

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO Crown Castle Fiber LLC TO CONSTRUCT, OPERATE, MAINTAIN AND UPGRADE SMALL CELL WIRELESS FACILITIES IN THE CITY OF AUBURN, ALABAMA.

Whereas, Crown Castle Fiber LLC has applied to construct, operate and maintain Small Cell Wireless Facilities, associated Structures and related System within the City of Auburn ("City") to be utilized for the purpose of providing Wireless Services to the citizens of Auburn and the businesses operating within the city limits of the City of Auburn; and

Whereas, the City's authority to franchise and regulate Small Cell Wireless Facilities and associated Structures is subject to the provisions of the Communications Act of 1934 and rules and orders promulgated by the FCC; and

Whereas, the City Council of the City of Auburn has determined that the deployment of Grantee's Small Cell Wireless Facilities, associated Structures and System within the City is in the public interest; and

Whereas, the City Council of the City of Auburn has conducted a public hearing concerning the grant of a non-exclusive franchise to **Crown Castle Fiber LLC** ("Grantee") and has determined that, as a result of such public hearing that:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered, and
2. Grantee's plans for constructing, operating, maintaining and upgrading the Small Cell Wireless facilities, associated Structures and System were considered, and
3. The non-exclusive franchise granted to **Crown Castle Fiber LLC** by this Ordinance complies with all applicable City, state and federal laws.

Now, therefore, be it ordained by the City Council of the City of Auburn, Alabama, as follows:

Section 1. Short Title and Definitions.

- a. *Short Title.* This Franchise Ordinance shall be known and cited as the **Crown Castle Fiber LLC** Small Cell Wireless Facility Franchise Ordinance.
- b. *Definitions.* For the purposes of this Franchise, the terms, phrases, words, and their derivations shall have the meaning given in the City's Small Cell Regulation Ordinance, as the same may be amended from time to time. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

Section 2. Grant of Authority and General Provisions.

- a. *Grant of Franchise.* This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to meet the

obligations and comply with all provisions herein, shall be deemed a violation of this Franchise. This grant of Franchise does not constitute authorization from the City to the Grantee to use the Rights of Way to provide any service other than for wireless services. To the extent Grantee uses its Small Cell Wireless Facilities, associated Structures or System to provide any services other than Wireless Services, this Ordinance shall not be construed to waive or otherwise forfeit any rights the City otherwise has with respect to the franchising of, or imposing fees upon, Grantee's provision of other services.

b. *Grant of Non-exclusive Authority.*

- (1) The Grantee shall have the right and privilege, subject to applicable laws, including the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in the City Small Cell Wireless Facilities and associated Structures and shall have the right and privilege to provide wireless services. The System constructed and maintained by Grantee or its agents shall not interfere with other legal uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.
- (2) This Franchise shall be nonexclusive, and the City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of wireless services in accordance with applicable laws.
- (3) The Franchise granted pursuant to this Franchise Ordinance is subject to the City's Small Cell Regulation Ordinance as modified from time to time during the term herein.

c. *Lease or Assignment Prohibited.* Nothing herein shall prevent Grantee from providing telecommunication services to its customers. Grantee's customers' use of the Small Cell Wireless Facilities, associated Poles and related System shall not require a separate franchise provided that Grantee does not surrender control over the Small Cell Wireless Facilities, associated Poles and related System and Grantee remains responsible for its obligations under this Franchise. Grantee shall provide City, upon request, such documentation as is necessary to demonstrate to City that Grantee remains in control over its Small Cell Wireless Facilities, associated Poles and related System.

Otherwise, no Person may lease Grantee's Small Cell Facilities or System for the purpose of providing wireless services until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 3.c. of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of applicable laws.

d. *Franchise Term.* This Franchise shall be in effect for a period of fifteen years from the date of execution by the City, unless sooner renewed, revoked or terminated as herein provided. The Grantee and the City agree that the City may establish a process to evaluate Grantee's

compliance with the Franchise and the Grantee's expansion of its network following the elapse of five years from the date of execution of this Franchise.

e. *Compliance with Applicable Laws, Resolutions and Ordinances.*

(1) The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Wireless Service and operation of the System in the City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, and local ordinance-making authority of the City. This Franchise may also be modified or amended with the written consent of the City and Grantee as provided in Section 4. c. herein.

(2) Subject to applicable state and federal law, Grantee shall comply with the terms of the City's Small Cell Regulation Ordinance and any other City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within the City, which may have the effect of superseding, modifying or amending the terms herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

(3) In the event of any conflict between this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the terms of this Franchise shall govern, provided however Grantee shall at all times comply with City ordinances of general applicability promulgated by the City in accordance with its police powers.

f. *Rules of Grantee.* Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.

g. *Territorial Area Involved.* This Franchise is granted for the corporate boundaries of the City, as they exist from time to time.

h. *Written Notice.* All notices, reports, or demands required to be given in writing under this Franchise shall be sent via registered or certified mail or shall be deemed to be given when delivered personally to any officer of Grantee or City or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City Manager
 City of Auburn, AL
 144 Tichenor Ave
 Auburn, AL 36830

Finance Director
City of Auburn, AL
144 Tichenor Ave
Auburn, AL 36830

If to Grantee: Crown Castle Fiber LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317
Attn: Teddy Adams, General Counsel

With a copy to:
Crown Castle Fiber LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317
Attn: Contracts Administration

24/7 emergency contact information:
(888) 632-0931

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

- i. *Ownership of Grantee.* Grantee represents and warrants to the City that the names of the shareholders, partners, members or other equity owners of the Grantee and any of the shareholders, partners, members and/or other equity owners of Grantee are as set forth in Exhibit A hereto.

Section 3. Sale, Abandonment, Transfer and Revocation of Franchise.

a. *City's Right to Revoke.*

(1) In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by the City that after notice and an opportunity to cure as reordered herein;

- a. Grantee has violated material provisions(s) of this Franchise and has not cured; or
- b. Grantee has attempted to evade any of the provisions of the Franchise; or
- c. Grantee has practiced fraud or deceit upon the City

(2) The City may revoke this Franchise without the hearing otherwise required herein if Grantee is adjudged a bankrupt.

b. *Procedures for Revocation.*

(1) The City shall provide Grantee with written notice of a Franchise violation and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise.

- (2) Should the City determine to proceed with a revocation proceeding, Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation. The City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- (3) Only after the public hearing and upon written notice of the determination by the City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.
- (4) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

c. *Sale or Assignment of Franchise.*

- (1) Except as specifically provided herein, no sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee shall take place until a written request has been filed with the City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted; provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.
- (2) The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, the following:
 - a. All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary to understand the terms thereof, except any such documents that are proprietary and confidential; and
 - b. A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to the FCC, the FTC, the FEC, the SEC or applicable state departments and agencies. Upon request, Grantee shall provide the City with a complete copy of any such document; and
 - c. Any other non-proprietary or confidential documents or information related to the transaction as may be reasonably requested by the City.
- (3) The City shall have such time as is permitted by Applicable Laws in which to review a transfer request.
- (4) The Grantee shall reimburse the City for the reasonable legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills but may recover such

expenses in its Subscriber rates.

- (5) In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (1) or (2) of this section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments required by the City.
- (6) No Franchise may be transferred if the City determines Grantee is in noncompliance with the Franchise unless an acceptable compliance program has been approved by the City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to the City.
- (7) Notwithstanding the foregoing, Crown Castle Fiber LLC may assign or transfer, including by merger or change of control, this Franchise to an affiliate (a company that controls, is controlled by or under common control therewith) or parent entity of Crown Castle Fiber LLC without having to comply with the provisions of this Section 4.c. In the event of such assignment or transfer, Crown Castle Fiber LLC shall promptly provide the City written notice of any such assignment or transfer and shall provide the City with updated point of contact information. Otherwise, Crown Castle Fiber LLC shall not assign or transfer this Agreement or the rights granted hereunder without complying with the terms of this Section 4.c.

Section 4. Miscellaneous Provisions.

- a. *Franchise Renewal.* Any renewal of this Franchise shall be performed in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
- b. *Work Performed by Others.* Crown Castle Fiber LLC shall be responsible for its subcontractors or others performing any work or services pursuant to the provisions of this Franchise. Through the permitting process, Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise and shall ensure that all such work or services are performed in accordance with applicable laws and in a good and workmanlike manner.
- c. *Amendment of Franchise Ordinance.* Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict the City's exercise of its police powers.
- d. *Compliance with Federal, State and Local Laws.*
 - (1) If any federal or state law or regulation shall require or permit the City or Grantee to perform any service or act or shall prohibit the City or Grantee from performing any service or act which may be

in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and the City shall conform to state and federal laws and regulations and rules regarding wireless communications as they become effective.

- (2) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with, provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.
- e. *Non-enforcement by City.* Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing and with approval of the City Council. Any such written waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
- f. *Rights Cumulative.* All rights and remedies given to the City and Grantee by this Franchise or retained by the City and Grantee herein, as the case may be, shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City and Grantee, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and Grantee, as the case may be, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
- g. *Grantee Acknowledgment of Validity of Franchise.* Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.
- h. *Force Majeure.* Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism, storm or other similar catastrophes; national emergencies; insurrection; riots or wars.

- i. *Venue.* Legal action arising from this contract shall be filed in the Circuit Court of Lee County, Alabama located in Opelika, Alabama or the Federal District Court for, the Middle District of Alabama. – Eastern Division located in Opelika, Alabama.

Section 5. Publication, Effective Date, Acceptance and Exhibits.

- a. *Publication, Effective Date.* This Franchise shall be published in accordance with applicable local and state law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 5.b.
- b. *Acceptance.*
 - (1) Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place or should all ordinance adoption procedures and timelines not be completed, this Franchise and all rights granted hereunder to Grantee shall be null and void.
 - (2) Upon acceptance of this Franchise, Grantee and the City shall be bound by all the terms and conditions contained herein.
 - (3) Grantee shall accept this Franchise in the following manner:
 - a. This Franchise Ordinance will be properly executed and acknowledged by Grantee and delivered to the City.
 - b. With its acceptance, Grantee shall also deliver any insurance certificates as required herein that have not previously been delivered.

Adopted and approved by the City Council of the City of Auburn, Alabama, this the **17th** day of **October 2023**.

ATTEST:

/s/ Ron Anders, Jr., Mayor

/s/ Megan McGowen Crouch, City Manager