



REQUEST FOR COUNCIL ACTION

City of Greenville, South Carolina

TO: Honorable Mayor and Members of City Council
FROM: John F. McDonough, City Manager

Agenda Item No.

11a

Ordinance/First Reading
 Ordinance/Second & Final Reading
 Resolution/First & Final Reading
 Information Only

AGENDA DATE REQUESTED: September 26, 2022

ORDINANCE/RESOLUTION CAPTION:

ORDINANCE TO GRANT TO CROWN CASTLE FIBER LLC, THE RIGHT TO INSTALL, CONSTRUCT, AND OPERATE WIRELINE TELECOMMUNICATIONS FACILITIES WITHIN THE RIGHTS OF WAY OF THE CITY FOR THE PURPOSE OF RENDERING TELECOMMUNICATIONS SERVICE TO ITS CUSTOMERS AND TO PROVIDE FOR COMPENSATION TO THE CITY IN ACCORDANCE WITH SOUTH CAROLINA LAW

SUMMARY BACKGROUND:

This Ordinance grants Crown Castle a non-exclusive franchise to use the public right-of-way for installation, construction, and operation of wireline Telecommunications Facilities for the purpose of providing Telecommunications Service to its customers within the City for its own business purposes and profit. The franchise does not grant rights for base stations or towers and does not include facilities for the provision of mobile telecommunications service.

IMPACT IF DENIED:

The franchise will not be granted.

FINANCIAL IMPACT:

If granted, Crown Castle shall pay a franchise fee in the amount of \$1000 per annum.

REQUIRED SIGNATURES

Department Director

DocuSigned by:

Matt Eby

44928BTC67864BE...

City Attorney

DocuSigned by:

Leigh Padetti

56BFADF32244F0...

DocuSigned by:

John F. McDonough

FDC2AC15040F440...

OMB Director

City Manager

AN ORDINANCE

TO GRANT TO CROWN CASTLE FIBER LLC, THE RIGHT TO INSTALL, CONSTRUCT, AND OPERATE WIRELINE TELECOMMUNICATIONS FACILITIES WITHIN THE RIGHTS OF WAY OF THE CITY OF GREENVILLE FOR THE PURPOSE OF RENDERING TELECOMMUNICATIONS SERVICE TO ITS CUSTOMERS AND TO PROVIDE FOR COMPENSATION TO THE CITY IN ACCORDANCE WITH SOUTH CAROLINA LAW

WHEREAS, Crown Castle Fiber LLC, has requested consent of the City of Greenville to use the streets and public places of the City to Install, Construct, or Operate wireline Telecommunications Facilities for the purpose of providing Telecommunications Service to its customers within the City for its own business purposes and profit; and

WHEREAS, Crown Castle Fiber LLC, has specifically requested that the grant not include the right to Install, Construct, or Operate a base station or tower, as those terms are defined at 47 C.F.R. § 1.6100(b); and

WHEREAS, it is the policy of the City of Greenville, South Carolina, to permit such entry into to the corporate limits and such use of the streets and public places for the provision of Telecommunication Service, subject to the duty and authority of the City to manage its streets, public property and Right of Way, and to require fair and reasonable compensation from Telecommunications Service providers for the use thereof on a competitively neutral and nondiscriminatory basis and to publicly disclose the amount of compensation;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA:

Section 1. Definitions

- a). “Applicable Law” or “Law” means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations.
- b). “City” means the City of Greenville, South Carolina.
- c). “Company” means Crown Castle Fiber LLC, a New York limited liability company authorized to do business in South Carolina, whose address is 2000 Corporate Drive, Canonsburg, PA 15317-8564, and its authorized successors and assignees.
- d). “Franchise” means the consent granted by this ordinance, and agreed to by Company.
- e). “Installation, Construction, and Operation” and variations of those terms refer to any activity performed in the Right of Way with respect to the Facilities, including construction, modification, replacement, repair, operation, maintenance, removal or relocation.
- f). “Pole” means a post or other structure that is not a tower, is installed for the primary purpose of supporting utility facilities, and that is regulated pursuant to 47 U.S.C. § 224, or an equivalent provision of state law.
- g). “Right of Way” means any public street, alley, similar rights of way however nominated, and dedicated public utility easements within the City as may now exist or be

hereafter created, until and unless the same are abandoned or otherwise disposed of, which City may authorize the Company to use, and which are appropriate for placement of the Facilities. By way of example and not limitation, the term does not include structures or other improvements, regardless of whether they are situated in a Right of Way.

h). “Telecommunications Service” has the meaning and definition given to that same term by S.C. Code Ann. Section 58-9-2200(1) (2017); provided, however, for purposes of this ordinance, the term “Telecommunications Service” does not include cable services as that term is defined by S.C. Code Section 58-9-2200(4) (2017), or mobile telecommunications service as that term is defined by S.C. Code Section 58-9-2200(5) (2017).

i). “Telecommunications Facilities” or “Facilities” means facilities used in the provision of Telecommunications Service, and specifically does not include facilities for the provision of mobile telecommunications service, whether fixed or mobile. To remove any doubt, a wireline that uses the Right of Way in whole or part to connect a base station to other elements of a communications network at different locations is included within the term “Telecommunications Facilities.”

Section 2. Grant

a). Subject to, and contingent upon, Company obtaining and maintaining any required authorizations from the State of South Carolina, or other governmental entity from which it must obtain authorizations, the non-exclusive right, power and authority is hereby granted and vested in the Company to Install, Construct, and Operate over, under, and upon the Right of Way, its lines, poles, wires, cables, and other Telecommunications Facilities for the purpose of rendering Telecommunications Service, to its customers within the corporate limits of the City, provided that, the grant shall not be effective until and unless, within 30 days of the date this ordinance is adopted, Company:

- (1). Unconditionally accepts the terms and conditions of this ordinance by executing the form of acceptance attached hereto and incorporated herein as Exhibit A;
- (2). Provides proof satisfactory to City that it has obtained the insurance and bonds required herein; and
- (3). Pays the initial fee for occupancy of the Right of Way.

b). Company is not granted any property interest in the Right of Way, nor is it provided a right to occupy or continue to occupy any particular location within the Right of Way. The Franchise is not divisible, and Company may not grant any person the right to use or occupy the Right of Way. The grant does not extend to any other service, and Company may be required to obtain an additional franchise or an amendment to this Franchise before using and occupying the Right of Way to provide additional services.

c). The Franchise does not confer upon Company any right to place or attach Facilities directly upon or to structures located in the Right of Way that are owned by City or by a third party, or to install Facilities on land or structures owned by City or a third party outside the Right of Way.

Section 3. Term. The non-exclusive Franchise and consent granted by this ordinance shall be in force and effect for an initial term of five (5) years from the date this ordinance is adopted and shall continue in force and effect thereafter until properly terminated by either party. Either party may terminate the contract at the end of its initial five-year term, or at any time thereafter, by giving written notice of its intention to do so no less than two (2) years before the proposed date of termination. It is understood and agreed that the decision of whether to renew or to terminate the Franchise pursuant to this Section shall be made by those elected officials then in office under such circumstances as may then obtain. Provided, however, nothing in this Section is intended to expand or contract any rights that Company may have as a matter of state or federal law to obtain a franchise from City.

Section 4. Proof of Authority. Prior to the commencement or continuation of any Installation, Construction, and Operation in the corporate limits of the City, the Company shall be duly authorized to do business in South Carolina and shall have received a certificate of public convenience and necessity or other required authority from the South Carolina Public Service Commission. Evidence that such authority has been acquired will be filed with City.

Section 5. Compliance with Codes. All work in the Right of Way shall be in accordance with Applicable Law, and will be done under the general supervision of City. Except as specifically provided herein, or otherwise mandated by law, the privilege granted to the Company by this ordinance does not exempt or excuse the Company from the police power and all other municipal authority and laws including, but not limited to, those relating to zoning, permitting, traffic control, construction and excavation, planning, aesthetics, and the environment.

Section 6. Minimum Standards. Without limiting its obligations under Section 5, work in the Right of Way is subject to the following minimum conditions.

- a). City has a preference for placement of all new construction underground, provided that City shall not require Company to construct new facilities underground when the Telecommunications Facilities of the incumbent local exchange carrier are aboveground, or where existing Poles can be utilized, except in corridors where City is requiring existing Facilities similar to those proposed by Company to be undergrounded, or where property or structures within a designated area on which the aboveground Facilities would be placed are to be modified or moved as part of a publicly announced project that is scheduled to commence within twenty-four (24) months or less. Company may obtain a waiver of this provision for equipment cabinets, if it can clearly demonstrate to the City Engineer that there are compelling geological or technical reasons that preclude the underground installation of the equipment, and placement is proposed in a manner that creates no hazard or interference with the corridor, or that is inconsistent with its appearance. Increased cost alone is an insufficient basis. For purposes of this section, a “publicly announced project” is any project that is made public through any City ordinance, resolution, master plan, budget, capital improvement program, utility underground program, or other City document that is publicly released or available online.
- b). Any necessary aboveground construction will, wherever practicable, utilize existing Poles. No new Poles may be placed in the Right of Way without the express permission of the City Engineer. No towers may be placed in the Right of Way pursuant to the Franchise, nor may Company install any structure that exceeds the average height from grade of other Poles in the Right of Way near a proposed site by more than ten (10) feet. Nothing herein is intended to permit Facilities to be placed aboveground that are not permitted to be aboveground under Section 6(a).

c). No Right of Way or other place used by the Company shall be obstructed longer than necessary during its work of Installation, Construction, and Operation, and shall be restored to the same good order and condition as when said work was commenced.

d). No part of any Right of Way or other public place or facility of the City, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be damaged. However, should any such damage occur, the Company shall repair the same as promptly as possible, and, in default thereof, City may make such repairs following reasonable prior notice to Company and charge the reasonable cost thereof to and collect the same from Company.

e). City may direct placement in a manner that minimizes disruption of the Right of Way and adjacent properties. If City receives multiple requests for placement of Facilities similar to those authorized hereunder, City, after providing Company and other affected entities an opportunity for comment, may require consolidation of Facilities or develop a non-discriminatory means of allocating sites that may be appropriate for placement of Facilities in the Right of Way. In no event may Facilities be Installed, Constructed, or Operated in a manner that creates a hazardous condition, or a condition that is inconsistent with Applicable Law protecting persons with disabilities. In no event may hazardous materials be placed in the Right of Way, without providing specific notice of the hazardous material to City, and without City expressly approving the placement.

f). Nothing in the Franchise shall be construed as a waiver or release of the rights of City in and to the Right of Way. In the event that all or part of the Right of Way within the franchise area are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services comparable to Telecommunications Service; or (2) vacated or abandoned or if ownership of the land in, under or over the affected Right of Way is otherwise transferred to another person, all rights and privileges granted pursuant to the Franchise with respect to such Right of Way, or any part of such Right of Way so abandoned, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and Company shall remove its Facilities from such Right of Way, provided that if in connection with any such event, City preserves an easement for utilities, in a manner similar to the way in which it preserves easements as of the date hereof, Company shall not be required to remove its Facilities if Company's Facilities are permitted to remain in place under the easement. Exhibit B contains the current preservation language. Nothing herein is meant to preclude Company from pursuing any rights it may have under state law against a private person if the Right of Way is vacated for the benefit of that person. City shall provide reasonable prior written notice to Company of any such closing, vacation, or transfer to allow Company to remove its Facilities where the right to continue to occupy and use such Right of Way is not reserved for Company.

g). Relocation of Facilities.

(1). Company may be required to remove and relocate its Facilities, subject to such notice as may ordinarily be provided to users of similar structures or as required under Applicable Law, if the structures to which they are attached or located within are removed, ordered to be removed or relocated for any public purpose; or to ensure that Facilities do not interfere with the use of the Right of Way by the public, or present a risk to public health or safety. Without limiting the foregoing, but to remove any doubt, if a Pole to which Company's Facilities are attached is replaced, Company must promptly move its Facilities to the replacement Pole so that the Pole that is being

replaced may be removed. If City finds that Company has failed to move its Facilities promptly, it may exercise its rights under Section 6(h). To the extent that Company is required to remove or relocate its Facilities to accommodate the use of the Right of Way by a third party, nothing herein prevents Company from seeking compensation from that third party. Nothing in this Section is intended to abrogate or waive any right to reimbursement that Company may have under Applicable Law, but in no instance shall City be responsible for such costs.

(2). If Company's Facilities are located aboveground in the Right of Way and the distribution lines of the incumbent local exchange carrier are placed underground, Company's aboveground Facilities (other than those comparable to the Facilities of the incumbent local exchange carrier which are permitted to remain aboveground) shall be placed underground at the same time. In the event that Company's Facilities are in a corridor where there is no available Poles, if the Facilities of the owner of any Pole to which Company's Facilities are attached are placed underground, and there are no other available Poles in that corridor that can be utilized, Company's Facilities shall be placed underground. Nothing herein prevents Company from challenging a directive from the City requiring Company to place Facilities underground if City exempts other City-franchised Telecommunications Service providers from placement of similar Facilities underground, on the ground that the exemption amounts to an effective prohibition of Company's ability to provide Telecommunications Service under federal law.

h). The rights and privileges granted hereby shall not be in preference or hindrance to the right of City, or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works, public improvements or public projects. Upon notice to Company that the Facilities interfere in any way with the construction, maintenance or repair of such public works, public improvements, or public projects, Company shall:

(1). Immediately commence work to remove or relocate the object of such interference if Company is notified that emergency circumstances exist; or

(2). Otherwise, within thirty (30) days of notice of such interference and City's approval of any necessary permits, protect or relocate its Facilities, as may be directed by the relevant authority.

City shall cooperate with Company in finding a suitable alternative location for any relocated Facilities removed pursuant to this Section in a manner that, to the extent reasonably consistent with other provisions of this Franchise, and which allows Company to continue to provide Telecommunications Service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of Facilities.

i). If Company defaults in its obligations hereunder, City may remove or relocate Facilities and charge the reasonable cost thereof to and collect the same from Company.

k). Emergency Work by City.

Notwithstanding any other provision of this Franchise, where City deems an emergency, requires the relocation or removal of Facilities to avoid harm to persons or property, City may perform the work itself without notice and charge Company the costs therefor.

l). Installation, Construction, and Operation shall be done in a workmanlike manner. All work involved in the Installation, Construction, and Operation of Facilities shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. Company will comply with City requirements for identification of Facilities and for identification of employees, subcontractors, vehicles and equipment when performing work within the Right of Way.

m). Maintenance.

(1). Company shall maintain the Facilities in good condition and neat and orderly appearance, and in compliance with Applicable Law, permits, and authorizations and licenses.

(2). Company shall keep the Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference.

(3). If City gives Company written notice of a failure by Company to maintain the Facilities, Company shall use its best efforts to remedy such failure within forty- eight (48) hours after receipt of such written notice. If Company defaults in its obligations hereunder, City may perform the necessary work and charge the reasonable cost thereof to and collect the same from Company.

(4). Company shall at all times keep and maintain the Facilities free of all graffiti located thereon. If City notifies Company that graffiti is located on the Facilities, Company shall remove the graffiti within thirty (30) days of the written notice. If Company defaults in its obligations hereunder, City may perform the necessary work and charge the reasonable cost thereof to and collect the same from Company.

n). Emergency Notification. In addition to providing a notification telephone number and email pursuant to Section 17(b), at City's request, a contact number will also be placed on Company's Facilities in such manner as City may reasonably direct. Company shall respond immediately to address a reported emergency.

o). Excavation Notices. Company must be a member of the South Carolina 811 or successor association and comply with the requirements for excavation notification.

p). Inspection by City. City shall have commercially reasonable access to inspect any work conducted by Company during the Installation, Construction, or Operation of the Facilities.

q). Upon request, Company shall provide City an "as-built" map clearly indicating the location of the Facilities in the Right of Way, which shall identify the owner of any structure on or within which Company's Facilities are located.

Section 7. Hold Harmless. Company shall defend and save City harmless from all liability or damage (including judgments, decrees, court costs, and defense costs) arising out of the Company's operations within the corporate limits of the City, the exercise of the privileges granted to Company by this ordinance, or the acts or omissions of Company's employees, contractors, or agents. Notwithstanding the foregoing, the obligations of Company under this Section 7 shall not apply in the event that any liability or damages results from the gross negligence or intentional misconduct of City or any of its officers or employees.

Section 8. Insurance and Performance Bond.

a). Insurance. Company shall procure and maintain insurance for the duration of this Franchise against any and all claims for bodily injury and for property damage which may in any way arise from, or in connection with, the Installation, Construction, or Operation of the Facilities or activities Company, its agents, representatives or employees may perform pursuant to this Franchise (the "Work"). Such insurance shall be in the following amounts, which assume that no hazardous materials will be associated with any of the Facilities, and that the Facilities will be of a kind and type regularly installed in the Right of Way. City may require additional insurance if, in City's reasonable view, the Facilities present additional risks to it, the public, or property.

b). Coverages and Limits:

- | | | |
|------|------------------------------|---|
| (1). | Commercial General Liability | \$1,000,000 per occurrence |
| (2). | Commercial Auto Liability | \$1,000,000 per occurrence |
| (3). | Workers' Compensation | Statutory Limits |
| (4). | Employer's Liability | \$500,000/\$500,000/\$500,000 each
accident/disease/policy limit |

c). Certificates. Certificates showing proof of such insurance shall be submitted to City by e-mail to inscerts@greenville.gov prior to commencement of any work under this Franchise. Further, it shall be an affirmative obligation upon Company to advise City, by e-mail to inscerts@greenville.gov, thirty (30) days prior notice of cancellation of the insurance or a change in insurance such that the insurance no longer satisfies the requirements of this Section, or Applicable Law.

d). Endorsements. The General Liability policy is to include City, its officers, officials, and employees as additional insureds as their interest may appear under this Franchise excluding Workers' Compensation and Employer's Liability. Such coverage shall be primary.

e). Workers' Compensation. Company shall maintain Workers' Compensation Insurance for all of Company's employees who are in any way connected with the Work. Such insurance shall comply with all Applicable Law and provide a waiver of subrogation against City, its officers, officials, agents and employees.

f). Liability. Company and/or its insurers are responsible for payment of any liability arising out of Workers' Compensation, unemployment or employee benefits offered to its employees. Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII and licensed, or otherwise authorized or permitted to do insurance business in the

State of South Carolina, and Company shall not self-insure in satisfaction of any of the insurance requirements set out herein without the express written consent of City.

g). Performance Bond. Company shall, as a material condition of this Franchise, and prior to the commencement of any Work in the Right of Way, deliver to City a performance bond in the amount of \$50,000, payable to City to ensure the appropriate and timely performance of Work in the Right of Way and compliance with the obligations of this Franchise. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of South Carolina, and satisfactory to the City Attorney in form and substance, and must be maintained until all obligations to City under this Franchise (including obligations to remove) are satisfied.

Section 9. Fees.

a). In consideration of the grant of authority to utilize the streets and public places of the City for the provision of Telecommunications Service, and in accordance with Applicable Law and ordinances, Company shall pay such franchise fees, business license taxes, and administrative fees as are presently permitted by Article 20 of Chapter 9 of Title S8 of the 1976 Code of Laws of South Carolina, as enacted in 1999, and as may be enacted and imposed by City. Company shall also pay all such ad valorem taxes, service fees, sales taxes, or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the City. Provided, however, that in the event that Article 20 of Chapter 9 of Title 58 of the 1976 Code of Laws of South Carolina, as enacted in 1999, or other laws governing franchise fees, business license taxes and/or other fees with respect to Telecommunications Service shall be substantially modified by subsequent legislation or court decision, the provisions herein contained shall be brought into conformity with the changes in the Applicable Law by appropriate amendment to this ordinance. If the limitations on the amount of franchise fees, administrative fees, and business license taxes on Telecommunications Service providers presently contained in said statute shall be removed or modified, City will be free, by amendment to this ordinance, to impose such fair, reasonable, competitively neutral, and non-discriminatory fees and taxes as may then be permitted by that statute or by such Applicable Law as may then govern; Company will be free to challenge any fee structure not in compliance with Applicable Law.

b). For the use of the Right of Way, as defined by S.C. Code Section 58-9-2230, to provide Telecommunications Service, Company shall pay to City a franchise fee in the amount of \$1,000 per annum which fee is in lieu of any permit fee, encroachment fee, degradation fee, or other fee assessed on a Telecommunications Service provider for use of the Right of Way to the extent required by S.C. Code Section 58-9-2230. The initial franchise fee shall be paid to City on or before the effective date, and thereafter on January 2 of each calendar year the Franchise remains in effect.

c). Interest will be charged on any late payment at the maximum rate permitted under state law, or if there is no such rate, the prime rate charged by the bank City uses as its main depository, plus three percent (3%).

d). Acceptance of any payment by City does not relieve Company of any obligation to pay any amounts owed to City.

Section 10. Company's Expense. Except as specifically provided otherwise, all costs incurred by Company in connection with its compliance with, or enjoyment of this Franchise shall be borne by Company and not by City, and all work that must be performed in order to permit the placement of the Facilities at particular locations shall be paid for by Company.

Section 11. Application to Subcontractors. Company is responsible for ensuring that all contractors and subcontractors comply with the requirements of this Franchise and Applicable Law when performing work on behalf of Company and is jointly and severally responsible for their acts and omissions.

Section 12. No Third Party Beneficiaries. Nothing in this Franchise, express or implied, is intended to or shall confer upon any person (other than City and Company) including, but by no means limited to, Company's customers, any right, benefit or remedy under this Franchise of any nature whatsoever.

Section 13. Removal Due to Termination or Abandonment. Following the termination of the Franchise for any reason, or in the event Company ceases to operate and abandons any Facilities, Company shall, within one hundred twenty (120) days of written notice from City, remove such Facilities from the Right of Way and restore the Right of Way to specifications prescribed by City. Alternatively, City may allow Company, in City's sole and absolute discretion to abandon the Facilities in place and convey the Facilities to City free and clear. If Company defaults in its obligations hereunder, City may perform the necessary work and charge the reasonable cost thereof to and collect the same from Company.

Section 14. Default and Remedies

a). Defaults. The following are defaults under this Franchise:

(1). If either party fails to perform or comply with any of the conditions or covenants of this Franchise and such failure continues for a period of thirty (30) calendar days after written notice thereof, unless the performance cannot be reasonably completed within the thirty (30) day period and the party has commenced good faith efforts to perform and is diligently proceeding to complete performance to the satisfaction of the other party; or

(2). If Company fails to pay any sums herein specified when due and does not pay within thirty (30) calendar days after receipt of written notice of said default; or

(3). Company's willful or negligent misconduct create an imminent hazard to persons or properties which Company cannot or does not immediately correct.

b). Default by Company. In the event of default by Company as specified in the preceding section, City shall have the right to terminate this Franchise, by giving thirty (30) calendar days written notice to Company, and in addition may pursue any other remedies available to it at law or equity. The thirty-day notice period is not an additional cure period.

c). Default by City. In the event of default by City, Company shall have the right to terminate this Franchise while any default continues, beyond any applicable cure period, by giving thirty (30) calendar days written notice to City, and in addition may pursue any other remedies that may be available to it at law or equity, including for injunctive relief. Company shall have no recourse for damages against City except as required by state law, whether

resulting from enforcement or non-enforcement of this Franchise or any provision of Applicable Law.

Section 15. City Termination Right.

In addition to termination in the event of default under Section 14, City shall have the right to terminate this Franchise (1) if City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of all of the Facilities from the Right of Way; or (2) if Company's required authorizations to operate the Facilities and/or provide Telecommunications Service are terminated, revoked, expired, or otherwise abandoned.

Section 16. Transfer.

a). The Franchise, or control of the Franchise or of the Facilities within the Right of Way may not be assigned or transferred directly or indirectly by any means without the prior written consent of City which consent shall not be unreasonably withheld, conditioned, or delayed, if Company is in compliance with this Franchise and provided that the transfer or assignment does not create any additional burden upon the Right of Way, or adversely affect City's interests under this Franchise. Any assignee or transferee must accept all obligations of Company, and responsibility for all acts and omissions of the Franchise known and unknown. If the transaction results in a change in Company, a license or lease of capacity on the Facilities owned or controlled by Company is not a transfer under this Section.

b). Company may mortgage, pledge, or hypothecate its interest in the Facilities without consent to any financing entity, or agent on behalf of any financing entity to whom Company (1) has obligations for borrowed money or in respect of guaranties thereof, (2) has obligations evidenced by bonds, debentures, notes or similar investments, or (3) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof. Any such assignment to a financing entity or its agent shall be subordinate to the terms of this Franchise, will not permit any person to succeed to the rights of Company under the Franchise without City's consent, and will not result in any lien extending to municipal property or the Franchise itself.

Section 17. Notices.

a). All notices, requests, demands, and other communications hereunder which are required to be in writing shall be deemed given if personally delivered or by sent to the following addresses by certified mail, return receipt requested; or by an overnight delivery service providing proof of delivery:

City:

City of Greenville
Attn: City Manager
P.O. Box 2207
Greenville, South Carolina 29602
(ph) 864.467.5700

With a copy to (which shall not constitute notice):

City of Greenville
Attn: City Attorney
P.O. Box 2207
Greenville, South Carolina 29602
(ph) 864.467.4420

Company:

Crown Castle Fiber LLC
C/O Crown Castle
2000 Corporate Drive
Canonsburg, Pennsylvania 15317-8564

With a copy to (except for invoices):

Crown Castle Fiber LLC
C/O Crown Castle
2000 Corporate Drive
Canonsburg, Pennsylvania 15317-8564
Attn: Ken Simon, General Counsel

All invoicing to Company may be made to

Crown Castle Fiber LLC
C/O Crown Castle
2000 Corporate Drive
Canonsburg, Pennsylvania 15317-8564
Attn: Contracts Management

b). Other Notices. Company shall identify an entity to which notice may be provided by email or telephone call, twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the construction or maintenance of the Facilities, or conditions affecting the safety or integrity of the Facilities (downed poles or lines, for example), including matters that may require immediate relocation or removal of the Facilities. Initially, that notice may be provided to Company's Network Operations Center by phone at 855.933.4237.

c). Changing Notice. Either party may change the person, address, email, or telephone to which notice may be provided by written notice to the other party. Each party must ensure that the other has accurate information as to where notices are to be provided.

Section 18. Miscellaneous.

a). Materials and Claims. All materials furnished for any work done in the franchise area by Company shall be at Company's sole cost and expense. Company agrees to protect the Facilities installed in the Right of Way and property of City, and City, from all claims of contractors, laborers, mechanics, and persons furnishing material. Company shall promptly pay all contractors, laborers, mechanics, and persons furnishing material, so as to minimize the possibility of a lien attaching to any property of City or the Facilities in the Right of Way.

Should any such lien be made or filed, Company shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

b). No Advertisement. Company shall not place any advertisement or other notice on or about the Facilities which identifies Company or a third party in any way except for emergency notification postings, postings for purposes of identification, or public safety (as opposed to promotion), or postings required by Applicable Law.

c). Merger. This document contains the entire agreements of the Parties hereto with respect to the Franchise. No provision of this Franchise may be amended or added to except by an agreement in writing signed by the parties hereto or respective successors in interest.

d). Non-Waiver. Failure of City to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Franchise or to exercise any of its rights hereunder shall not waive such rights, but City shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Company to City after a breach of this Franchise shall not be deemed a waiver of such breach unless expressly set forth in writing.

e). Force Majeure If either City or Company is prevented or delayed from fulfilling any term or provision of this Franchise by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Franchise, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.

f). Governing Law; Jurisdiction.

(1). This Franchise shall be construed in accordance with the laws of the State of South Carolina, without reference to its conflicts of law principles. If suit is brought by a party to this Franchise, the Parties agree that trial of such action shall be vested exclusively in the Greenville County Court of Common Pleas or the United States District Court for the District of South Carolina, Greenville Division.

(2). This Franchise is subject to the Constitution and laws of the State of South Carolina. In conforming this Franchise to the requirements of S.C. Code Ann. Section 58.9-2200 et seq. as enacted by the General Assembly of South Carolina in 1999, City does not concede or imply that the General Assembly has the authority to restrict by general law the powers denied to the General Assembly and reserved to the municipalities of South Carolina by Article VIII Section 1 of the Constitution of South Carolina.

g). Change in Law and Severability. If any provision or portion thereof of this Franchise is or becomes invalid under any Applicable Law, and such invalidity does not materially alter the essence of this Franchise to either party, such provision shall not render unenforceable this entire Franchise. Rather, the parties intend that the remaining provisions shall be administered as if the Franchise did not include the invalid provision.

h). Reimbursement. Company shall pay for any required publication of the ordinance or this Franchise, if any.

DONE, RATIFIED AND PASSED THIS THE _____ DAY OF _____, 2022.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

EXHIBIT A
Acceptance of Franchise

The parties hereby bind themselves legally to the terms and conditions set forth in this Franchise approved by way of Ordinance No. 2022-_____ as evidenced by the signature of their duly authorized representatives.

CITY OF GREENVILLE, SC	CROWN CASTLE FIBER LLC
By: _____	By this signature, Crown Castle Fiber LLC unconditionally accepts the Franchise, as adopted by Ordinance No. 2022-_____. By: _____
Title:	Title:
Date:	Date:

EXHIBIT B

KNOW ALL PEOPLE BY THESE PRESENTS, that the CITY OF GREENVILLE, a Municipal Corporation (hereinafter “Grantor”), in consideration of One Dollar (\$1.00) and no other consideration, the receipt of which is hereby acknowledged, has, subject to limitations shown below, granted, bargained, sold, and released, and by these presents does grant bargain, sell, release and quitclaim unto _____ (hereinafter “Grantee”), its successors and assigns forever, all its right, title and interest in and to the following property:

ALL that certain portion of abandoned public right-of-way known as_ plat is hereby made for a metes and bounds description thereof.

Reference to said

SUBJECT to a utility easement preserving the current existing rights and benefits for the present providers of water, sewer, electricity, telephone and natural gas, if any, including maintenance easements for the same utilities and all other easements of record.

This property was abandoned by Ordinance of City Council dated, _____, Ordinance No. _____.

TOGETHER, subject to limitations shown above, with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee’s successors and assignees, forever.

51248.00008\40089611.5