

## FIBER RELOCATION AGREEMENT

THIS FIBER RELOCATION AGREEMENT (this "Agreement") is made effective as of the date of the last signature below (the "Effective Date"), by and between Crown Castle Fiber LLC, a New York limited liability company ("Crown"), and the Village of Wellington, a Florida municipality, whose address is 12300 Forest Hill Blvd., Wellington, FL 33414 ("City").

### BACKGROUND:

City has an easement located adjacent to the public right of way located at 50th Street South on which City wells are located. However, certain fiber, wires, cables, underground conduit, above-ground enclosures, markers, concrete pads, and other appurtenant fixtures and equipment owned or controlled by Crown ("Property") is interfering with City's ability to maintain its wells located within the easement area. City therefore seeks to have Crown relocate Crown's Property to accommodate maintenance of such wells located in the easement area, and Crown is willing to relocate such Property, provided that: the City pays the cost of relocation, as more particularly provided below.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and intending to be legally bound hereby, the parties agree as follows:

**1. Scope of Work.** The Scope of Work outlined in Exhibit A describes work to be performed pursuant to this Agreement ("Project"), specifying detail including the location, scope of work, schedule, pricing, and any other pertinent information required for the Project. This Agreement, together with Exhibit A, purchase orders, attachments, exhibits, drawings, specifications, instructions, issued and agreed to hereunder shall be hereinafter referred to collectively as the "Contract Documents." The work which Crown is engaged by City to perform pursuant to the Contract Documents is hereinafter referred to as the "Work." The Work may be performed by a Crown affiliate.

### **2. Pricing, Payment, and Liens.**

- a. The method of determining the amount to be paid by City to Crown for performing the Work for the Project shall be set forth in Exhibit A.
- b. City shall review invoices sent by Crown and notify Crown of any dispute of any of the charges set forth in the invoice within five (5) business days of receipt. City shall pay the undisputed portion of such invoices within thirty-five (35) days of receipt. Crown will impose a late charge of one percent per month on all amounts not paid by the deadlines set forth herein. In cases where Work is to be performed by Crown on a time and materials basis, City shall be entitled to receive appropriate supporting documentation (i.e., receipts) for materials which the Contract Documents provide are to be charged to City (except per diem, if any), and City may withhold payment on such specific items where such documentation is lacking until such documentation is provided. No interest shall accrue on the unpaid amount of any such undocumented items unless and until the appropriate documentation is provided and the applicable payment period shall have expired. The existence of a dispute as to any specific item shall not affect City's obligation to pay for all undisputed items.
- c. City shall not make, file or maintain a mechanic's or other lien or claim of any kind or character whatsoever against any fiber, tower, small cell site, building, site, or other structure to which the Work relates, the additions, improvements, alterations, or repairs made thereon, the ground on which said fiber, tower, small cell site, building or other structure is situated, or any other property or property interest owned, held, occupied or otherwise possessed by Crown or its affiliates for or on account of any labor, materials, fixtures, tools, machinery, equipment or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Work, or any agreement supplemental thereto.

**3. Performance Standards and Warranties.** Crown will perform the Work required pursuant to the Contract Documents by making use of its skill and experience and with due consideration to standards of care generally accepted in the communications contracting industry. Crown will not be responsible for defects or incorrect relocation caused in whole or in part by City's acts, omissions, negligence or misconduct or the acts, omissions, negligence or misconduct of City's customers or any other third party. NO OTHER WARRANTY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESSED OR IMPLIED (INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY) SHALL BE APPLICABLE TO THE WORK PROVIDED BY CROWN PURSUANT TO THIS AGREEMENT.

**4. Limitation of Liability.** UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, EQUITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL CROWN BE LIABLE TO CITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF.

**5. Applicable Law; Venue.** Unless as otherwise required by law, this Agreement shall be governed by, and construed and enforced in accordance with, the laws of Florida, without regard to conflicts of law principles. All suits, actions or other proceedings brought by either party arising out of or relating to this Agreement shall be brought only in the state or federal courts located in Palm Beach County.

**6. Disputes.** If for any reason City and Crown are unable to resolve a dispute, the party initiating the dispute shall notify the other party in writing that a dispute exists. Such notification shall provide sufficient details of the dispute so as to allow the other party to respond to the notification. The party receiving the notification shall respond with sufficient details of its position within fifteen (15) business days.

If the parties are then unable to settle the dispute, the dispute will be referred to senior executives of the parties who shall have designated authority to settle the dispute. The parties shall promptly prepare and exchange memoranda stating the issues in dispute and their respective positions, summarizing the negotiations that have taken place and attaching relevant documents. The senior executives will meet for negotiations at a mutually agreed time and place or via phone. If the matter has not been resolved within thirty (30) calendar days of the commencement of such negotiations, the parties agree to consider resolution of the dispute pursuant to Section 6.

**7. Indemnification.** City shall indemnify, defend and hold harmless Crown, its affiliates, its employees, officers, directors, agents, successors, assigns, and landlords from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, reasonable attorneys' fees, costs, expenses and losses which result or arise from: 1) injuries to or death of any persons or damage to property, including theft, in any way arising out of or caused by the Work performed; 2) any failure of City to perform its obligations under this Agreement, or breach by City of any representation, warranty, covenant or agreement contained in the Agreement; 3) any release of hazardous substances, pollutants or contaminants caused in the performance of the Work; 4) any violation of any law, regulation, rule, standard, or other governmental requirement by City; and 5) any actual or alleged infringement or misappropriation of any patent, trademark, copyright, trade secret or any actual or alleged violation of any other intellectual property or proprietary rights arising from or in connection with the products or materials provided or the Work performed under the Agreement or their use. Notwithstanding the foregoing, this paragraph shall not be construed or interpreted as a waiver of City's sovereign immunity and the limits established in Section 768.28, Florida Statutes, nor shall this paragraph be construed or interpreted to impose contractual liability on City beyond the limits specified in Section 768.28, Florida Statutes.

**8. Insurance.**

- a. At its expense, Crown shall obtain and maintain in effect at all times during the performance of Work insurance coverage with limits not less than those set forth below:

- i. Workers' Compensation insurance as required by any applicable law or regulation.
  - ii. Primary comprehensive general liability insurance, including contractor's protective (contingent), contractual and completed operations, with a combined single limit of One Million Dollars (\$1,000,000) for bodily injury and property damage claims arising out of any one incident.
  - iii. Primary comprehensive automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000) for bodily injury and property damage claims arising out of any one incident.
  - iv. Umbrella liability insurance with a combined single limit of Five Million Dollars (\$5,000,000) in excess of the foregoing coverages indicated above for all insured claims arising out of any one incident.
- b. Crown shall deliver to City certificates of insurance evidencing the above-described coverage. Such certificates shall be issued in forms reasonably acceptable to City and shall provide that not less than thirty (30) calendar days advance written notice will be given to City prior to cancellation, termination or material alteration of such policies. Except with respect to workers' compensation coverage, all policies of insurance required pursuant to this Agreement shall name City as an additional insured, but only with respect to liability arising out of Work to be performed pursuant to this Agreement.

**9. Subcontracts.** Crown may subcontract or delegate any or all of the Work. Any such subcontracts shall incorporate the terms of this Agreement.

**10. Confidentiality.**

- a. To the extent permitted by Chapter 119, Florida Statutes, each party shall hold Confidential Information received from the other party with the same degree of care as it would its own confidential information, but with no less than reasonable commercial care, and shall use such information only for the purpose for which it is disclosed and in accordance with this Agreement. The receiving party shall not disclose Confidential Information to any third party without the prior written approval of the disclosing party, except that Crown may disclose Confidential Information to its agents, employees, officers, attorneys, and contractors to the extent they need to know the Confidential Information under this Agreement. The receiving party shall only use the Confidential Information of the disclosing party for the purpose of this Agreement. No ownership right in Confidential Information is transferred in any manner pursuant to this Agreement. "Confidential Information" means information, including, but not limited to, information regarding: (i) the disclosing party's assets, liabilities, operations, financial conditions, employees, suppliers, plans, prospects, management, investors, products, strategies and techniques; (ii) the disclosing party's products system designs, system planning or technical data; (iii) the identity and confidential information of the receiving party's suppliers, landlords, and customers; and (iv) trade secrets.
- b. The confidentiality restrictions of this Agreement shall not apply to any information: (i) lawfully received from another source free of restriction and without breach of this Agreement; (ii) that becomes generally available to the public without breach of this Agreement; (iii) known to the receiving party at the time of disclosure; (iv) independently developed by the receiving party without reference or resort to the Confidential Information; (v) disclosed pursuant to written consent of the disclosing party; or (vi) if legally permitted, is required by legal process or court order to be disclosed by the receiving party, provided that the receiving party provides the disclosing party prompt written notice of such requirement prior to such disclosure.

- c. The obligation to protect the confidentiality of Confidential Information shall survive the expiration, termination or assignment of this Agreement.

#### **11. No Use of Trademarks.**

- a. Neither party shall use the name or trademark of the other, or any of their respective parent companies, subsidiaries, affiliates or partners with respect to any advertising, promotion, publicity or representation that either party may make in connection with the party's business, services and/or product lines, as applicable, without the prior written consent of the other party.

**12. Delays.** The parties acknowledge that they expect to agree upon a schedule for the completion of the Work in connection with each Project undertaken. Crown will use reasonable efforts to complete the Work in accordance with the applicable schedule. In any event, Crown will not be responsible for delays that occur for reasons outside its reasonable control, as provided in Section 13. of this Agreement.

**13. Force Majeure.** Crown shall not be liable for delay or interruption in the performance of Work, or for inability to perform the Work, due to acts of God, flood, fire, lightning, earthquake, epidemic, quarantine restriction, war, sabotage, acts of a public enemy, insurrection, riot, civil disturbance, accidents or disruptions such as fire, explosion or major equipment breakdown, failures or delay beyond Crown's reasonable control in securing necessary materials, equipment, services or facilities, strikes, slowdowns, jurisdictional disputes or other labor difficulties, restraint by court order or public authority, any act, delay or failure to act by any governmental authority, including delay or failure to obtain authorizations or approvals from any governmental authority, any delay caused by City or any party acting under the direction of City or on its behalf, or any other cause beyond Crown's reasonable control. Upon receipt of a notice from Crown requesting appropriate action, City and Crown will negotiate mutually acceptable changes to the Contract Documents which effect equitable adjustments in prices, schedules and any other affected provision of the Contract Documents resulting from the occurrence of any such event.

**14. Changes.** City will cooperate with Crown as required to permit Crown to perform the Work in a timely and cost-effective manner, and, in connection therewith, City will keep Crown apprised generally of City's plans, goals and prospects for the Project. By written agreement between the City and Crown, City may request changes to the Work or any portion thereof which has been contracted. If any such change causes an increase in the cost of Crown's performance or the time for performance, Crown shall not be required to implement any such change unless and until Crown is given an equitable adjustment in the price and performance schedule. If in the course of its performance of the Work, Crown discovers a specific Project-related situation which will cause an unforeseen delay or necessitate the incurring by Crown of unanticipated extra costs, Crown will be compensated for such unanticipated extra costs. If any dispute arises over any change order, Crown may continue with the performance of the Work as it was originally described without giving effect to such change and will be entitled to compensation therefor as originally provided in the Contract Documents.

**15. Termination.** Either party may terminate this Agreement by reason of the default of the other party; provided, however, that the party seeking to terminate this Agreement shall first give the other party written notice of the claimed default and its intention to terminate this Agreement by virtue of such default and thirty (30) days within which to cure such default; provided, however, that if such default is of such a nature that it cannot reasonably be cured within such thirty (30) day period, then the defaulting party shall not be deemed to be in default, so long as it commences promptly within such thirty (30) day period such action as shall reasonably be necessary to cure such default and in good faith diligently pursues such cure to conclusion. If the claimed default is not cured within such thirty (30) day period (or such longer period as provided in the preceding sentence), then the non-defaulting party may, upon written notice, terminate this Agreement. In the event of a default by City, City shall pay Crown the cost of the Work performed up until the termination date.

**16. Independent Contractor.** Crown's relationship to City under this Agreement is that of independent contractor. Neither Crown nor any of its employees, subcontractors or consultants shall be designated as employees, agents, joint venturers or partners of City.

**17. Notices.**

- a. Any notice delivered under this Agreement shall be in writing and shall be delivered by certified mail or recognized overnight courier service addressed to the parties at the addresses set forth below or to such other address as a party may subsequently designate in a written notice delivered pursuant to this provision:

If to City:

Village of Wellington  
12300 Forest Hill Blvd  
Wellington, FL 33414  
Attention: Utility Director

If to Crown:

Crown Castle Fiber LLC  
2000 Corporate Drive  
Canonsburg, PA 15317  
Attention: Network

Copy to: Crown Castle Fiber LLC  
1500 Corporate Drive  
Canonsburg, PA 15317  
Attn: Legal - Infrastructure

- b. Any notice given by Certified U.S. Mail or courier delivery service shall be effective on the date of receipt as evidenced by the U.S. Postal Service's domestic return receipt or courier delivery service receipt.

**18. Term of Agreement.** The term of this Agreement shall commence on the Effective Date. Unless terminated sooner in accordance with Section 15, the term of the Agreement shall be the longer of: (i) six (6) months; or (ii) the completion of the Work.

**19. Entire Agreement.** This Agreement and the other Contract Documents constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral or written communications, understandings or agreements between the parties with respect to such subject matter. In no event shall preprinted terms or conditions found on any purchase order, work order, or similar document issued by City be considered part of, or an amendment or modification to, this Agreement.

**20. Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction, for any reason, then, to the fullest extent permitted by law all other provisions hereof will remain in full force and effect in such jurisdiction and will be liberally construed in order to carry out the intent of the parties hereto as nearly as may be possible, and such invalidity, illegality or unenforceability will not affect the validity, legality or enforceability of any other provision hereof. Any court or arbitrator having jurisdiction over this Agreement shall have the power to reform such provision to the extent necessary for such provision to be enforceable under applicable law.

**21. Amendments.** No amendment, waiver or discharge of any provision of this Agreement will be effective unless made in a writing that specifically identifies this Agreement and the provision intended to be amended, waived or discharged and is signed by Crown and City. Each such amendment, waiver or discharge will be effective only in the specific instance and for the purpose for which it is given.

**22. Assignments.** City may not assign this Agreement without the prior written agreement of Crown. Crown may assign this Agreement to its parent or any subsidiary, affiliate, or successor without the written consent of City.

**23. Survival.** Any provision contained within the Agreement which by its very nature is intended to survive termination of the Agreement shall survive such termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

Crown Castle Fiber LLC

Signature: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

City:

Village of Wellington

Signature: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

# **Exhibit A**

**I. Location of Fiber Relocation**

**II. Scope of Work**

**III. Schedule**

**IV. Pricing**

1. Date of Request: 11/03/2022

- Location(s): 10075 50th St S, Wellington, FL 33449
- Scope of work: At the request of the City, Crown Castle will relocate the existing Aerial fiber along S 50<sup>th</sup> St at Well 19 and 20 to underground using 2 - 1½" conduit. Refer to **Attachment 1** attached hereto.
- Crown Castle will complete the following tasks:
  - Create construction drawings to plan and execute the requested work.
  - Obtain all required permits for the project as required with any regulatory agencies, including Palm Beach County for work in 50<sup>th</sup> Street right-of-way
  - Order all associated materials
  - Complete the construction of the requested relocation
  - Schedule the migration of circuits from the conflict aerial cable to the newly installed underground cable after customer notifications are completed (45 days).
  - Update (CADD) Crown Castle existing as-built drawings to show new facilities

- Relocation Charges:

• Engineering	\$ 2,364.00
• Materials	\$ 4,713.00
• <u>Construction/Splicing</u>	<u>\$ 33,813.00</u>

**Total:                      \$ 40,890.00**



6. Special Requirements or Notes:

- Please note that NO WORK can commence until an executed copy of this contract is signed by the Customer and payment is provided to Crown Castle.
- Full payment must then be made to Crown Castle before any Engineering and Construction is performed.

7. Anticipated Completion Date: After receipt of signed contract and payment, Crown Castle will schedule the work with a target completion date of 45 calendar days after all permit and customer circuit releases are approved.

8. Please make checks payable to Crown Castle Fiber and mail to:

J.P. Morgan Bank  
P.O. Box 28730  
New York, NY 10087-8730  
Reference: Customer **WO#41228**

9) Wire Crown Castle payments to:

**Wire / ACH Information:**

JP Morgan Chase Bank  
Crown Castle Fiber LLC  
Acct #: 198710895  
ABA #: 021000021  
**WO#41228**

# Area of Proposed Work

## Attachment 1

