

DRAWN BY: JoAnne L. Carlyle, City Attorney
RETURN TO: City Attorney, P.O. Box 230, High Point, NC 27261

NORTH CAROLINA

RIGHT OF WAY

GUILFORD COUNTY

ENCROACHMENT AGREEMENT

THIS AGREEMENT (Agreement) made this 22 day of April, 2022, between **THE CITY OF HIGH POINT**, a municipal corporation, located at 211 South Hamilton Street, High Point, North Carolina, 27260, existing under the laws of the State of North Carolina (the "City") and **NORTH STATE TELEPHONE COMPANY, d/b/a NORTH STATE COMMUNICATIONS LLC**, a domestic Corporation located at 1201 W Fairfield Rd, High Point, NC 27263, hereinafter known as the "Company"

W I T N E S S E T H

WHEREAS, the City owns the public right of way that includes Challock Wy, Bowers Av, Dillon Rd, Wilton Way, Sussex Dr, Banbridge Dr, Shorewell Dr, Eskdale Dr, Coryton Wy, Densbury Dr, Cayley Ct, Chatfield Dr, Timberwood Dr, Bridgend Dr, Barston Wy, Edinburgh Dr, Sternley Wy, Timberwood Dr, and Kennison Ct.; and

WHEREAS, the Company desires, for its interest and convenience, to construct, maintain and put in place an underground fiber line as shown on Exhibit A in said right-of-way; and

WHEREAS, the City under the terms and conditions herein set forth, is willing to allow the above described improvements to be made, and allow the Company to encroach upon the above-referenced City-owned right of way; and

WHEREAS, the Company has paid to the City the sum of \$300.00, which partially defrays the administrative costs of the City.

NOW, THEREFORE, in consideration of the premises and \$300.00 in hand paid receipt of which is hereby acknowledged and other consideration, the Company hereby covenants and agrees that:

1. The Company is responsible for any and all expenditure of labor or materials required in the installation, erection, repair, maintenance or location of the above-referenced Structure.

2. The Company is responsible for any and all labor or expense which results from any and all future maintenance and repair of such Structure, and the removal or dismantling of the Structure if and when the Structure is removed.

3. The Company is to be fully responsible for any and all property damage or injury to or death of any person which results from any and all negligence, omission, defect in design, maintenance or workmanship created by the Company, its agents, employees, contractors or subcontractors in connection with the Encroachment, or any cause of action arising out of the installation, maintenance, or location of said Structure or any other cause of action arising out of the planting, installation, maintenance, or location of said Structure (collectively, "Claims and Causes of Action").

4. The Company agrees:

- (a) to hold the City, its officers, agents and employees harmless from any and all liability arising out of any such Claims and Causes of Action, and
- (b) to defend the City, its officers, councilors and employees and pay all attorney fees in any and all actions brought as a result of such Claims and Causes of Action; and
- (c) indemnify the City, its officers, agents and employees against any and all loss sustained by reason of such Claims and Causes of Action.

5. The Company, during the life of this agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers, authorized under the laws of the State of North Carolina, insurance in the minimum amounts of One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate, combined single limit for personal injury, property damage, or wrongful death caused by construction, maintenance, location, repair or visual obstruction of said encroachment with the City of High Point being included as additional insured as respects work under this Agreement. Company shall furnish the City upon the City's request, but no more than once in any 12-month period, a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect (or proof of self-insurance as referenced below). Company shall give the City at least 30 days advanced written notice of any cancellation of any required coverage that is not replaced. Should Company fail to pay premiums upon said insurance, or should Company fail to obtain said insurance, or to perform any of the agreements, terms, or conditions herein contained; the City at its option, by written notice may

declare this agreement cancelled and terminated and all rights acquired hereunder by Company shall thereupon terminate, except Owner shall still be responsible for removing the Equipment from the right of way. In lieu of the foregoing, Company may self insure for any or all of the coverages set forth above.

6. The Company, upon completion of the installation of the Structure, shall submit to the City revised drawings in the form of an AutoCad (.dwg) file for retention by the City if the actual installation differs significantly from the installation shown on the Exhibit A (Site Plan) (in such event, the Company shall secure approval of the City prior to the differing installation).

7. The Company agrees to abide by all lawful statutes and ordinances governing construction of the Structure as contemplated herein.

8. This Agreement shall not divest the City of any rights or interest in said right of way.

9. The Company shall contact "NC One Call Center" prior to excavation where and in the manner required by the NC One Call law.

11. This Agreement shall be binding upon and ensure to the benefit of all of the parties hereto and their heirs, personal representatives, grantees, successors, and assigns.

12. All matters relating to this Agreement shall be governed by laws of the State of North Carolina without regard to its choice of law provisions, and venue for any action related to the Agreement shall be Guilford County Superior Court or the United States District Court for the Middle District of North Carolina.

13. All notices required herein shall be deemed given by depositing such in the United States Mail, first class, and addressed as follows:

If to City:
City of High Point
Planning & Development Department
P.O. Box 230
High Point, NC 27261
ATTN: Planning Director

If to Company:
North State Telephone Company d/b/a North State Communications LLC
1201 W Fairfield Road
High Point, NC 27263

IN WITNESS WHEREOF, the City of High Point has caused this instrument to be signed by its Deputy City Manager and notarized, the day and year first above written.

NORTH STATE TELEPHONE COMPANY, d/b/a NORTH STATE COMMUNICATIONS LLC

By: [Signature]

Print Name: Anthony Tussley

Title: OSP Construction Manager

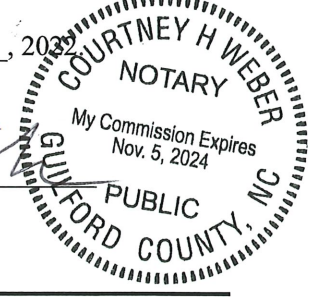
STATE OF North Carolina
Guilford COUNTY

I, Courtney H. Weber, a Notary Public of said County and State, do hereby certify that Anthony Duayne Tussley, personally came before me this day and acknowledged that he/she is OSP Construction Manager and that he/she, as OSP Construction Manager being authorized to do so, executed the foregoing on behalf of NORTH STATE COMMUNICATIONS LLC.

Witness my hand and official stamp or seal, this the 22nd day of April, 2022.

My commission Expires: 11/5/24

[Signature]
Notary Public



CITY OF HIGH POINT

By: [Signature]
Greg Ferguson, Deputy City Manager

NORTH CAROLINA

GUILFORD COUNTY

I, Mary S. Brooks, a Notary Public of said county and state do hereby certify that Greg Ferguson is known to me as the Deputy City Manager of the City of High Point; that he personally appeared before me this date; and, that by authority duly given, and as the act of the said City of High Point, the foregoing instrument was signed in its name by its Deputy City Manager.

Witness my hand and official stamp or seal, this the 22nd day of April, 2022.

My commission Expires: July 26, 2023

[Signature]
Notary Public

