

A FRANCHISE AGREEMENT BETWEEN THE CITY OF COLONIAL HEIGHTS, VIRGINIA AND VERIZON VIRGINIA LLC ALLOWING VERIZON TO OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN THE CITY

WHEREAS, the City of Colonial Heights, Virginia (the “City”), acting consistent with applicable federal and state law, has the authority to grant franchises and other authorizations for the use and occupancy of the public rights-of-way (as hereinafter defined); and

WHEREAS, Verizon Virginia LLC (the “Grantee”) desires to occupy the public rights-of-way for the purpose of placing and maintaining a telecommunications system (as hereinafter defined); and

WHEREAS, the City intends to exercise, to the fullest extent that applicable law permits, its authority with respect to the regulation of the occupation and use of the public rights-of-way in connection with the construction, maintenance and repair of a telecommunications system;

NOW, THEREFORE, THE CITY AND GRANTEE AGREE AS FOLLOWS:

1. Definitions. The following terms, as used in this Agreement, have the following meanings, with all terms defined in the singular to have the correlative meaning when used in the plural and vice versa:

(a) “Cable Services” means “cable services” as defined in Section 602(6) of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984 and the Telecommunications Act of 1996 (the “Cable Act”).

(b) “Code of Virginia” means the 1950 Code of Virginia, as amended.

(c) “Construction” means to install, construct, maintain, upgrade, repair, or remove facilities.

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

(e) “Facilities” means the facilities, cables, optical fiber, poles, wires, customer service connections, electrical conductors, conduits, ducts, manholes, fixtures, appliances, and appurtenances that are placed or maintained within the public rights-of-way.

(f) “FCC” means the Federal Communications Commission.

(g) “Franchise” has the meaning set forth in this Agreement.

(h) “Grantee” means Verizon Virginia LLC, a Virginia Public Service Corporation, and its lawful successors, transferees, and assigns.

(i) “Hazardous Substances” means:

1. Hazardous waste as defined in Section 10.1-1400 of the Code of Virginia;
2. A “hazardous substance” as defined in 42 U.S.C. 9601;
3. Oil; and
4. Any substance the Virginia Waste Management Board designates as hazardous.

(j) “Like-for-Like” means the installation or relocation of facilities in a like or similar manner of construction when compared to previously installed facilities. For example, placement of facilities above-ground using aerial construction in locations where existing facilities are constructed above-ground (aerial-to-aerial) or the placement of facilities underground, either buried directly or within a conduit, in locations where existing facilities are constructed underground (underground-to-underground).

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

(l) “Place” or “Place and Maintain” or “Placement and Maintenance” means to install, place, construct, maintain, operate, upgrade, expand, repair, replace, or remove facilities.

(m) “Public Rights-of-Way Use Fee” or “PROW Use Fee” means the public rights-of-way use fee that the City is authorized to impose pursuant to Section 56-468.1 of the Code of Virginia.

(n) “Streets” or “Public Rights-of-Way” means the surface and area across, in, over, along, upon, above, and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including utility easements, waterways, or other public places used as public rights-of-way, as the same now or may hereafter exist, which are under the City’s jurisdiction or control to the extent the City has the right to allow the Grantee to use them. The term Public Rights-of-Way excludes private property and private easements. Public Rights-of-Way does not include the air waves above a right-of-way used for broadcast, cellular mobile radio service, satellite, or other wireless services.

(o) “Relocation Cost” or “Cost to Relocate” shall mean the total cost to remove, alter, connect, or relocate facilities and shall include the cost to install and connect facilities at a new location; the cost to remove facilities at the old location; and the cost of any lands, or any rights or interest in lands, required to accomplish any removal, alteration, or relocation of Grantee facilities. The cost of relocation shall include the entire

amount incurred or paid by the Grantee after deducting any increase in a new facility's value (betterment) and any salvage value derived from the old facility.

(p) "Structures" includes the City's buildings, signs, fences, tanks, poles, lines, fixtures, facilities, and appurtenances.

(q) "Telecommunications" means the transmission between or among points the user specifies, of information of the user's choosing, without change in the information's form or content as sent and received by or through any electronic, cable, optical, microwave, or other medium or method in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.

(r) "Telecommunications Services" means the offering of telecommunications for a fee, regardless of the facilities used. The term "Telecommunications Services" shall not include cable services.

(s) "Telecommunications System" means the plant, facilities, real property (including interests in real property), tangible and intangible personal property, cable, wires, optical fibers, amplifier, antenna, and all other electronic devices, equipment, and facilities of a telecommunications provider located in, on, over, or under the public rights-of-way.

(t) "Term" has the meaning set forth in this Agreement.

2. Grant of Franchise. The City grants to the Grantee a Franchise (the "Franchise") to place and maintain telecommunications facilities within the City's public rights-of-way subject to this Agreement's conditions. The Franchise does not grant the Grantee authority to provide cable services within the City, which would require a separate Franchise. The Franchise does not grant the Grantee authority to place and maintain

facilities on private property. The Grantee is not authorized to sublicense or sublease to any person the right to place and maintain facilities on private property.

3. Term of Franchise. The Franchise commences on the effective date and expires fifteen (15) years after the effective date. The period of time that the Franchise is in effect is referred to as the “term”.

4. Nonexclusive Franchise. Nothing in this Agreement affects the City’s right to grant any other person a Franchise to occupy and use the public rights-of-way for the purpose of providing telecommunications services or to engage in any other activity in the public rights-of-way, provided that the exercise of such right shall not unreasonably interfere with or cause the relocation of the Grantee’s facilities.

5. Renewal. Upon expiration of the original fifteen (15) year term, this Franchise shall renew for an additional fifteen (15) year period unless either party notifies the other party in writing of its desire to renegotiate the Franchise. Such written notice must be given at least one hundred twenty (120) days prior to the initial term’s expiration.

6. Transfer of Franchise. Neither the Franchise, nor any of the Grantee’s rights or obligations pursuant to this Agreement, shall be assigned, sold, or transferred in any manner, in whole or in part, unless the City is provided written notice within ninety (90) days of any such transfer.

7. Right of City to Use Public Rights-of-Way. Nothing in this Agreement affects the City’s right to occupy and use the public rights-of-way to place and maintain its facilities or structures or to engage in any other activity in the public rights-of-way, provided that the exercise of such right will not require any of the Grantee’s existing facilities to be unreasonably interfered with or relocated.

8. Street Closings or Vacations. Nothing in this Agreement waives or releases the City's right in and to the public rights-of-way. The City shall notify Grantee of any proposed street vacation. If all or part of a public right-of-way is eliminated, discontinued, closed, or vacated in accordance with applicable law, the Franchise shall cease with respect to such street unless the City Council specifically reserves to Grantee the right to continue its installation in the street. Grantee shall, without expense to the City, promptly remove its facilities from such street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in at least as good a condition as existed immediately prior to removal. If after the City gives the Grantee thirty (30) days' notice to repair, improve, or maintain a Street, the Grantee has not repaired, improved, or maintained the street, the City may do the work or cause it to be done; and the Grantee shall pay the City for its cost incurred.

9. Discontinued Use of Facilities. Whenever the Grantee intends to discontinue use of its facilities within all or part of a particular portion of the streets and does not intend to use the facilities again, the Grantee shall submit to the Public Works Director for the Director's approval a completed application describing the facility and the date on which the Grantee intends to discontinue using the facility. The Grantee may remove the facility or request that the Director permit it to remain in place. If the Grantee is permitted to abandon its facilities in place, upon consent of the City, the ownership of facilities in the streets shall transfer to the City; and the Grantee shall have no further obligation or liability therefor. Notwithstanding the Grantee's request that any such facility remain in place, the Public Works Director may require the Grantee to remove the facility from the streets or modify the facility in order to protect the public health and safety or otherwise serve the public interest. The Public Works Director may require the Grantee to perform a

combination of modification and removal of the facility; provided, however, that the Grantee may elect to remove its facility entirely if the City requests any modification. The Grantee shall complete such removal or modification in accordance with a reasonable schedule the Public Works Director sets. Until such time as the Grantee removes or modifies the facility as the Public Works Director directs, or until the rights to and responsibility for the facility are accepted by another person having authority to construct and maintain the Facility, the Grantee shall be responsible for, and retain liability for, all of the facility's necessary repairs and relocations, as well as maintenance and restoration of the streets, in the same manner and degree as if the facility was in active use.

10. Hazardous Substances. The Grantee shall comply with all applicable state and federal laws, regulations, and orders concerning hazardous substances relating to the Grantee's telecommunications system in the streets. The Grantee shall maintain and periodically inspect its facilities in the streets. Upon reasonable notice to the Grantee and in the presence of an authorized representative of the Grantee, the City may inspect the Grantee's facilities in the streets to determine if any release of hazardous substances has occurred, or may occur, from or related to the Grantee's facilities. In removing or modifying the Grantee facilities as this Agreement provides, the Grantee shall also remove all residue of hazardous substances in compliance with applicable standards related thereto. Upon request, the City shall provide the Grantee with any information it has which identifies potentially responsible parties.

11. Compliance with Laws. The Grantee shall comply with all applicable local laws, rules regulations, orders, or other City directives issued pursuant to this Agreement or with respect to the City's management of its public rights-of-way, provided they are no greater than the directives imposed on other users of the City rights-of-way as required

under Subsection C of Section 56-462 of the Code of Virginia and are issued in compliance with applicable federal and state law.

12. Safety Precautions. The Grantee shall, at its own cost and expense, undertake to prevent accidents at its work sites in, at, or on the public rights-of-way, including the placement and maintenance of proper guards, fences, barricades, watchpersons, and suitable lighting, in accordance with federal and state law.

13. Quality. All work involved in the placement and maintenance of facilities shall be performed in a safe, thorough, and reliable manner in accordance with industry, professional, state, and federal mandated standards and using materials of good and durable quality.

14. Emergencies. In the event that emergency repairs are necessary for the Grantees' facilities in the public rights-of-way, the Grantee shall immediately notify the City of the need for such repairs. The Grantee may immediately initiate the emergency repairs and shall apply for appropriate permits the next business day following the emergency discovery. The Grantee shall coordinate its activities in responding to the emergency with the City Manager or Public Works Director or his designee. The Grantee must comply with all City Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.

15. Construction Permits. Except during emergency situations, the Grantee shall obtain all required construction, building, or other governmental or regulatory permits or approvals necessary before constructing facilities within, on, over, and under the public rights-of-way. The Grantee may perform routine maintenance and repair activities without a construction permit. Nothing in this Franchise waives any City law or requirement relating to Grantee's use of the public rights-of-way.

16. Installation of Equipment. The Grantee's facilities shall be installed and maintained in accordance with applicable state and local law and standards regulating such construction.

17. No Obstruction. Except for emergencies, the Grantee shall not obstruct traffic to any street, road, or other public rights-of-way within the City's corporate limits without obtaining required permits from the City. The Grantee's facilities in the public rights-of-way shall be located so as to cause minimal interference with any use of the public rights-of-way and adjoining property. As soon as practicable, the Grantee shall notify the City Manager or Public Works Director, or his designee, of any obstruction under this Section.

18. Liability Planning and Coordination. (a) The Grantee shall submit information related to the general location, proposed location, and size of existing and proposed facilities as the City requests, within sixty (60) days of receiving the City's written request for the information.

(b) The Grantee shall assign a representative to coordinate with the City on planning for City Capital Improvement Program projects. By July 1st of each year, the Grantee shall provide the Department of Public Works with a schedule of its anticipated capital improvements which may affect the City's rights-of-way. In an effort to effectively coordinate potential work within the City, the Grantee shall meet with the City, other franchisees, and possibly other City right-of-way users, according to a schedule the City formulates. All construction locations and activities shall be coordinated with the Public Works Director to minimize public inconvenience or damages.

(c) Except as provided in paragraph (d) of this section, the Public Works Director shall not issue a permit for excavation in any public right-of-way that has been constructed, reconstructed, repaved, or resurfaced in the preceding three years, as measured from

the date of City acceptance. Except in the event of an emergency, the Grantee shall determine alternative methods of making necessary repairs and facility installations to avoid excavations that this paragraph prohibits.

(d) The Public Works Director shall grant the Grantee a waiver of the prohibition in paragraph (c) of this Section to allow excavation if: (1) the City's denial of a permit would violate applicable federal or state law; (2) the Grantee needs to respond to an emergency; or (3) the waiver is necessary to provide service to buildings for which there are no other reasonable means of service. The Director shall set forth the reasons for granting or denying the waiver in writing. In addition to any other information the Grantee must provide for a permit, the Grantee shall provide the following information to support its request for a waiver under this paragraph: (1) the reason why the excavation was not performed before or when the public right-of-way was paved; (2) the reason why the excavation cannot be delayed until after the three-year period set forth in paragraph (c) of this Section expires; and (3) the reason why the excavation cannot be performed at another location or the Grantee's need cannot be accomplished by a method that does not require excavation.

19. Restoration after Construction. The Grantee shall, after construction, maintenance, or repair of facilities and at its own cost and expense, replace, repair, or restore any damaged property, leaving the property in as good or better condition in all respects as it was before the commencement of the construction, maintenance or repairs. If the Grantee does not commence replacement or repair within a reasonable time period after the City gives the Grantee notice, the City may make such replacement or repair and the Grantee shall pay the reasonable cost thereof. When the Grantee makes an opening in a hard surface pavement in any street, the Grantee shall promptly refill the

opening and restore the surface in accordance with Department of Public Works standards. All excavations the Grantee makes shall be properly safeguarded.

20. Some Facilities to be Placed Underground. Where the City zoning or subdivision ordinances require, the Grantee shall place its facilities underground in locations serving new subdivisions so long as the City requires other users of the public rights-of-way to likewise place their facilities underground in areas serving new subdivisions. Existing overhead utility services may remain overhead when repaired, replaced, upgraded, or increased in capacity.

21. Street Construction and Relocation of Facilities. (a) The City shall have the right to require the Grantee to change its facilities' location within public rights-of-way for public transportation projects, and the Grantee shall pay the expense thereof. The Grantee shall not be required to relocate its facilities at its expense for aesthetic reasons or if a transportation project is being performed for the benefit of a third party. The City shall provide the Grantee with the standard notice given under the circumstances to other lessees, franchisees, licensees, or permittees. The Grantee shall, upon written notice from the City, within a reasonable time based on the size and scope of the work, relocate its facilities that are within the public rights of way at the Grantee's expense, consistent with Va. Code Ann. § 56-468.2 and any prior rights Grantee may possess, to new locations the City approves as necessary to accommodate the change. The City shall use its best efforts to design its streets, utility, and other public works systems to minimize the impact on Grantee facilities. The City shall work with the Grantee to modify designs as reasonably necessary to minimize the need to relocate the Grantee facilities. The City shall provide alternative space within a reasonable proximity to the previous location for the placement of relocated Grantee facilities.

(b) The Grantee may relocate existing aerial facilities to new locations using above-ground aerial construction or may relocate exiting aerial facilities to new underground locations, subject to obtaining the proper permits. If any person requests the Grantee place its facilities underground in new locations where aerial construction would normally suffice, then the person requesting underground construction shall reimburse the Grantee for the incremental difference between aerial and underground construction.

(c) If the Grantee refuses or neglects to remove or relocate its facilities by the date the City establishes in writing and provided Grantee has not been delayed by a force majeure or other event beyond its reasonable control, the City may cause such removal or relocation of the facilities; and the Grantee shall pay the City the actual removal or relocation costs the City incurred to remove or relocate the Grantee facilities.

(d) Nothing in this Agreement abrogates the City's right to construct sewers; perform excavation; grade, pave, repair, or alter any street or appurtenance; or lay down, repair or remove water mains or construct any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure, or prevent the unrestricted use and operation of the Grantee's facilities in the streets. However, if any of the Grantee's facilities interferes with the construction or repair of any street or public improvement, including construction, repair, or removal of a sewer or water main, the Grantee's facilities shall be removed or replaced in the manner the City directs in accordance with this Agreement; provided, however, the City shall cooperate with the Grantee to identify alternate locations within the streets. Any such removal or replacement shall be at the Grantee's expense, except in the event such relocation is requested for aesthetic reasons or for the benefit of a third party. Should the Grantee fail

to remove, adjust, or relocate its facilities by the date the City establishes in written notice to the Grantee and provided Grantee has not been delayed by a force majeure or other event beyond its reasonable control, the City may cause such removal, adjustment, or relocation; and the expense thereof shall be paid by the Grantee, including all costs the City incurs due to the Grantee's delay.

(e) Except for street construction relocation of facilities as specified above, if any person requests the Grantee to remove, alter, or relocate Grantee facilities, then the person requesting the removal, alteration, or relocation shall reimburse the Grantee for all such removal, alteration, or relocation costs.

(f) The Grantee may impose charges on a third party to recover its cost to relocate existing aerial facilities underground for aesthetic, beautification, or economic development purposes. The Grantee may also impose charges to recover its cost to relocate its facilities for the benefit of a third party, such as a private developer, or for the City's benefit to compete as a telecommunications service provider.

(g) The Grantee shall, upon the City giving sixty (60) days prior written notice, comply with the City's request to temporarily relocate its facilities to facilitate the movement of any structure, building, wire, machinery, or equipment within a reasonable time under the circumstances. The City shall not be liable for the costs of such relocation.

22. Tree Trimming. The Grantee may trim trees that overhang a public right-of-way as reasonably necessary to prevent tree branches from coming in contact with Grantee facilities, in accord with ANSI A300 standards.

23. Record of Installations. On the date the Grantee executes this Agreement, and annually thereafter, if any new facilities are constructed or any existing facilities are relocated, the Grantee shall provide to the Public Works Director a shapefile suitable for

upload to the City's Geographic Information System (GIS) that identifies the type, size, and location of Grantee's facilities in the streets. Within thirty (30) days following the Grantee's acquisition of any facilities in the streets, the Grantee shall submit to the City a written statement describing all facilities acquired, whether authorized by agreement, license, permit, or any other form of prior right, and specifying all such facilities' location. Facilities the Grantee acquires shall immediately be subject to this Agreement's terms.

24. Public Rights-of-Way Use Fee. If the City imposes the Public Rights-of-Way Use Fee authorized by Section 56-468.1 of the Code of Virginia, the Grantee shall charge and remit such fee in compliance with Section 56-468.1. The City reserves the right, as authorized by state and federal law, to amend the Public Rights-of-Way Use Fee in accordance with such section and to impose any other fee or payment that federal or state law allows for the occupation and use of public rights-of-way; and the Grantee shall pay any such fee or charge.

25. Use of City Structures. This Franchise does not grant to the Grantee use of City-owned structures. The terms and conditions of the Grantee's use of any City-owned structure shall be set forth in a separate document.

26. Use of Grantee's Facilities. This Franchise does not grant to the City free use of any Grantee facilities. The Grantee may, in its sole discretion, enter into pole attachment, joint-use, or conduit lease Agreements with any party, including the City, regarding use of Grantee facilities. Grantee shall not charge the City for any Grantee aerial facilities the City utilizes for holiday or seasonal decorations, traffic signaling, lighting, police, fire, or any other public safety purposes; and any such use by the City shall comply with all applicable laws and standards.

27. Payments Not a Tax. The payments the Grantee shall make: (a) shall not be deemed to be tax; and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any other taxes or charges the Grantee is required to pay to the City.

28. Insurance Specifications. Throughout this Agreement's term, the Grantee shall, at its own expense, maintain a liability insurance policy or policies, in a form acceptable to the City. The Grantee may, at its option, self-insure. Upon request, the Grantee shall provide a certificate or certificates of liability insurance demonstrating that the Grantee is maintaining the insurance requirements or certificates this Section specifies. Each certificate shall include the City as an additional insured. Any such policy shall be issued by a company duly authorized to conduct business in the Commonwealth of Virginia. Each such policy shall insure the Grantee, and excluding Workers' Compensation and Employer's Liability, include the City and its officials, boards, commissions, Council, elected officials, agents, and employees as additional insureds; and the Grantee shall procure the following coverages:

(a) Commercial General Liability Insurance (including, but not limited to, premises-operations, products/completed operations, contractual liability, independent contractors, and personal and advertising injury) with limits of not less than one million dollars (\$1,000,000) combined single limit for each occurrence for bodily injury and property damage, and two million dollars (\$2,000,000) annual aggregate;

(b) Commercial Automobile Liability Insurance with limits of not less than one million dollars (\$1,000,000) combined single limit for each accident for bodily injury and property damage;

(c) Workers' Compensation Insurance meeting all statutory requirements of the Commonwealth of Virginia;

(d) Employer's Liability Insurance with limits of not less than one million dollars (\$1,000,000) for each accident or disease; and

(e) Excess/Umbrella Liability Insurance above the primary Commercial General Liability, Commercial Automobile Liability, and Employers' Liability policies required herein. The amount of such Excess or Umbrella Liability Insurance shall not be less than five million dollars (\$5,000,000) for each occurrence and aggregate.

The foregoing minimum requirements shall not prohibit the Grantee from obtaining coverage in excess of such requirements.

The Grantee shall maintain the liability insurance policies required above throughout this Agreement's term and for a period of one year following this Agreement's expiration while the Grantee removes facilities. Each certificate of liability insurance shall contain the following: "The insurer or its authorized representative shall provide thirty (30) days prior written notice to the city of intent to non-renew, cancel, or make a material adverse change, except that a ten (10) day notice for nonpayment of premium shall apply."

In the event of any changed circumstances following the effective date, the parties may alter the minimum amount of any liability insurance policy this section requires. The minimum coverage this Agreement requires shall not limit the Grantee's indemnification obligation to the City.

29. Surety. The Grantee shall furnish the City with surety to guarantee faithful performance under this Agreement in an amount of fifty thousand dollars (\$50,000.00). The form of the surety shall be, at Grantee's option, a performance bond, letter of credit, cash deposit, or cashier's check. Any performance bond, letter of credit, or cashier's

check shall be written by a corporate surety or financial institution reasonably acceptable to the City and authorized to do business in the Commonwealth of Virginia. Grantee shall provide any required surety within fifteen (15) days of this Agreement's effective date; and if the surety is not provided within such fifteen (15) day period, this Agreement shall lapse until the surety is provided. The fifty thousand dollar (\$50,000.00) surety shall remain in effect during this Agreement's term, and the surety shall not be in effect until the City Attorney approves it.

30. Wireless Facilities. The Grantee shall not place, construct, or operate any wireless facilities in the City during this Agreement's term, except that Grantee may place fiber optic cable and related appurtenances for support of third party wireless facilities permitted by the City.

31. Public Safety. In case of fire, disaster, or other emergency posing an imminent risk to public safety, the City may cut or move Grantee facilities as reasonably necessary to protect public health or safety. The City will make a reasonable effort to consult with the Grantee prior to any such cutting or movement of facilities, and the Grantee shall be given the opportunity to perform the work itself. The City shall protect Grantee's facilities to the extent reasonable under the circumstances. Absent the City's gross negligence or willful misconduct, the Grantee shall pay to repair or replace the facilities.

32. City Liability. Barring the City's gross negligence or willful misconduct, neither the City nor its officials, employees, agents, attorneys, consultants or independent contractors shall be liable to the Grantee as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any facilities by the Grantee or the City due to any emergency related to the public's health and safety.

33. Indemnification of City. The Grantee shall defend, indemnify, and hold harmless the City, its officials and employees from and against all liabilities, whether special, incidental, or consequential, and all other damages, costs, and expenses (including reasonable attorney's fees) arising out of or in connection with the actions or omissions of Grantee, its employees, representatives, agents or contractors, relating to the installation, maintenance, upgrade, repair, or removal of facilities except to the extent that negligence or willful misconduct by City officials, employees, or agents causes such liabilities, damages, costs, and expenses. The City shall notify the Grantee within forty-five (45) days of receipt of any claims, demands, or actions (together, "Claims") this indemnity covers, after which the Grantee shall defend such Claims. The Grantee shall be entitled to have sole control over the defense through counsel of its own choosing, and the City shall cooperate in the defense of a Claim. However, the Grantee must obtain the City's prior written approval (which shall not be unreasonably withheld) for settlement of any Claim against the City. The City waives the applicability of these indemnification provisions in their entirety if it: (a) elects to conduct its own defense against a Claim; or (b) fails to give the Grantee the forty-five (45) day notice specified above, and such failure compromises the Grantee's ability to defend against the Claim.

While the foregoing indemnity obligations shall not apply to Claims arising from the City's sole negligence or willful misconduct, they shall apply to Claims arising from the joint negligence or willful misconduct of the Grantee and City; provided that in such cases, the amount of the Claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the Grantee's negligence or willful misconduct. If the City and Grantee do not agree on the amount of a claim attributable to the Grantee's

negligence or willful misconduct, the parties agree that the Colonial Heights Circuit Court shall decide on the claim amount for which the City shall be indemnified.

34. Termination. The City, at its option, may terminate this Agreement upon the Grantee's material breach of this Agreement, should the Grantee fail to correct the breach within sixty (60) days after receiving specific written notice of such material breach from the City; or if the breach cannot reasonably be corrected within sixty days, within another time period the parties agree upon.

35. Delays and Failures Beyond the Grantee's Control. Notwithstanding any other provision of this Agreement, the Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations herein due to strike, war, or act of war (whether or not an actual declaration of war is made), insurrection, riot, act of a public enemy, accident, fire, flood, any other act of God, technical failure, terrorism, sabotage, or other events, to the extent that such causes or events are beyond the Grantee's control. If the delay in performance or failure to perform affects only part of the Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct, as quickly as possible, the causes of the partial inability to perform.

36. Notices. All notices or other communications by one party to another shall be in writing and sent to the following address:

City: City Manager
City of Colonial Heights
P. O. Box 3401
Colonial Heights, VA 23834

and

City Attorney
City of Colonial Heights

P. O. Box 3401
Colonial Heights, VA 23834

Grantee: Verizon Virginia LLC
Attention: General Counsel
One Verizon Way
Basking Ridge, NJ 07920

By written agreement, the parties may exchange notices or other written communications by email to the persons specified above.

37. Grantee's Organization and Authority. The Grantee is a Public Service Corporation duly organized and in good standing under the laws of the Commonwealth of Virginia, and is authorized to do business in the City. The Grantee has all requisite power to execute and perform this Agreement.

38. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the City and the Grantee, their respective successors, and permitted transferees and assigns.

39. Headings; Other Terms. This Agreement's headings are to facilitate reference only and shall not in any way affect the Agreement's construction or interpretation. The term "may" is permissive; the terms "shall" and "will" are mandatory. All references to a gender shall be deemed to include the other gender, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

40. No Third-Party Beneficiary Rights. Nothing in this Franchise shall create any third-party beneficiary rights.

41. Entire Agreement. This Agreement embodies the entire understanding and Agreement of the City and the Grantee with respect to the subject matter hereof and

Verizon Virginia LLC

By: _____
Name: _____ Date _____
Title: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

The foregoing was acknowledged before me, a Notary Public in and for the Commonwealth of Virginia at large, by _____, _____, on behalf of Verizon Virginia, Inc., on this _____ day of _____, 2021.

My commission expires: _____

Notary Public