



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 7/13/2023

File ID: TMP-3108

Department: Legal

Subject:

Type of Action: Introduction

Introduction of an Ordinance granting a small cell wireless facilities license to Crown Castle Fiber LLC.

Ordinance No.

Finance Information:

Account Number: TBD

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address: NA

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

ORDINANCE NO.: _____
GRANTING A SMALL CELL WIRELESS FACILITIES LICENSE

BE IT ORDAINED, by the City Council of the City of Huntsville, Alabama, as follows:

Section 1. *Incorporation of Division 3.* The provisions of Chapter 23, Article VII, Division 3 of the Code of Ordinances of the City of Huntsville, Alabama (Ordinance No. 20-270A), as such may be amended from time to time (hereinafter referred to as "Division 3"), are incorporated herein by reference as if fully set out herein, including, but not limited to, the definitions set forth therein.

Section 2. *Grantee.* Crown Castle Fiber LLC, as a wireless provider, who, along with its lawful successor(s), transferee(s), or assignee(s), shall hereinafter be referred to as "Grantee", has made application for a Small Cell Wireless License pursuant to and in accordance with Division 3.

Section 3. *Grant.* The City of Huntsville, Alabama (hereinafter "City"), where the City has the right and authority to do so, hereby grants to the Grantee a non-exclusive license to construct, maintain, and operate small cell facilities and/or support structures in the rights-of-way in accordance with and subject to the provisions of Division 3, applicable law, and any mutually acceptable additional terms, as may be set forth in an attachment to this License. Approval of installation of facilities at specific locations or on specific support structures will be administered through the siting permit process set forth in Division 3.

Section 4. *Certifications.* Grantee hereby certifies as follows:

(a) Grantee is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of New York, is qualified to do business under the laws of the State of Alabama, and has the power and authority to own its properties, to carry on its business as now being conducted, to execute and deliver the acceptance of this license, to carry out the transactions contemplated hereby, and to perform and carry out all obligations on its part to be performed under and pursuant to this license.

(b) Grantee, as of the date of the grant of this License, has adequate financial resources to install the small cell facilities or support structures in accordance with the provisions of Chapter 23, Article VII, Division 3 of the City Code, and knows of no technical or legal impediment which would prevent it from performing as contemplated in said division.

(c) Grantee is not prohibited by any agreement or applicable law from executing and accepting a license.

(d) All corporate actions and consents required on Grantee's part to execute and deliver the acceptance of the license have been completed.

The foregoing certifications are material to the grant of the License. A breach of any of the certifications in subsections (a) through (c) above shall constitute a non-curable default under the License, and shall entitle the City to immediately revoke the License for cause. A breach of the

certification contained in subsection (d) shall constitute a curable default under the License, wherein following written notice, Grantee will have reasonable time to cure such default.

Section 5. *Nonexclusive.* Grantee's use of the rights-of-way pursuant to Division 3 and this License shall be nonexclusive. The City specifically reserves the right to grant, at any time and from time to time, such additional franchises, licenses, use agreements or other rights to use the rights-of-way for any purpose as determined by the City, and to any other person, including itself, as it deems appropriate, subject to applicable law.

Section 6. *No title.* The grant of this License shall not convey title, equitable or legal, in the rights-of-way, and the rights granted by the License do not excuse the Grantee from obtaining appropriate access or attachment agreements before locating its facilities on another person's support structures in the rights-of-way, including the city d/b/a Huntsville Utilities.

Section 7. *Term of license.*

(a) *Term.* Subject to termination or revocation in accordance with Division 3, this License shall be valid for a period of five (5) years commencing on the date of publication of this ordinance (hereinafter referred to as "Effective Date"), and shall be subject to renewal as provided in Division 3. Upon Grantee's written certification to the franchise manager within 30 days of the expiration of the License that Grantee remains in compliance with the provisions of Division 3, including this License and each siting permit, then the License will be automatically renewed for an additional five (5) year term without further action required by the City.

(b) *Operation after termination; holding over.* The term of this License may be held-over in accordance with the applicable provisions of Division 3.

Section 8. *Fees.* The Grantee will pay the City the annual license fee in accordance with applicable provisions of Division 3.

Section 9. *Insurance, security and indemnification.* The Grantee understands it is bound by and shall comply with the provisions of Division 3 applicable to insurance, security, and indemnification.

Section 10. *Construction.*

(a) Subject to subsection (b), except as expressly otherwise provided in Division 3, the provisions of Chapter 23, Article VII, Division 2 of the City Code, which are incorporated into this License by reference as if fully set forth herein, shall apply to Grantee's small cell facilities and support structures, including, but not limited to, their construction, removal, abandonment, maintenance and relocation. In the case of an irreconcilable conflict between Division 3 and Division 2, Division 3 shall apply.

(b) The Grantee shall bear the costs and expenses for relocation when the purpose involves a lawful public purpose, including, but not limited to, the City's exercise of its police powers for the public health, safety, and general welfare, and public infrastructure projects, public building projects, and other public improvements funded in whole or part by the City.

Section 11. *Inducements not offered.* The Grantee, by its written Acceptance of this License, acknowledges that it has not been induced to accept this License by an understanding or promise or other statement, whether verbal or written, by or on behalf of the City concerning any term or condition of said License that is not included in this License.

Section 12. *Grantee accepts terms of License.* The Grantee, by its written acceptance of this License, acknowledges that it has thoroughly examined and is familiar with the terms and conditions of this License and Division 3 and agrees to so bound by them.

Section 13. *Administration and Enforcement.* Administration and enforcement of this License shall be in accordance with Division 3.

Section 14. *Notice.* All notices or demands pursuant to Division 3 shall be effective if in writing and: (1) delivered personally to the addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; or (2) sent by overnight or commercial air courier. Notice will be deemed to have been adequately given three (3) days following the date of mailing, or immediately if personally served. Notices shall be addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City, to: Franchise Manager
 c/o Director of ITS Department of the City of Huntsville
 101 Church Street, Suite 201
 Huntsville, AL 35801

With a copy to: City Attorney
 City of Huntsville
 308 Fountain Circle
 Huntsville, AL 35801

If to Grantee, to: Crown Castle Fiber LLC
 c/o Crown Castle
 2000 Corporate Drive
 Canonsburg, PA 15317-8564
 Attn: Teddy Adams, General Counsel
 (425) 416-2000

With a copy to: c/o Crown Castle
 2000 Corporate Drive
 Canonsburg, PA 15317-8564
 Attn: Contracts Administration

At no time will the City be required to send notice to more than two persons/addresses. It shall be the duty of the Grantee to promptly update in writing any changes in the information provided above, and failure to do so shall not render ineffective the notice or demand sent by the City.

Section 15. Captions. The captions to sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

Section 16. Severability. The severability provisions of section 1-8 of the Code of Ordinances of the City of Huntsville, Alabama are specifically included herein by reference as if fully set forth.

Section 17. Governing Law. This License granted and every question arising hereunder shall be construed or determined according to the laws of the State of Alabama and applicable federal law.

Section 18. When ordinance effective. This Ordinance shall become effective upon its adoption and publication. Publication of this ordinance, or a synopsis thereof, shall be at the expense of the Grantee.

ADOPTED this the _____ day of _____, 2023.

President of the City Council
Of the City of Huntsville, Alabama

APPROVED this the _____ day of _____, 2023.

Mayor of the City of
Huntsville, Alabama

ACCEPTED BY the undersigned Grantee on this _____ day of _____, 2023.

GRANTEE:
Crown Castle Fiber LLC,
a New York limited liability company


By: Maria Johnston
Its: Director, Network Permitting & Utilities