP.

*Consortium* means a consortium comprised of GTS and SCC.

*Detail Phase* means the detail phase of consideration of the Proposal, and has the same meaning as in the PPEA, the Guidelines, and the PPEA RFP.

*GTS* means Management Services Group, Inc., d/b/a Global Technical Systems.

*Gross Eligible Revenues* shall have the meaning set forth in Section 3.2.

*Guidelines* means the Authority’s Guidelines for Implementation of the Public-Private Education Facilities & Infrastructure Act of 2002, dated as of July 30, 2020.

*Implementation Plan* means the plan incorporated herein by reference as **Exhibit B (Confidential)**, reflecting the Consortium’s draft implementation and marketing plan for the first five years of the Comprehensive Agreement. The Implementation Plan will be further developed

during the Interim Period and included as part of the Comprehensive Agreement, and is subject to change based on market variability and SNA construction completion.

*Interim Period* means the period of time between the Effective Date of the Interim Agreement and the effective date of the Comprehensive Agreement.

*Lease* means the dark fiber lease agreement intended to be executed by the Parties, by which the Authority grants a right of use in the RCR to the SPE for the purpose of effecting the Comprehensive Agreement. A sample Lease, subject to further modification by the parties, is included as **Exhibit A** to this Agreement.

*Participation Agreement* means the Project Participation Agreement entered by and between the Authority and the Cities, dated as of February 11, 2022.

*PPEA* means the Public-Private Education Facilities and Infrastructure Act of 2002, Sections 56-575.1 through 56-575.18 of the *Code of Virginia*.

*PPEA RFP* means the solicitation that the Authority issued under the provisions of the PPEA and the Guidelines entitled *Southside Network Authority Guidelines for Implementation of the Public-Private Education Facilities & Infrastructure Act of 2002*, dated as of July 30, 2020.

*Proposal* means the Consortium's proposal entitled *Conceptual Proposal for Hampton Roads Southside Regional Connectivity Ring 100% Turnkey Approach: Design, Build, Procure, Operate, Manage and Finance*, dated as of August 24, 2001.

*RCR* or the *Project* means the Regional Connectivity Ring.

*SCC* means Smart City Capital, LLC.

*Special Purpose Entity* or *SPE* means a limited liability company formed under the laws of Virginia or another United States jurisdiction and duly domesticated in Virginia to carry out the functions set forth in this Agreement.

1.2 **Rules of Interpretation.** The following rules of interpretation are applicable to the construction of this Agreement.

1.2.1 All Article, Section, Subsection, Exhibit and Schedule references used in this Agreement are to Articles, Sections, Subsections, Exhibits, and Attachments to this Agreement unless otherwise specified. The Exhibits and Attachments to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes.

1.2.2 If a term is defined as one part of speech (e.g., as a noun), it also has a corresponding meaning when used as a different part of speech (e.g., a verb). Unless the context of this Agreement clearly requires otherwise, words using the masculine gender also include the feminine and neuter genders, and vice versa. The words "includes" or "including" mean "includes without limitation" or "including without limitation," the words "hereof," "hereby," "herein," "hereunder," and the like, when used in this Agreement, refer to this Agreement as a whole and not to any particular Section or Article in which the words appear, and any reference to a Law includes any rules and regulations

promulgated thereunder and refers to such Law, rules, and regulations as in effect on the date hereof unless otherwise indicated. Currency amounts are stated in U.S. Dollars.

1.2.3 Whenever this Agreement refers to a number of days, such number refers to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may validly be taken or done on the next day that is a Business Day.

1.2.4 Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement is not applicable to the construction or interpretation of this Agreement.

## Article II – Special Purpose Entity

2.1 **Formation.** The Parties agree that a special purpose entity (SPE) will be formed for the purpose of exercising the concession contained in this Agreement. The SPE will be comprised of GTS, SCC, and such investors as may be provided in the Articles of Organization or the Operating Agreement (“Members”), and will be advised by a Strategic Advisory Board, as further described in Section 2.3. The SPE shall be a limited liability company, organized and operating in accordance with Articles of Organization and an Operating Agreement to be developed during the Interim Period, subject to the provisions of this Article.

2.2 **Purposes.** The purposes of the SPE shall be substantially as follows:

- i. Lease, market, and expand the services of the RCR.
- ii. Provide, either itself or through parties with whom it contracts, broadband internet services in the Cities, including in multi-tenant environments.
- iii. Acquire, own, buy, sell, invest in or receive equity investment, financing and/or leasing from authorized institutions, trade, manage, finance, refinance, exchange or otherwise dispose of stocks, securities, partnership interests, CDs, mutual funds, commodities, and any and all investments whatsoever, that the Manager (or Members) may from time to time deem to be in the best interests of the SPE.
- iv. Engage in such other activities as may be related or incidental to the foregoing purposes.

2.3 **Strategic Advisory Board.** The Operating Agreement shall provide an irrevocable right to the Consortium to identify and select board seats to a Strategic Advisory Board (SAB) and an irrevocable right to the Authority to appoint at least one representative to the SAB. The form and substance of the SAB shall be substantially as follows:

- i. The function of the SAB is to assist and provide advice to the the Members with respect to the SPE's management, to provide input into the SPE's corporate strategic plan, as well as general strategic planning advice.
- ii. The SAB shall have no fewer than two (3) nor more than eleven (11) members. Members other than the Authority shall be appointed by the Members as provided in the Operating Agreement.
- iii. The SAB will meet not less often than quarterly.
- iv. The SAB will provide substantive advice and assistance on:
  - a. The development of the SPE's strategic plan;
  - b. The implementation of the SPE's strategic plan, including the provisions of the Comprehensive Agreement;
  - c. The SPE's long-term strategic plans, which may include goals for future years, evaluations of evolving and maturing technologies, and changes in desired products and services in the Cities;
  - d. Strategic introductions to key stakeholders;
  - e. Advice on strategic economic development and community development priorities of the Cities;
  - f. Introductions to potential acquisitions and other growth and expansion opportunities for the SPE;
  - g. Introductions to potential customers, clients, suppliers, and others potential advantageous to the SPE's strategic goals;
  - h. Strategic issues or opportunities affecting the SPE's business operations; and
  - i. Other strategic matters identified by the Manager and/or Members.
- v. The SAB will be advisory, and ultimate responsibility for the management of the SPE's business and affairs will generally be in the hands of the Members, subject to further refinement in the Operating Agreement.

**2.4 Access to Infrastructure.** Subject to terms in the Lease or the Comprehensive Agreement relating to a grant of exclusive rights to the SPE for a period of time, the SPE shall ensure that all qualified persons wishing to use the RCR, or SPE network infrastructure connected to the RCR as contemplated in the Implementation Plan, to provide Communication Service will have the opportunity to do so on fair and reasonable terms and prices, and that no person will be arbitrarily excluded from such access. The SPE will describe an equitable process ensuring fair price and access to RCR and SPE infrastructure, to be set forth in the Comprehensive Agreement, that addresses the evaluation and qualification of all solicited and unsolicited proposals received by the SPE and/or SNA seeking lit or unlit network access services for the purpose of providing

Communication Services. The Comprehensive Agreement shall further provide for defined prices for access to dark fiber by institutional users, as well as community benefits intended both (i) to provide flexibility to the Authority to provide more timely and/or otherwise incentivized access to economic development prospects, and (ii) to provide preferential access to Communications Services to customers and community anchors in unserved, underserved, and historically disadvantaged areas of the Cities.

### **Article III – Concession & Comprehensive Agreement**

3.1 **Concession.** The Authority, as lessor, will grant to the SPE, as lessee, the right to use RCR dark fiber by executing a Lease with the SPE in substantially the form, and on substantially the terms stated in, the sample Dark Fiber Lease Agreement included as Exhibit A to this Agreement. The Parties may negotiate final terms and conditions that differ from their counterpart terms and conditions in the draft Dark Fiber Lease Agreement, provided that the final Dark Fiber Lease Agreement, viewed as a whole, provides the Parties benefits comparable to those provided by the draft Dark Fiber Lease Agreement.

3.2 **Comprehensive Agreement.** During the Interim Period, the Parties shall negotiate and complete a Comprehensive Agreement to implement the objectives set forth in this Agreement. The Comprehensive Agreement will have a stated term of 20 years. Substantial contingencies to be addressed prior to execution of the Comprehensive Agreement include, but are not limited to:

- i. Development of the SAB Articles of Organization and Operating Agreement of the SPE.
- ii. Final detailed mapping of the route of the RCR.
- iii. Testing standards and network segment acceptance procedures for the RCR.
- iv. Service Level Agreements (if any) and an operations and maintenance agreement between the Authority and the SPE.
- v. Development of an updated Implementation Plan for inclusion in the Comprehensive Agreement.
- vi. Revenue-sharing between the SPE and the Authority, including scope, metrics, and processes. The Parties currently intend that the SPE will contribute a portion of its Gross Eligible Revenues to the Authority. Gross Eligible Revenues means any and all consideration of any kind or nature, including cash, credits, property, and in-kind contributions of services or goods, attributable to the SPE's provision of retail broadband Internet access, wholesale transmission services provided to retail internet service providers, and dark fiber leasing, where such activities directly use the RCR or the Consortium network infrastructure connected to the RCR, less the following:

- a. 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 eligible gross revenues for the period collected;
- b. Refunds, rebates, credits, or discounts to subscribers, licensees, or lessees to the extent not already offset by subsection (a);
- c. Any revenues received by the SPE for Internet advertising, including banner advertisement and electronic publishing;
- d. Funds collected pursuant to any tax of general applicability imposed on the customer or the transaction by a federal, state, or local government or any other governmental entity, collected by the SPE, and required to be remitted to the taxing authority, including sales and use taxes and utility user taxes;
- e. Any foregone revenue from the provision of service at no charge to any person, except that foregone revenues exchanged for consideration in trades, barter, services, or other items of value shall be considered gross eligible revenue;
- f. Sales of capital assets or surplus equipment.

[REDACTED]

- vii. Provisions for early termination and termination for convenience.
- viii. Potential extension of the Exclusivity Period (as defined in the Lease) beyond the 60-month period described therein.
- ix. The Authority and SPE will have an agreement for the buildout of the dark fiber by phase which defines penalties for not meeting deadlines as it relates to scope of work and delays specifically attributable to the SPE and/or the Consortium. In recognition that the RCR is currently under construction, such buildout timeline shall be consistent with the existing construction schedule set forth in the Authority's construction contract with Danella Construction, Inc. The Authority shall provide to the GTS and SCC a copy of the current construction schedule, and any material changes to it, within ten (10) days of any such changes. In the event that additive change orders are necessary to conform to SPE's proposed changes to its desired timeline, SPE shall be responsible for additional costs set forth in such change orders, but shall exclude change orders, delays, penalties or other expenses that are due to reasons or requests not associated to or requested by the SPE.
- x. Step in rights.
- xi. Ownership of data.

- xii. Monetization of data and smart SNA solutions.

3.3 **Future Grants.** The Comprehensive Agreement shall provide that the Authority and SPE shall cooperate in the pursuit of available Federal or State broadband funding opportunities, including but not limited to the federal BEAD program. The details of support will be clarified in the Comprehensive Agreement and be tailored to the respective grant and other public funding.

3.4 **Time for Performance and Completion of Interim Agreement Goals.** The following target dates are established for completion of Interim Agreement Goals:

- i. Articles of Organization and Operating Agreement .....February 28, 2023
- ii. Incorporation of SPE and appointment of SAB.....March 15, 2023
- iii. Mapping of RCR.....February 28, 2023
- iv. Testing Standards for Lease.....March 15, 2022
- v. Comprehensive Agreement.....April 15, 2023

3.5 **Force Majeure.** No party shall be liable or responsible to another party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such party’s (the “Affected Party”) failure or delay is caused by or results from the following force majeure events (“Force Majeure Events”): (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the control of the Affected Party.

The Affected Party shall give notice within 10 days of the Force Majeure Event to the other parties, stating the period of time the occurrence is expected to continue. The burden shall be on the Affected Party to prove the existence of a Force Majeure Event. The Affected Party shall use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. The Affected Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the Affected Party’s failure or delay remains uncured for a period of 180 consecutive days following written notice given by it under this Section, the other parties may thereafter terminate this Agreement upon 30 days’ written notice.

#### **Article IV – Default & Remedies**

4.1 **Default.** A default under this Agreement occurs if:

- a. A Party breaches a material term of this Agreement.



b. A Party becomes unable to fulfill its material obligations under this Agreement.

c. If a Party becomes insolvent, or publicly admits it is generally unable to meet its debts as they come due.

d. If a Party is party to a voluntary or involuntary bankruptcy proceeding in which it admits the material allegations, or in which it fails to obtain dismissal within 60 days.

e. If a Party makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of creditors, or if a receiver is appointed on account of its insolvency.

f. Any proceeding is instituted, with the consent or acquiescence of the Party involved, for the purpose of effecting an agreement between such Party and its creditors for the purpose of adjusting the claims of such creditors.

**4.2 Notice & Cure.** In the event of a default under this Agreement, the non-defaulting Party shall give notice to the defaulting Party of the default, reasonably specifying the basis thereof and stating what steps, if any, the non-defaulting Party believes must be taken to remedy the default. The defaulting Party must take such steps, or other steps acceptable to the non-defaulting Party, to cure the default within 30 days of such notice, or, if the default is not susceptible to cure within 30 days, expeditiously begin and diligently pursue cure thereof to completion.

**4.3 Nonwaiver.** No Party's waiver or failure to enforce or require performance of any term or condition of this Agreement or the waiver of any particular breach of this Agreement extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Agreement or a waiver of any other breaches of the Agreement by the breaching Party and does not bar a non-breaching Party from requiring the breaching Party to comply with all the terms and conditions of the Agreement and does not bar the any Party from asserting any and all rights and/or remedies it has or might have against the breaching Party under this Agreement or at law or in equity.

**4.4 LIMITATION ON LIABILITY. NO PARTY WILL BE LIABLE FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF REVENUE, BUSINESS INTERRUPTION, COST OF REPAIR OR REPLACEMENT SERVICES (INCLUDING THE COST OF LABOR AND MATERIALS), OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES RESULTING FROM ANY CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY) RELATED TO OR ARISING OUT OF THIS CONTRACT, NO MATTER THE FORM OF THE CLAIM AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**4.5 Nonbinding Mediation.** In the event that a default is not resolved pursuant to Section 4.2, the Parties shall resort to nonbinding mediation before a neutral facilitator for not less than 90 days prior to bringing suit in court. Notwithstanding the foregoing, the non-defaulting

Party shall have the right to file a court action for specific performance or injunctive relief within the 90-day period for the purpose of tolling any applicable statute of limitations, but shall not serve such lawsuit until the 90-day period has elapsed.

4.6 **Applicable Law & Courts.** This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the Commonwealth of Virginia. Any litigation with respect to the Agreement or the activities contemplated by this Agreement will be brought only in a court of appropriate jurisdiction in the City of Chesapeake, Virginia.

4.7 **Attorney's Fees.** In the event of litigation relating to this Agreement or the activities contemplated hereby, no fee shifting shall occur.

#### **Article V – Miscellaneous Terms**

5.1 **Warranty with Respect to Intellectual Property.** The Parties represent and warrant that the activities contemplated this Agreement will not infringe on any United States or foreign patents, copyrights, or other intellectual property rights, and that they each have all requisite licenses and agreements from third parties for carrying on the Activities. Each party will remain the sole owner of its respective Intellectual Property.

5.2 **Insurance.** The Consortium members must each maintain the following insurance:

Workers Compensation: Statutory

Employers Liability Limits

Bodily Injury by Accident: \$1,000,000

Bodily Injury by Disease: \$1,000,000 each employee

Bodily Injury by Disease: \$1,000,000 policy limit

General Liability: \$1,000,000 per occurrence

Cybersecurity (malware, viruses, ransomware): \$1,000,000

The obligations of this Section shall survive termination of this Agreement.

5.3 **Anti-Discrimination.** The Consortium and the SPE will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginia Human Rights Act, the Virginians with Disabilities Act, the Americans With Disabilities Act, and all other applicable federal, state and local anti-discrimination laws, codes, rules, and regulations. Without limiting the foregoing, during the performance of this contract, the Consortium agrees as follows:

- i. The Consortium will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law relating to discrimination in

employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Consortium. The Consortium agrees to post in conspicuous places, available to employees, notices setting forth the provisions of this nondiscrimination clause.

- ii. The Consortium, in all solicitations or advertisements for employees placed by or on behalf of the Consortium for employees for accomplishing the Project, will state that the Consortium is an equal opportunity employer.
- iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- iv. The Consortium will include the provisions of the above subparagraphs i, ii, and iii in every subcontract or purchase order over \$10,000 in connection with this Agreement, so that the provisions will be binding upon each subcontractor or vendor.

**5.4 Drug-Free Workplace.** During the performance of the Agreement, the Consortium agrees to (i) comply with the drug-free workplace provisions of Section 2.2-4312 of the *Code of Virginia*; (ii) provide a drug-free workplace for its employees; (iii) post in conspicuous places, available to employees, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Consortium's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iv) state in all advertisements or solicitations for employees that the Consortium maintains a drug-free workplace; and (v) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000 in connection with this Agreement, so that the provisions will be binding upon each subcontractor or vendor.

**5.5 No Third-Party Beneficiaries.** The Parties covenant and agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the Parties hereto and the SPE; (iii) no other individual or entity shall obtain any right to make any claim against any Party under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

**5.6 Assignment.** Under the Comprehensive Agreement, the Authority shall not assign its interest or rights in the Comprehensive Agreement without the consent of the SPE, which shall not be unreasonably denied, conditioned, or delayed. A Party may assign its rights and obligations hereunder to an Affiliate (i.e., any such entity Controlling, Controlled by, or under common Control with such entity). "Control" shall mean (i) ownership of fifty percent (50%) or more of the outstanding shares representing the right to vote for members of the board of director or other managing officers of such entity, or (ii) for an entity which does not have outstanding shares, fifty percent (50%) or more of the ownership interest representing the right to make decisions for such

entity. SPE may assign, at its sole discretion, its rights and remedies to its funding or investment partners or group for the purpose of securing financing.

5.7 **No Collusion.** The Consortium certifies that this Agreement is not the result of, or affected by, any unlawful act of collusion with another person or company engaged in the same line business or commerce, or any act of fraud punishable under the Virginia Governmental Frauds Act, sections 18.2-498.1 et seq. of the *Code of Virginia*, 1950, as amended. Furthermore, fraud and unlawful collusion are crimes under the Virginia Governmental Frauds Act, laws against bid rigging (sections 59.1-68.6 et seq.), the Virginia Antitrust Act (sections 59.1-9.1 et seq.), the provisions of the *Code of Virginia* relating to ethics in public contracting (sections 2.2-4367 et seq.), the requirements of the Virginia State and Local Government Conflict of Interests Act (sections 2.2-3100 et seq.) and Federal laws regarding the same, and can result in fines, prison sentences, and civil damage awards.

5.8 **Severability.** This Agreement is to be presumed severable. If any provision of the Agreement, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall not be affected and all other terms and conditions of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.9 **Further Assurances.** It is the intent and understanding of the Parties that each and every provision of law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, if through mistakes and otherwise, any such provision is not inserted in correct form, then this Agreement shall upon application of either Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of any Party.

5.10 **Independent Contractors.** The Parties hereto are independent contractors and are not agents, partners, or joint venturers, provided, however, that the Authority certifies that it has the right, and by signing this Interim Agreement is exercising its right, to bind itself and its member Cities. Otherwise, no Party shall have the ability to bind another to any contract with a third party and no Party shall hold itself out to any third party as having the right to bind another Party to any contract.

5.11 **Sovereign Immunity.** Nothing in this Agreement is intended to waive, or shall be construed to waive, the sovereign immunity of the Authority.

5.12 **Entire Contract.** This Agreement constitutes the entire and integrated agreement between the Parties. No representations, inducements, promises or agreements, oral or written, between the parties not embodied herein shall be of any force or effect. No amendment to the Agreement shall be binding on any of the Parties unless such amendment is in writing and such amendment is executed by authorized representatives of the Parties.

5.13 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together constitute one and the same instrument. Electronic signatures are permitted in accordance with the Virginia Uniform Electronic Transactions Act.

*Signatures on following pages*

DRAFT

**SOUTHSIDE NETWORK AUTHORITY, , on  
its own behalf and on behalf of its member cities**

---

Steven DeBerry  
Executive Director

Witness:

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

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

DRAFT

**CONSORTIUM:**

**Management Services, Inc., d/b/a Global Technical Systems:**

\_\_\_\_\_  
[]

Witness:

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

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

**Smart City Capital, LLC:**

\_\_\_\_\_  
[]

Witness:

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

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

DRAFT



## EXHIBIT A – DARK FIBER LEASE

### Dark Fiber Lease Agreement

This dark fiber lease agreement (“Agreement”) is entered as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (“Agreement Date”), by and between the **Southside Network Authority**, a body politic and corporate and a political subdivision of the Commonwealth of Virginia under the Virginia Wireless Service Authorities Act (“Grantor” or the “Authority”) and **Name**, a [state] [type of entity] (“Grantee”), each a “Party” and together the “Parties.”

#### Recitals:

WHEREAS, the Authority owns a fiber optic cable network located within the Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach, Virginia; and

WHEREAS, Grantee desires to lease and use dark optical fibers within said fiber optic network; and

WHEREAS, Grantor is willing to lease to Grantee the dark optical fibers within the network, and has the authority to do so, subject to the terms and conditions hereinafter set forth.

#### Witnesseth:

Now therefore, in consideration of the foregoing premises, which are expressly incorporated herein, the mutual undertakings and promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **Article 1**

#### **Definitions**

Section 1.01 **Definitions.** Capitalized terms used in this Agreement have the meanings given to them in this Section 1.01.

*Acceptance Date* means, with respect to each Grantee Fiber subject to the Lease, the date on which Grantee accepts, or is deemed to have accepted, the fully constructed and operable ring, or an identified network segment thereof.

*Acceptance Testing Procedures* has the meaning given to it in Section 4.01(A).

*Affiliate* means any Person that directly or indirectly, including through one or more intermediaries, controls, is controlled by, or is under common control with another specified Person. For the purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or of ownership interests, by contract, or otherwise, and specifically with respect to a corporation, partnership, trust, or limited liability company, includes direct or indirect ownership of more than 50% of the voting securities in a corporation or of the voting interest in a partnership or limited liability company or of the beneficial interest in a trust.

*Agreement* means this Agreement.

*Agreement Term* has the meaning given to it in Section 3.01.

*Annual Invoice* has the meaning given to it in Section 2.03.

*Business Day* means a day other than a Saturday, Sunday, or other legal holiday in the Commonwealth of Virginia.

*Dark Fiber(s)* means unactivated optical fiber strands within the Network which have no optronics or electronic equipment attached to them.

*Governmental Entity* means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, or other agency or instrumentality of any government, whether federal, national, state, provincial, municipal, or local.

*Grantee Authorizations* has the meaning given to it in Section 6.01.

*Grantee Fibers* means the fiber strands identified in **Schedule 1.1** as Grantee Fibers.

*Implementation Plan* has the same meaning as in the Comprehensive Agreement between the Grantor and the Grantee relating to the Network.

*Initial Grantee Fibers* means the Grantee Fibers identified in Schedule 1.1 as of the effective date of the Comprehensive Agreement and this Lease Agreement.

*Initial Payment* has the meaning given to it in Section 2.03.

*Laws* means any applicable federal, national, state, provincial, municipal, or local law, statute, rule, regulation, ordinance, permit, order, writ, injunction, judgment, or decree.

*Lease* means an exclusive beneficial right to use specified optical fibers, fiber optic equipment and/or facilities.

*Lease Fee* means the fee to be paid by SPE to SNA in exchange for the Lease, as specified in Section 2.03 and Schedule 1.1.

*Lease Effective Date* has the meaning given to it in 0.

*Lease Term* has the meaning given to it in 0.

*Losses* means any and all judgments losses, liabilities, amounts paid in settlement, damages, fines, penalties, supplemental environmental project costs, deficiencies, losses, and expenses (including interest, court costs, reasonable fees of attorneys, accounts, and other experts, or other reasonable expenses of litigation or other proceedings of any claim, default, or assessment).

*Network* means the telecommunications fiber optic network owned by the Southside Network Authority (SNA) known as the Regional Connectivity Ring (“RCR”), as shown on the map attached hereto as **Attachment B. Attachment B** may be amended from time to time to reflect changes in the Network as a result of new construction or reroutes.

*Non-maintenance work* has the meaning given to it in Section 5.11.

*Notice of Rejection* has the meaning given to it in Section 4.01(C).

*Permits* means all licenses, permits, franchises, certificates of authority or orders, or any waiver of the foregoing, issued by a Governmental Entity.

*Person* has the meaning given to it in *Code of Virginia*, §§ 1-230 and 1-231.

*Preventative Maintenance* means the routine maintenance and repair of the outside plant fiber optic cables of Grantee Fibers, including associated fibers and facilities. Grantor will perform routine maintenance, repair checks, and services, including preventative inspections, in accordance with Article 5, to maintain Grantee Fibers within the agreed upon specifications. Grantor's Normal Preventative Maintenance activities will include the following:

- Patrol and monitoring of the Network on a regularly scheduled basis;
- Coordination with "Call-Before-You-Dig" program; and
- Performance of all required cable locates and record-keeping of the Network.

*Reactive Maintenance* means any non-routine maintenance and repair of outside plant fiber optic cables of Grantee Fibers and associated fibers and facilities not identified as Preventative Maintenance, to be performed in accordance with Article 5, including repairs required because of cable cuts or natural or man-made disasters. Reactive Maintenance is generally divided into two categories:

- *Emergency Reactive Maintenance* is repair activity performed in response to (i) notification by the Grantee or notification by third party of any failure, (ii) interruption or impairment of Grantee Fibers, or (iii) any event likely to cause the failure, interruption, or impairment of fiber.
- *Non-Emergency Reactive Maintenance* means repair activity performed in response to any potential service-affecting situation to prevent any failure, or unscheduled interruption or impairment, of Grantee Fiber.

*Relocation Request* has the meaning given to it in Section 6.03.

*Right of Way* or *Rights of Way* has the meaning given to them in Section 6.01.

*Service Activation Notice* has the meaning given to it in Section 4.01(B).

*Specifications* has the meaning given to it in **Attachment A**.

*Taxes* means any taxes, assessments, fees or other governmental charges imposed by any Governmental Entity, including income, gross income, gross receipts, production, excise, employment, sales, use, transfer, ad valorem, value added, profits, license, capital stock, franchise, severance, stamp, withholding, Social Security, social insurance, employment, unemployment, occupational, disability, worker's compensation, payroll, utility, fuel, windfall profit, custom duties, personal property, real property, registration, alternative or add-on minimum, estimated and other taxes, duties, levies, fees or like charges of any kind whatsoever, including any interest, penalties or additions thereto, whether disputed or not.

*Tax Return* means any returns, forms, declarations, elections, reports, claims for refund, informational returns or other documents (including related or supporting schedules, statements, or information) filed or required to be filed in connection with the determination, assessment, collection, payment, or refund of any Taxes or the administration of any Laws relating to any Taxes.

*Testing and Connection Fees* has the meaning given to it in Section 2.06.

#### Section 1.02 **Construction.**

(A) All Article, Section, Subsection, Exhibit and Schedule references used in this Agreement are to Articles, Sections, Subsections, Exhibits, and Attachments to this Agreement unless otherwise specified. The Attachments to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes.

(B) If a term is defined as one part of speech (e.g., as a noun), it also has a corresponding meaning when used as a different part of speech (e.g., a verb). Unless the context of this Agreement clearly requires otherwise, words using the masculine gender also include the feminine and neuter genders, and vice versa. The words “includes” or “including” mean “includes without limitation” or “including without limitation,” the words “hereof,” “hereby,” “herein,” “hereunder,” and the like, when used in this Agreement, refer to this Agreement as a whole and not to any particular Section or Article in which the words appear, and any reference to a Law includes any rules and regulations promulgated thereunder and refers to such Law, rules, and regulations as in effect on the date hereof. If a law is cited “as amended,” the statement incorporates amendments subsequent to the date of this Agreement. Currency amounts are stated in U.S. Dollars.

(C) Whenever this Agreement refers to a number of days, such number refers to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may validly be taken or done on the next day that is a Business Day.

(D) Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement is not applicable to the construction or interpretation of this Agreement.

## **Article 2**

### **Grant of Beneficial Ownership**

Section 2.01 **Lease.** Upon the terms and subject to the conditions of this Agreement, as of the Lease Effective Date, the Grantor grants to Grantee, and Grantee accepts, a Lease to use each of the Grantee Fibers for the applicable Lease Term. Grantee may use the Grantee Fibers for any lawful purpose and use any types of electronic, optronic, or other equipment in connection with the activation, operation, and interconnection of the Grantee Fibers, subject to compliance with the terms of this Agreement. Grantee shall be solely responsible for providing and

maintaining its own equipment used in connection with the Grantee Fibers and ensuring all such equipment complies with this Agreement. Grantee must use all commercially reasonable safety procedures when operating and maintaining said equipment.

#### Section 2.02 **Initial and Additional Grantee Fibers.**

(A) From time to time during the Agreement Term, Grantee may request, by written notice to Grantor, that **Schedule 1.1** be amended to add additional Dark Fiber strands as provided in this Section.

All requests for additional Dark Fiber strands shall be in 96 fiber count tranches for the entire length of the RCR. The Grantee option for Phase 2 lease of additional 96 strands will be available when Grantee has reached 60% usage capacity of the initial Phase 1 allocation.

- (1) Within ten (10) Business Days after receipt of such notice, Grantor shall confirm to Grantee whether all or a portion of the requested Dark Fibers is available.
- (2) If requested additional Dark Fibers are not available, but the Grantor has sufficient additional space in its conduit(s) to add fiber, the Grantor shall provide, within thirty (30) Business Days after receipt of such notice, a non-binding estimate of the timeline for such additional Dark Fibers' availability.
- (3) Grantee's request for additional Dark Fiber strands shall not be for the sole purpose of investment, speculation, arbitrage strategy, or assigning its interest in some or part of this Lease for an anticipated higher rate of return in the future. If Grantee violates this Section, and such violation continues for a period of 10 days after written notice from Grantor specifying the violation, then Grantor may (i) terminate the Lease in respect to the Grantee Fibers which were improperly assigned or sublet; or (ii) terminate the Lease in its entirety.

(B) If Grantee's request for additional Dark Fibers is made prior to the Lease Effective Date and Grantor confirms that the requested Dark Fibers are available, the Parties shall agree upon the specific Dark Fiber strands to be granted to Grantee and shall amend **Schedule 1.1** to incorporate such Dark Fiber strands and the associated annual fee. The "Initial Grantee Fibers" shall include the Grantee Fibers that were initially identified in **Schedule 1.1** as of the Agreement Date and any additional Grantee Fibers that are added by amendment prior to the Lease Effective Date. Grantor shall initiate the Acceptance Testing Procedures with respect to all Initial Grantee Fibers within 30 days following Grantor's receipt of a Grantee's written request to do so.

(C) If the Grantee's request is made after the Lease Effective Date and Grantor confirms that the requested Dark Fibers are available, the Parties shall cooperate diligently and in good faith (i) to select the specific Dark Fiber strands or portions thereof to be granted to Grantee, (ii) to test those selected Dark Fibers in accordance with the Acceptance Test Procedures, and (iii) upon the Acceptance Date following such Acceptance testing, to amend **Schedule 1.1** to add the requested

and available Dark Fibers under the “Additional Grantee Fibers” section. The fee for such fibers shall be set in accordance with Section 2.03. Upon execution of such amendment to **Schedule 1.1** by both Parties, such additional Dark Fibers shall be deemed to be “Additional Grantee Fibers.”

(D) **Exclusivity Period.**

- (1) **Initial Exclusivity Period.** Lessee shall have the exclusive right to provide Communication Services using the RCR, and to utilize RCR dark fiber, during the first eighteen (18) months following the completion and acceptance of the entirety of the RCR (“Exclusivity Period”). During the Exclusivity Period, Lessor shall grant no additional rights of use in the RCR to third parties relating to the provision of Communication Services (whether wholesale or retail) or with respect to dark fiber strands.
- (2) **Extended Exclusivity Period.** If, within 18 months of the completion and acceptance by Lessee of the entirety of the RCR, Lessee has executed 25% of total last-mile passings described in the Implementation Plan, and 10% of the total passings are located in unserved or underserved areas, the Exclusivity Period shall vest for an additional 42 months, for a total Exclusivity Period of 60 months. If SPE is unable to complete the specified passings due to circumstances outside of the reasonable control of SPE, the Exclusivity Period shall be extended for a reasonable time in light of the particular circumstances.

Section 2.03 **Consideration.** The total cost to Grantee for the Lease of the Initial Grantee Fibers is set forth in **Schedule 1.1** (the “Lease Fee”). The Initial Lease Fee shall be payable by Grantee on an annual basis for each calendar year, or portion thereof, during the Lease Term. Following the Acceptance Date for the Initial Grantee Fibers, Grantor shall invoice Grantee for the applicable annual Lease Fee prorated for the remainder of the initial calendar year following such Acceptance Date (the “Initial Payment”). If in any calendar year Grantee acquires Additional Grantee Fibers, Grantor shall invoice Grantee for the applicable annual Lease Fee for such Additional Grantee Fibers prorated for the remainder of such calendar year following the execution by both Parties of the applicable amendment to **Schedule 1.1**. Thereafter, for fully constructed, completed Accepted Fiber infrastructure Grantor shall invoice Grantee for the applicable annual Lease Fee for all Grantee Fibers no later than February 1<sup>st</sup> of each year during the Lease Term (the “Annual Invoice”), and Grantee shall pay such invoiced amount no later than March 1<sup>st</sup> of such year. If Grantee fails to pay any invoiced amount within 30 days following the applicable due date, Grantor shall have the right to charge a late fee on the overdue amount at the rate equal to the lesser of one-percent (1.0%) per month, or the maximum rate allowed under applicable law, until such overdue amount is paid in full. Nothing in this Agreement shall preclude the Parties from agreeing to accept and activate portions of the Network for revenue-generating activities before the Acceptance Date corresponding to the entire RCR. Lease Fees in such case shall be adjusted and determined in accordance with the circumstances involved.

Section 2.04 **Fee for Additional Grantee Fibers.** The Authority shall calculate its fee for Additional Grantee Fibers using one of the following four models, in its sole discretion:

- (A) The same rate per strand-mile as is then being charged for Initial Grantee Fibers.

(B) A market price, to be based on two or more market prices for similar leases of dark fiber of similar terms and duration and in similar metropolitan markets, or adjusted for similar terms and duration based on market data, at least one of such comparators to be in the Hampton Roads Planning District.

(C) A rate of return cost recovery ratemaking model, based on generally accepted principles of public utility accounting and consistent with the costs as stated in the Project Participation Agreement for the RCR, using a rate of return that is the average of the rates of return on common equity authorized for all Phase 1 electrical utilities authorized by the Virginia State Corporation Commission in the Phase 1 electrical utilities' most recent base rate proceedings.

(D) The average price per strand-mile of the most recent bulk lease of Dark Fibers by a third party (if any) from the Authority. The term "bulk purchase" is defined to mean a lease of 48 or more fibers for a term, including renewals, of 10 or more years or the remaining term of this Lease, whichever is shorter, for the entire mileage of the Initial Grantee Fibers or longer.

**Section 2.05 Escalation.** Commencing on the second Annual Invoice, and then for each Annual Invoice thereafter, the Lease Fee shall increase by two percent (2%).

**Section 2.06 Testing Fees.** The fees for testing the Grantee Fibers shall be invoiced and due with the Initial Payment. Testing and Connection Fees for any Additional Grantee Fibers shall be invoiced and due with the first prorated payment of such Additional Grantee Fibers.

**Section 2.07 No Lien.** Subject to compliance with the provisions of Section 13.03, either Party may pledge its rights and privileges contained in this Agreement, including the Lease itself, to secure financial obligations to third parties without the need to obtain consent from the other Party (or any lienholder of the other Party). Provided, however, that this Agreement does not entitle either Party to cause or permit the other Party's interest in any fibers, equipment, facilities, or other property related hereto to be subjected to any lien, rights, or claim of any third party. Nothing in this Section shall prohibit Grantor from transferring or assigning any of its obligations and/or interests under this Agreement to a successor political subdivision of the Commonwealth of similar composition and powers.

### **Article 3 Term**

**Section 3.01 Lease Effective Date.** The Lease granted by Grantor to Grantee under this Agreement will become effective on the day following the date on which any portion of the Network is completed and accepted by the SPE ("Lease Effective Date").

**Section 3.02 Lease Term.** Unless earlier terminated in accordance with the terms of this Agreement, the term of a Lease in Initial Grantee Fibers under this Agreement will continue until the twenty (20) year anniversary of the Lease Effective Date ("Lease Term"). The Lease Term for each Additional Grantee Fiber shall commence upon execution by both parties of the applicable amendment to **Schedule 1.1** and shall be coterminous with the Lease Term determined pursuant to the preceding sentence.

Section 3.01 **Agreement Term.** The term of this Lease Agreement will commence on the Agreement Date, and, unless earlier terminated in accordance with the terms herein, will continue until the end of the Lease Term (“Agreement Term”).

Section 3.02 **Early Termination and Termination for Convenience.** [This clause is to be negotiated and finalized upon entry of the Comprehensive Agreement.]

Section 3.03 **Effect of Termination.** Upon expiration of the Lease Term or the termination of the Lease for any Grantee Fiber for cause, (i) the Lease will immediately terminate with respect to such Grantee Fiber(s) and neither Party will have any further rights or obligations under this Agreement with respect to the Lease in such terminated or expired Grantee Fibers, (ii) Grantee will have no further rights in such Grantee Fibers, and all rights in, and use of, such Grantee Fibers will revert to the Grantor without any reimbursement of any fees or other payments previously made with respect thereto, (iii) from and after the date of expiration or termination, such Grantor Fibers will no longer be deemed to be Grantee Fibers for the purposes of this Agreement, and (iv) Grantee must, under Grantor’s supervision, remove all of the Grantee’s electronics and equipment used solely in connection with such Grantee Fibers from any facilities of Grantor at Grantee’s sole cost and expense; provided, however, that if Grantee fails to remove such electronics and equipment within 90 days after the date of such expiration or termination, Grantor may remove and dispose of such electronics and equipment without any liability to Grantee and Grantee must reimburse Grantor for all reasonable, documented out-of-pocket costs and expenses incurred by Grantor in connection with such removal and disposal. Notwithstanding the foregoing, if the Lease is terminated as a result of a default by the Grantor, Grantor will use its best efforts to secure for Grantee the right to continue to use the Grantee Fibers for the remainder of the Lease Term.

#### **Article 4**

##### **Testing and Acceptance of Grantee Fibers**

Section 4.01 **Procedures.** Testing and acceptance of Grantor fiber Leased to the Grantee will follow the following procedure:

(A) Grantor will test each fully constructed fiber ring (or portion thereof if early acceptance occurs under Section 2.03) to be used as Grantee Fiber in accordance with the testing procedures and standards provided in **Attachment A** (the “Acceptance Testing Procedures”) to demonstrate that the applicable Grantee Fibers meet the Specifications. Grantor will give Grantee at least five days’ written notice prior to the date of the testing, and Grantee may observe the testing at its own risk, cost, and expense.

(B) When Grantor determines that the applicable fully constructed Grantor Fiber ring provided to the Grantee (or portion thereof if early acceptance occurs under Section 2.03) have satisfied the Acceptance Testing Procedures, Grantor shall provide written notice of the completion of such testing, together with a written copy of the test results, also unconditionally certifying in writing to Grantee of full compliance of the operation of Grantee Fiber (the “Service Activation Notice”).

(C) Unless Grantee delivers, within 10 days of receipt of the Service Activation Notice, a written notice of rejection to the Grantor (the “Notice of Rejection”), which Notice of Rejection



must specify in detail the defect or failure of the Grantee Fiber to meet the Specifications, the Grantee is deemed to have accepted the fully constructed and operating Grantee Fiber(s) ring (or portion thereof if early acceptance occurs under Section 2.03). The defect or failure noted in such Notice of Rejection must be described with reference to prevailing industry standards of fiber testing and results and the testing standards set forth in **Attachment A**.

(D) In the event Grantee delivers a Notice of Rejection to Grantor, the Grantor must, at no cost to the Grantee, remedy the defect or failure specified in the Notice of Rejection and conduct any additional testing of the Grantee Fiber in accordance with the Acceptance Testing Procedures that the Grantor deems necessary. Thereafter, Grantor will again deliver to Grantee a Service Activation Notice, including an unconditional certification, that the Grantee must respond to in accordance with (C). The foregoing procedure will apply again and successively thereafter until Grantor has remedied all defects or failures specified by the Grantee. Notwithstanding the foregoing, if the Grantor is unable to remedy the defect or failure specified in the Notice of Rejection after three (3) commercially reasonable attempts, Grantee has the right to terminate the Agreement with respect to the Grantee Fibers subject to testing.

Section 4.02 **Acceptance by Performance.** Notwithstanding anything to the contrary in this Article, Grantee will be deemed to have accepted the fully constructed Grantee Fiber if Grantee (or any of its Affiliates or representatives with its knowledge) substantially uses any of the fully constructed Grantee Fiber for the purpose of delivering communications traffic (other than traffic that is transmitted solely for the purpose of testing the performance of the Grantee Fibers), in which case Grantee will be deemed to have accepted the fully constructed Grantee Fiber as of the first date of such use.

## **Article 5 Maintenance and Operations**

Section 5.01 **Control of the Network.** Subject to Grantee's access for the purpose of conducting maintenance described in subsection 5.02, Grantor will control all activities concerning physical access to the RCR Network, and the Grantee shall not have access to Grantee's Fibers and to the Fiber Plant, except outside the demarcation points described in **Schedule 1.1** Grantee will control all activities concerning Grantee's last mile or middle mile network.

Section 5.02 **Maintenance.** Commencing on the Date of Final Completion of the Construction of the Network, Grantee will maintain and repair the Network in accordance with prevailing telecommunications industry standards and the maintenance and repair requirements and procedures set forth in this Article. However, notwithstanding any provision of this Agreement, except in accordance with Section 5.11, the Grantee has no obligation to replace all or any part of any of the Network that is damaged, destroyed, or rendered unusable as a result of the negligence, gross negligence, or intentional misconduct of the Grantor so long as the useful economic life is not less than the remainder of the Lease Term. When performing maintenance and repairs, Grantee must in all cases use commercially reasonable efforts to minimize the interruption of the business operations of third parties. Subject to an event of Force Majeure, Grantee must provide 24-hours, seven-day-a-week maintenance service for the Network. Grantee is also responsible for all one-call and cable locate services for the Network.

**Section 5.03 Preventative and Non-Emergency Maintenance.**

(A) Grantee shall perform all Preventative Maintenance and Non-Emergency Maintenance at Grantee's sole expense. Grantor shall cooperate with and assist Grantee, as reasonably may be required, in performing said maintenance or repairs. Grantee must report any required maintenance to Grantor, and Grantor must report any required maintenance to Grantee, and seek resolution of any maintenance problems pursuant to the notice provisions of this Agreement. In the event Grantee must perform Non-Emergency Reactive Maintenance on the Network, and such maintenance does not cause a total outage to Grantor or Grantor's other end customer(s), Grantee may perform such maintenance during normal business hours.

(B) Grantee shall perform Preventative Maintenance in accordance with current industry practices. Grantor may be present during the performance of any Preventative Maintenance or Reactive Maintenance at its own risk, cost, and expense. Preventative Maintenance expected to produce any signal discontinuity (causing complete outage to end customers) must be coordinated between the Parties at least five Business Days prior to the event and only during the hours between 12 midnight and 6 am, local time.

**Section 5.04 Emergency Reactive Maintenance.** If Grantee is required to perform any Emergency Reactive Maintenance, then Grantee shall notify Grantor of the need for Emergency Reactive Maintenance as soon as reasonably practicable. This may be after said maintenance is complete.

**Section 5.05 Subcontractors.** Grantee may use subcontracts (including to its Affiliates) to perform any or all of the services to be provided by Grantee without the consent or approval of the Grantor; provided, however, that the Grantee shall require of any subcontractor that it perform in accordance with the provisions of this Agreement. The use of a subcontractor does not relieve Grantee of any of its obligations under this Agreement. If Grantee uses subcontracts to perform any part of this Agreement, Grantee shall provide Grantor a list of all such subcontractors at least 10 days in advance of said work.

**Section 5.06 Reporting Obligations.** Each Party will report, by written notice, any failure, interruption, or impairment in operation of the Fiber Plant to the other and Grantee will use best efforts to correct such failure, interruption, or impairment as soon as commercially practicable. In no case may the Grantee fail to respond to a need for required Emergency Reactive Maintenance more than two (2) hours after receiving such report. Upon request by Grantor and within 48 hours of any outage, Grantee will provide a *post mortem* report detailing the cause of the outage and the actions taken.

**Section 5.07 Non-Interference.**

(A) Each Party shall take reasonable precautions to prevent damage to the Network. Neither Party shall use, nor allow another Person under its control to use, equipment, technologies or methods of operation which are not standard in the telecommunications industry or that would materially interfere with, or adversely affect, the Network or use of the fibers in the Network or associated facilities or equipment by any permitted user.

(B) Grantee may not interfere with, or materially or adversely affect the use by, any other Person of the Network and/or any electronic, optronic, or other equipment or related facilities used by such Person in connection therewith. If a Person under the control of Grantor or the Grantee materially, adversely affects any Party's or any other Person's use of the Network, Grantee or Grantor, as the case may be, must immediately cause such Person to cease using the Network until such Person can do so without causing such material, adverse effect on the Network.

(C) Grantor may not interfere with, or materially or adversely affect or permit another Person under the control of Grantor to interfere with or materially or adversely affect Grantee's use of the Grantee Fibers and/or any optronics, electronics, electric, optronic, or other equipment or related facilities used by Grantee in connection therewith. Grantee may not interfere with, or materially or adversely affect or permit another Person under the control of Grantee to interfere with or materially affect the Network. If a Person materially, adversely affects either Party's use of the Network and such Person is in any way leasing, licensing or otherwise using (through an IRU or otherwise) any part of the Network from either Party, the Party who has the legal relationship with such Person shall require such Person to cease using the Network until such Person can do so without causing such material, adverse effect on either Party.

**Section 5.08 Notice Obligations.** Each Party must promptly notify the other Party of any matters pertaining to, or the occurrence or impending occurrence of, any event of which the Party is aware that could give rise to damage or impending damage to the Network or the Grantee Fibers.

**Section 5.09 No Equipment.** Grantee acknowledges and agrees that Grantor is not supplying, nor is Grantor obligated to supply to Grantee, any optronics or electronics or optical or electrical equipment, any related facilities, or any space for the placement thereof (except as may be agreed in any other agreement executed by the Parties). Notwithstanding anything to the contrary contained herein, Grantee shall be solely responsible for the construction, installation, operation, maintenance, repair, and any other activity engaged by or on behalf of Grantee relating to all light communications transmission equipment and other terminal equipment and facilities required in connection with the use of Grantee's Fibers beyond the defined point of demarcation.

**Section 5.10 Ownership of Network.** The Grantor shall at all times continue to own the RCR.. It is expressly understood that the Grantee may construct extensions to the Network to serve others using the Grantee Fibers. These extensions, laterals, service drops, antennas, aerial or radiofrequency equipment, regardless of type or description, shall remain the property of the Grantee, and the Grantor shall have no legal ownership interest therein.

**Section 5.11 Non-Maintenance Work.** If Grantor requires any work (other than any Preventive Maintenance, Non-Emergency Reactive Maintenance or Emergency Reactive Maintenance, which will be performed by Grantor in accordance with this Article) with respect to the Network, then Grantor shall so notify Grantee in writing, specifying in reasonable detail the nature and scope of such Non-Maintenance Work and the priority of such Non-Maintenance Work (if more than one request has been issued by Grantor) and the requested completion date for such Non-Maintenance Work, and Grantee will make commercially reasonable efforts to perform (or cause to be performed) such Non-Maintenance Work in a timely manner, consistent with accepted

industry practices, provided that (i) Grantee is not obligated to perform any Non-Maintenance Work that (a) could reasonably be expected to cause any damage to, or degradation of, any portion of the Network or any related equipment or facilities, (b) could reasonably be expected to cause interference with, or materially or adversely affect the use by any other Person of, the Network or any equipment or related facilities, or (c) is inconsistent with, or contrary to, accepted industry practices.

## **Article 6**

### **Rights of Way and Relocations**

**Section 6.01 Rights of Way.** Grantor warrants that it has or will have prior to submitting the Grantee Fibers to the Grantee for Acceptance and will maintain in full force and effect during the Lease Term or replace with suitable replacements, all rights, approvals, Permits, authorizations, rights of way, easements, and other agreements necessary for the use of poles, conduit, cable, wire, or other physical plant facilities that are part of the Network (“Rights of Way”).

**Section 6.02 Grantee Authorizations.** Grantee must obtain and maintain, at its sole cost and expense, all other rights, approvals, Permits, authorizations, rights of way and other easements and agreements (other than the Rights of Way) necessary to enable Grantee to use, operate, or access the Grantee Fibers and to perform all of Grantee’s rights and obligations under this Agreement (collectively, the “Grantee Authorizations”). Grantee must cause the Grantee Authorizations to remain in full force and effect during the Agreement Term or to replace such Grantee Authorizations with suitable replacement authorizations, as applicable.

**Section 6.03 Relocation.** If, because of any request, intent, or plan (a “Relocation Request”) by any Person, including any Governmental Entity, Grantor is required to relocate any segment of the Network affecting the Grantee Fibers, Grantor will have the right to relocate the Network in accordance with such Relocation Request.

**Section 6.04 Condemnation.** In the event any portion of the Network, the Grantee Fibers, and/or the Rights-of-Way becomes the subject of a condemnation proceeding that is not dismissed within 180 days of the date of filing of such proceeding, and said proceeding could reasonably be expected to result in a taking by any Governmental Entity or other Person clothed with the power of eminent domain for public purpose or use, both Parties may, to the extent permitted by Law, participate in such proceedings to seek to obtain compensation by separate awards for the value of their respective interests in the portion of the Network and/or Grantee Fibers subject to such proceeding. Grantor must notify Grantee as soon as practicable of receipt of any notice of any condemnation proceeding filed against the Network, the Grantee Fibers, or the Rights-of-Way. Grantor agrees not to do anything with respect to the Grantee Fibers or the Rights-of-Way with a Governmental Entity or other Person in lieu of condemnation without providing Grantee with at least 10 Business Days’ prior written notice.

## **Article 7**

### **Title and Taxes**

**Section 7.01 Grantee’s Interest in Grantee Fibers.** Grantor and Grantee acknowledge and agree that Grantee will have sole the beneficial, indefeasible and exclusive right to use the

Grantee Fibers for the applicable Lease Term, subject to the terms and conditions of this Agreement, as if Grantee has full ownership thereof. Grantor agrees that it will not take any action that is inconsistent with Grantee's sole beneficial interest in the Lease except as expressly provided in this Agreement. Grantee's use of any Network facilities to access or use Grantee's Fibers will not create or vest in Grantee any easement, leasehold interest, or other ownership right in any such facility. The Parties acknowledge and agree that Grantee will have no other rights with respect to any other portion of Grantor's Network or facilities under the terms of this Agreement.

**Section 7.02 Grantor's Interest in Grantee Fibers.** The Grantor shall retain the undivided, absolute legal title to and ownership in the Network, including the Grantee Fibers, subject to the beneficial, indefeasible, and exclusive rights granted to Grantee in this Agreement. Notwithstanding the foregoing, Grantor will have no interest in Grantee's middle mile or last mile infrastructure, equipment or other assets, licenses, clients, intellectual property, etc.

### **Section 7.03 Taxes.**

(A) Each Party agrees to file its required respective Tax Returns for its respective Taxes attributed to the ownership or use of the Grantee Fibers or imposed upon such Party's fibers and all associated equipment by any Governmental Entity.

(B) Grantee shall be responsible for all Taxes assessed against the Grantee Fibers, if any.

(C) Grantor and Grantee are separately responsible for any and all Taxes upon or measured by the gross receipts, gross income, net receipts, or net income received by or accrued to each Party due to their respective interests in, or use of, the Grantee Fibers. Grantor and Grantee, each for themselves, reserve the right to contest any Tax.

## **Article 8 Representations and Warranties**

**Section 8.01 Representations and Warranties.** Each Party represents and warrants to the other Party that:

(A) It has the power, authority, and right to enter into, execute, deliver, and perform its obligations under the full term of this Agreement

(B) It has taken all requisite corporate action to approve the execution, delivery, and performance of this Agreement;

(C) This Agreement constitutes a legal, valid, and binding obligation enforceable against such Party in accordance with its terms, subject, however, to bankruptcy, insolvency, creditor's rights, and other equitable principles;

(D) Its entry, execution, delivery, and performance of this Agreement in accordance with its terms will not cause it to breach any agreement to which it is a party; and

(E) Its execution and performance of this Agreement will not violate any existing law.

**Section 8.02 Representations and Warranties by the Grantor.** The Grantor further represents and warrants to Grantee that, at the time of the Lease Effective Date:

(A) Grantor has obtained all interests, easements, rights, leases, authorizations and privileges of whatever kind or nature necessary to provide Grantee with the full benefits under this Agreement including the Attachments hereto; and

(B) The Grantee Fibers are free of known defects in materials and workmanship and are designed, engineered, and installed, at a minimum, in accordance with prevailing industry standards.

**Section 8.03 Compliance with Laws.** Each Party must perform its obligations under this Agreement in accordance with all applicable Laws.

## **Article 9 Force Majeure**

If either Party is rendered wholly or partly unable to perform any of its obligations under this Agreement (other than the obligation to pay money) because of a Force Majeure event, then such Party shall be excused from whatever performance is affected by the Force Majeure event until the Force Majeure event ceases. Any such suspension of performance may be of no greater scope and of no greater duration than is reasonably required by the Force Majeure event. The Party claiming relief due to a Force Majeure event must promptly notify the other Party of the occurrence of the event of Force Majeure and the cessation thereof and use commercially reasonable efforts to minimize the scope of the impact and the duration of the Force Majeure event. The Party claiming a Force Majeure event has the burden of proving the existence and duration of the event.

“Force Majeure” means any event that (i) renders it commercially impracticable for a Party to comply with its obligations under this Agreement (other than an obligation to pay money), (ii) is beyond the reasonable control of such Party, (iii) does not result from the fault or negligence of such Party, and (iv) could not have been avoided by the affected Party through the exercise of reasonable diligence. Subject to the satisfaction of the foregoing criteria, Force Majeure may include (i) acts of God such as storms, floods, lightning, and earthquakes, (ii) downed power lines or other similar events, (iii) wars, civil disturbances, revolts, insurrections, sabotage, acts of terrorism, and commercial embargoes, (iv) transport disasters that disrupt supply chains, whether by sea, rail, land, or air, (v) strikes or other labor conflicts that are not caused by the affected Party’s noncompliance with any labor agreement, (vi) fire, (vii) fiber, cable, or conduit cuts or other material failures, (viii) acts or omissions of a common carrier or warehouseman, and (ix) acts or omissions by a Governmental Entity that were not requested by the affected Party, nor caused by noncompliance with this Agreement or any Law.

## **Article 10 Default**

**Section 10.01 Grantee Events of Default.** If the Grantee (i) fails to observe and perform the terms and provisions (other than any payment obligation) of this Agreement and such failure continues for a period of 30 days after a written notice from Grantor specifying the breach (or, if

such failure is not capable of being cured within such 30-day period, cure has not commenced and diligently pursued thereafter to completion); (ii) voluntarily files a petition for bankruptcy or has an involuntary petition for bankruptcy filed against it which is not dismissed within ninety (90) days after the date of such filing; or (iii) fails to pay any undisputed amount due to Grantor under this Agreement on or before the applicable payment due date and such failure continues for a period of 30 days after written notice from the Grantor, then, in either case, Grantor may (x) terminate this Agreement, in which case Grantor will have no further duties or obligations hereunder, and/or (y) pursue any other legal remedies it may have under law or principles of equity relating to such default, including an action for damages, specific performance, and/or injunctive relief.

**Section 10.02 Grantor Events of Default.** If Grantor (i) fails to observe and perform the terms and provisions of this Agreement and such failure continues for a period of 30 days after written notice from the Grantee specifying the breach (or, if such failure is not capable of being cured within such 30-day period, cure has not been commenced and diligently pursued thereafter to completion), or (ii) voluntarily files a petition for bankruptcy or has an involuntary petition for bankruptcy filed against it which is not dismissed within ninety (90) days after the date of such filing, then Grantee may (x) terminate this Agreement, in which case Grantee will have no further duties or obligations hereunder, and/or (y) pursue any other legal remedies it may have under law or principles of equity relating to such default, including an action for damages, specific performance, and/or injunctive relief.

## **Article 11 Liabilities**

**Section 11.01 Grantor Liabilities.** Grantor hereby agrees to be solely responsible for the actions of its agents, employees, officers, and directors, and any and all Losses suffered by Grantee, whether arising out of contract, tort, strict liability, other Law or otherwise, actually incurred by any of them, including as a result of claims made by a third party, for any injury, loss or damage to any Person, tangible property or facilities, to the extent arising out of or resulting from:

(A) The gross negligence or willful misconduct of Grantor, the City, or its Affiliates or any of their respective officers, employees, servants, agents, contractors, licensees, invitees, or vendors in connection with the performance by Grantor of its obligations or the exercise of its rights under this Lease Agreement; or

(B) The breach of this Lease Agreement by the Grantor, provided that such breach is not caused by or the result of a breach of this Lease Agreement by Grantee.

**Section 11.02 Grantee Liabilities.** Grantee hereby agrees to be solely responsible for the actions of its agents, employees, officers, and directors, and shall be solely responsible for any and all Losses suffered by Grantor, whether arising out of contract, tort, strict liability, other Law or otherwise, including as a result of claims made by a third party, actually incurred by any of them to the extent arising out of or resulting from:

(A) The gross negligence or willful misconduct of Grantee or its Affiliates or any of their respective officers, employees, servants, agents, contractors, licensees, invitees, and vendors in connection with the performance by Grantee of its obligations or the exercise of its rights under this Lease Agreement; or

(B) The breach of this Lease Agreement by Grantee, provided that such breach is not caused by or the result of a breach of this Lease Agreement by Grantor.

Grantee intends that its obligation pursuant to this subsection to each Person in this Section for claims related to or brought by any Person directly or indirectly employed by Grantee or any of Grantee's Affiliates or any of their respective subcontractors may not be limited in any way by any provision of any workers' compensation act, disability benefits act, or other employee benefit act, and Grantee hereby waives immunity under such acts to the extent such acts would bar recovery under, or full enforcement of, Grantee's obligation pursuant to this subsection.

Section 11.03 **Procedures.** Grantor and Grantee agree to promptly provide each other with notice of any claim that may be the responsibility of the other Party's obligation hereunder.

Section 11.04 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by Grantor.

**Section 11.05 Waiver of Remedies and Limitations.**

(A) WITH THE EXCEPTION OF ACTUAL FRAUD OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES (INCLUDING, BY WAY OF ILLUSTRATION ONLY, LOST REVENUES AND LOST PROFITS SUFFERED BY EITHER PARTY) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OBLIGATION ARISING HEREUNDER, WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT, OR OTHERWISE, AND WHETHER OR NOT A PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

(B) EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTY TO THE OTHER PARTY OR TO ANY OTHER PERSON, EXPRESS, IMPLIED, OR STATUTORY, AND ALL SUCH WARRANTIES AS TO DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY ROUTE, THE GRANTEE FIBERS, OR ANY SERVICES PROVIDED HEREUNDER ARE HEREBY EXCLUDED AND DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW.

(C) Each Party must make commercially reasonable efforts to mitigate any Loss suffered by such Party in connection with this Agreement.

Section 11.06 **Survival.** The waiver and liability provisions of this Article will survive the expiration or termination of this Agreement.



## **Article 12 Confidentiality**

**Section 12.01 Confidentiality Obligation.** To the extent permitted by applicable Law, if either Party (the “receiving Party”) receives from or otherwise obtains confidential or proprietary information of the other Party (the “disclosing Party”), including, without limitation, information regarding the disclosing Party’s business or technical plans, pricing, trade secrets, customer information and other proprietary information, and the disclosing Party labels such information as “Confidential,” then the receiving Party shall (a) protect the disclosing Party’s confidential information from disclosure to third parties with the same degree of care it accords to its own confidential and proprietary information, but not less than reasonable care, and (b) refrain from using such confidential information except in negotiating or performing under this Agreement. Notwithstanding the foregoing, the receiving Party may provide the disclosing Party’s confidential information to its employees, contractors, consultants, financial institutions and potential or existing investors and customers, who, in each case, (i) reasonably needs access to such confidential information in connection with this Agreement, (ii) has been informed of the confidential nature of the information being disclosed, and (iii) is bound by written confidentiality obligations substantially similar to the terms of this Article. In any event, the receiving Party shall be responsible and liable to the disclosing Party for any disclosure or use of the disclosing Party’s confidential information by any Person to whom the receiving Party disclosed such information,

**Section 12.02 Permitted Disclosures.** Notwithstanding any other provision hereof, no obligation of confidentiality shall apply to information that (a) becomes publicly available other than through the receiving Party’s violation of this Agreement; (b) is independently developed by the receiving Party without use of, or reference to, the disclosing Party’s confidential information; or (c) becomes available to the receiving Party without restriction from a third party who is not otherwise restricted from disclosing such information. In the event that the Authority or the City receives a disclosure request under Virginia Law pursuant to which any of Grantee’s confidential information may be required to be disclosed, the Authority shall give Grantee notice of such request prior to making any disclosure of information in response to such request; provided, however, that the Authority shall use reasonable efforts to ensure that any and all information that is exempt from disclosure pursuant to Virginia Law is redacted and not disclosed in response to such request.

**Section 12.03 Compelled Disclosure.** In the event the receiving Party or anyone acting on its behalf becomes legally compelled to disclose the disclosing Party’s confidential information pursuant to an order of court, governmental entity, or freedom of information act request, the receiving Party shall promptly notify the disclosing Party of such requirement and afford the disclosing Party the opportunity to seek a protective order relating to such disclosure.

**Section 12.04 Survival.** The obligations set forth in this Article shall survive expiration or termination of this Agreement for a period of three (3) years, except that, with respect to any confidential information designated by the disclosing Party as a trade secret, and entitled to protection as such, the obligations set forth in this Article shall survive such expiration or termination indefinitely.

## **Article 13**

## Miscellaneous

Section 13.01 **No Agency.** This Agreement does not appoint either Party as the agent or legal representative of the other Party and does not create a partnership or joint venture between the Parties.

Section 13.02 **Amendment.** This Agreement, including the Attachments hereto may be amended or supplemented only by the execution and delivery of a written instrument signed by a person with actual, not apparent, authority by or on behalf of each Party.

Section 13.03 **Assignment.** Neither Party may assign or otherwise transfer this Agreement or its duties and obligations without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the consent of the other Party to (i) any of its Affiliates (ii) any purchaser of all or substantially all of the assets of such Party, or (iii) any Person with whom or into which such Party may merge or consolidate, provided that such Person must agree in writing to comply with the terms of conditions of this Agreement as fully as if an original party hereto. Nothing in this Section shall be deemed or construed to limit or prohibit Grantee from leasing or granting to its customers indefeasible rights of use in the Grantee Fibers; however, no such lease or grant shall absolve Grantee of its obligations under this Agreement or create rights in any customer greater than those of Grantee under this Agreement. Additionally, nothing in this Agreement shall prohibit Grantor from transferring or assigning any of its obligations and/or interests under this Agreement to the City of Portsmouth, Virginia. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.

Section 13.04 **Severability.** Whenever possible, each provision of this Agreement should be interpreted in such manner as to be valid and effective under applicable Law. However, if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

Section 13.05 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original, any all such counterparts taken together will constitute one and the same Agreement. Copies of executed signature pages delivered by facsimile or other electronic transmission are, for all intents and purposes, to be treated as originals.

Section 13.06 **Notices.** Any notice, request, instruction, or other document to be give hereunder must be in writing and delivered personally or sent by registered or certified U.S. Mail, postage prepaid, by reputable national express courier or by shipping, cost prepaid, according to the instructions set forth below. Such notices will be deemed given at the time delivered by hand, if personally delivered; five Business Days after being sent by registered or certified mail; one Business Day after having been sent by express courier.

### **To Grantor:**

Southside Network Authority

The Regional Building  
723 Woodlake Drive  
Chesapeake, Virginia 23320  
Attn: Executive Director  
*stevenhdeberry@gmail.com*

**With Copy To:**

Guynn, Waddell, Carroll & Lockaby, P.C.  
415 South College Avenue  
Salem, Virginia 24153  
Attn: Michael W.S. Lockaby  
*MikeL@guynnwaddell.com*

**To Grantee:**

ADDRESS

Or to such other address or to the attention of such other Party that the recipient Party has specified by prior written notice to the sending Party in accordance with the preceding. Notwithstanding the foregoing, notices related solely to operational issues may be delivered via email to the following addresses:

**To Grantor (must send to all):**

ADDRESS

**To Grantee:**

ADDRESS

Section 13.07 **No Waiver.** No failure to exercise and no delay in exercising, on the part of either Party, of any right, power, or privilege hereunder is to be construed as a waiver thereof.

Section 13.08 **Third-Party Beneficiary.** The Parties hereto acknowledge and agree that they intend no third party beneficiaries to this Agreement.

Section 13.09 **Entire Agreement.** This Agreement, together with the exhibits and attachments attached hereto and made a part hereof, constitutes the entire agreement of the Parties with respect to its subject matter and supersedes any prior or contemporaneous understandings, agreements, or representations by or among the Parties, written or oral, that may have related in any way to the subject matter hereof. In the event of a conflict or inconsistency between the terms of this Agreement and the terms of any exhibit or attachment hereto, the terms of this Agreement will control.

Section 13.10 **Governing Law and Venue.** This Agreement is to be construed under the laws of the Commonwealth of Virginia, without regard to its principles of conflicts of laws. Each Party hereby irrevocably submits to exclusive venue and jurisdiction in the courts serving the City of Chesapeake, Virginia.

Section 13.11 **Insurance.** At all times during the Lease Term, Grantee shall, at its expense, maintain the following insurance policies. Any required insurance shall be in a form and with an insurance company authorized to do business in the Commonwealth of Virginia and have a rating of no less than A- VII by A.M. Best Co.

(A) *Commercial General Liability.* Commercial General Liability insurance coverage on an occurrence basis insuring against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of any of the work or activity under or by virtue of this Agreement. The minimum limits of liability for such coverage shall be Two Million Dollars (\$2,000,000) combined single limit for any one occurrence. However, the parties acknowledge that Grantee meet the policy limit in this section by combination of Grantee's General Commercial Liability Policy and Grantee's Umbrella or Excess Liability Policy.

(B) *Contractual Liability.* Broad form Contractual Liability insurance.

(C) *Workers' Compensation.* Workers' Compensation insurance covering Grantee's statutory obligation under the laws of the Commonwealth of Virginia and Employer's Liability insurance for all its employees engaged in work under this Agreement.

(D) *Automobile Liability.* Automobile Liability insurance having minimum limits of liability of One Million Dollars (\$1,000,000) combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Agreement.

(E) *Pollution Liability Insurance.* Grantee shall maintain during the life of this Agreement Pollution Liability Insurance in the amount of One Million Dollars (\$1,000,000) for each occurrence. Coverage shall be provided for bodily injury and property damage resulting from pollutants which are discharged suddenly and accidentally. Such insurance shall also provide coverage for cleanup costs.

(F) *Cybersecurity.* Insurance covering cybersecurity-related events in a minimum amount of One Million Dollars (\$1,000,000).

(G) *Umbrella Coverage.* The insurance coverages and amounts set forth in this Section may be met by an umbrella liability policy following the form of the underlying primary coverage in a minimum amount of Five Million Dollars (\$5,000,000).

(H) Grantee shall, prior to the Lease Effective Date, furnish Grantor with certificates of insurance, showing the type, amount, effective dates and date of expiration of the policies, and thereafter prior to the expiration of any such policy or change in the amount or conditions, of coverage. Such certificate or certificates and evidence of insurance shall include the Grantor and its officers, agents, and employees as additional insureds. Grantee shall obtain a written obligation on the part of each insurance company to notify Grantee at least thirty (30) days before cancellation or a material change of any such insurance. Upon receipt of such notice from Grantee's insurance company, Grantee will immediately notify Grantor if any of the required coverages were not replaced.

**[SIGNATURE PAGES TO FOLLOW]**

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

**COMPANY NAME**

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

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

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

**SOUTHSIDE NETWORK AUTHORITY**

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

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

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

**Attachment A**

**Acceptance Testing Procedures**

\*Include specifications. [draft to come from GTS]

## **Attachment B**

\*Include map. [to come from SNA]



Schedule 1.1  
Grantee Fibers

[REDACTED]

[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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