

**AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI,
AUTHORIZING THE MAYOR TO EXECUTE A BROADBAND
INFRASTRUCTURE DESIGN, INSTALLATION AND OPERATION
AGREEMENT**

WHEREAS, on March 11, 2021, the American Rescue Plan Act (“ARPA”) was signed into law by the President of the United States. Section 9901 of ARPA amended Title VI of the Social Security Act (the “Act”) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the “Fiscal Recovery Funds”), which are intended to provide support to State, local and Tribal governments in responding to the impact of COVID-19 and their efforts to contain COVID-19 on their communities, residents, and businesses; and

WHEREAS, Section 603 of the Act establishes a fund for nonentitlement units of local government to be used, in part, to make necessary investments in broadband infrastructure; and

WHEREAS, on May 17, 2021, the United States Department of the Treasury issued Subpart A to 31 C.F.R. Part 35 (the “Interim Final Rule”) implementing section 9901 of ARPA, and establishing the regulations for the use of the Fiscal Recovery Funds; and

WHEREAS, the Interim Final Rule allows for the use of the Fiscal Recovery Funds for the installation of broadband infrastructure that is designed to provide service to Unserved or Underserved Households and Businesses (hereinafter defined); and

WHEREAS, the City of Wildwood, Missouri (the “City”) has identified that an area within the boundaries of the City contains Unserved and Underserved Households and Businesses; and

WHEREAS, it is the desire of the City to make the necessary investment in broadband infrastructure to provide high-quality broadband service to the Unserved or Underserved Households and Businesses located in the City; and

WHEREAS, it is further the desire of the City to establish or improve broadband service to Unserved or Underserved Households and Businesses in the City to reach an adequate level to permit a household to work or attend school; and

WHEREAS, the City desires to enter into an agreement to design and install broadband infrastructure to serve the Unserved or Underserved Households and Businesses in the City and to provide high-quality broadband services thereto.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:

Section One. That the form, terms, and provisions of the Broadband Infrastructure Design, Installation and Operation Agreement between the City of Wildwood, Missouri, and Spectrum

Mid-America, LLC, marked as **Exhibit A** and incorporated by reference herein (the “Agreement”), be and they hereby are approved and the Mayor is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

Section Two. That the Mayor is hereby further authorized and directed on behalf of and in the name of the City to agree to do any and all other acts and things and to execute and deliver any and all other agreements, documents, instruments and certificates, all as may be necessary and appropriate to consummate the above mentioned Agreement, and to perform all of the terms, provisions and conditions of the Agreement. The execution by the Mayor of any agreement, document, instrument, check or certificate referred to in this Ordinance and the Agreement shall be conclusive evidence of the approval thereof and of all of the terms, provisions and conditions contained therein. Any and all acts which the Mayor may do or perform in conformance with the powers conferred upon them by this Ordinance are hereby expressly authorized, approved, ratified and confirmed.

Section Three. Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

Section Four. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Section Five. This Ordinance shall be in full force and effect from and after its passage and approval.

This Bill was passed and approved this ____ day of _____, 2021, by the Council of the City of Wildwood, Missouri, after having been read by title or in full two times prior to passage.

Presiding Officer

James R. Bowlin, Mayor

ATTEST:

City Clerk

City Clerk

**BROADBAND INFRASTRUCTURE DESIGN, INSTALLATION AND OPERATION
AGREEMENT**

This Broadband Infrastructure Design, Installation and Operation Agreement (the “Agreement”) is entered into by and between the City of Wildwood, Missouri, a charter city of the State of Missouri (hereinafter referred to as the “City”) and Spectrum Mid-America, LLC, a Delaware limited liability company (hereinafter referred to as “Spectrum”) on [INSERT DATE] “Effective Date.”

WHEREAS, on March 11, 2021, the American Rescue Plan Act (“ARPA”) was signed into law by the President of the United States. Section 9901 of ARPA amended Title VI of the Social Security Act (the “Act”) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the “Fiscal Recovery Funds”), which are intended to provide support to State, local and Tribal governments in responding to the impact of COVID-19 and their efforts to contain COVID-19 on their communities, residents, and businesses; and

WHEREAS, section 603 of the Act establishes a fund for nonentitlement units of local government to be used, in part, to make necessary investments in broadband infrastructure; and

WHEREAS, on May 17, 2021, the United States Department of the Treasury issued Subpart A to 31 C.F.R. Part 35 (the “Interim Final Rule”) implementing section 9901 of ARPA, and establishing the regulations for the use of the Fiscal Recovery Funds; and

WHEREAS, the Interim Final Rule allows for the use of the Fiscal Recovery Funds for the installation of broadband infrastructure that is designed to provide service to Unserved or Underserved Households and Businesses (hereinafter defined); and

WHEREAS, the City has identified that an area within the boundaries of the City contains Unserved and Underserved Households and Businesses; and

WHEREAS, it is the desire of the City to make the necessary investment in broadband infrastructure to provide high-quality broadband service to the Unserved or Underserved Households and Businesses located in the City; and

WHEREAS, it is further the desire of the City to establish or improve broadband service to Unserved or Underserved Households and Businesses in the City to reach an adequate level to permit a household to work or attend school; and

WHEREAS, the City and Spectrum have determined it is unlikely that the investment necessary to establish or improve broadband service to Unserved or Underserved Households and Businesses in the City will be met with private sources of funds without financial assistance from the City; and

WHEREAS, Spectrum provides high-quality broadband service to the greater metropolitan area, and represents that it has the resources and facilities to provide such broadband services to the identified Unserved or Underserved Households and Businesses located in the City; and

WHEREAS, the City desires to enter into an agreement with Spectrum to design and install broadband infrastructure to serve the Unserved or Underserved Households and Businesses in the City and to provide high-quality broadband services thereto; and

WHEREAS, the City finds and determines that the Fiscal Recovery Funds received, and anticipated to be received, and that the Interim Final Rule provide the requisite funding and authority to enter into and carry out its obligations under this Agreement and that any payment from the City has been determined as an authorized use of the City's funding sources under applicable State and federal laws.

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Spectrum agree, as follows:

1) RECITALS

The Recitals to this Agreement are hereby incorporated by reference herein, and form a material part of this Agreement.

2) DEFINITIONS

As used in this Agreement:

Broadband Infrastructure shall mean network, materials, equipment, supplies and facilities designed and constructed to provide Broadband Service to Unserved and Underserved Households and Businesses within the Service Area and is designed to, upon completion, reliably meet or exceed the requirements of § 35.6(e)(2)(i) of the Interim Final Rule, on the Effective Date of this agreement subject to the Change of Law Provision in Section 21;

Broadband Infrastructure Project or *Project* shall mean the design, construction and installation of the Broadband System pursuant to the terms of this Agreement;

Broadband Service shall mean the provision of high-speed internet access service with a minimum of 25 Mbps download and 3 Mbps upload speeds;

Broadband System shall mean the FTTP Broadband network designed, constructed and installed by Spectrum in the Service Area pursuant to the terms of this Agreement;

Certificate of Substantial Completion means a Certificate of Substantial Completion in substantially the same form as Exhibit C attached hereto, to be delivered by Spectrum to the City pursuant to Section 8 of this Agreement;

City Code shall mean the Code of Ordinances of the City of Wildwood, Missouri;

Completion Date shall mean the date of approval of the Certificate of Substantial Completion;

Construction Period shall mean the time period for construction of the Project as set forth in Section 5 of this Agreement;

Design Plans shall mean the confidential plans and specifications for construction and installation of the Broadband Infrastructure dated ____, referencing Project No. ____, a copy of which is on file in the principal place of business of Spectrum in the State of Missouri, and incorporated by reference herein, which includes the following:

- a. A description of the Broadband Infrastructure;
- b. An explanation of the phasing of construction and installation of the Broadband Infrastructure;
- c. A proposed construction schedule; and
- d. The property addresses, or other reasonable property identifiers, for each property within the Service Area Spectrum will provide service subject to the provisions of this Agreement;

Fiber-to-the-Premises (or FTTP) shall mean a fiber optic cable delivery medium (Ethernet Passive Optical Network) in which optical fibers are run directly from the central hub to pass all the premises occupied by potential Subscribers;

Make-Ready Work shall mean the act of preparing a utility pole to receive a new Broadband Infrastructure by a third-party utility;

Passing shall mean a residential or business structure to which the Broadband System is capable of providing Broadband Service through a Service Drop as identified in the Design Plan;

Payment Schedule shall mean the schedule for payment of the City Contribution (defined herein) and the terms and conditions therefore as set forth in Exhibit B, attached hereto and incorporated by reference herein;

Right-of-Way shall mean any “public right-of-way” as defined in Section 67.1830, RSMo., or any easement of record through which Spectrum has right of access for installation of the Broadband Infrastructure;

Related Party shall mean any party related to Spectrum by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended, or any party controlled by or under common control with Spectrum.

Service Area shall mean the area depicted on Exhibit A, attached hereto and incorporated by reference herein;

Service Drop(s) shall mean deployment of wireline broadband access to the identified locations in the Project Area by deploying Broadband Infrastructure into adjacent public rights-of-way and performing Standard Installations upon request upon customer request;

Standard Installation shall mean for purposes of the Broadband Project, deployment of wireline Broadband Service to all of the property addresses in the Service Area identified on the Design Plan. The Parties acknowledge that the objective of connecting the identified locations in this manner may be limited by constraints in individual cases, (e.g., where property owners do not allow necessary access, or where Spectrum cannot obtain access to necessary private easements, rights-of-way or non-standard installation);

St. Louis County Metropolitan Area shall mean an area of land comprised of the entirety of St. Louis County, St. Charles County, Jefferson County and Franklin County, Missouri;

Subscriber shall mean a resident or business that lawfully receives wireline Broadband Service distributed by the Broadband System; and

Unserved and Underserved Households or Businesses shall have the same meaning as set forth in § 35.1 of the Interim Final Rule,.

Wall-fishing means the process Spectrum uses to conceal low-voltage cables through a cavity of a wall and across ceilings to reduce the exposure of cable lines in a subscriber's residential or business location. Wall-fishing cannot be performed through concrete, brick, exterior plaster, cinder block or cement walls.

3) CONSTRUCTION COMMITMENT

Spectrum shall design, construct, install, operate, and maintain all necessary fiber and equipment for the Broadband System within the Construction Period. The Broadband System will include all constructed Service Drops. The parties acknowledge that constructing the Service Drops is contingent upon customer subscriptions for Broadband Service with Spectrum and paying any applicable fees, and that any Service Drops constructed will be incorporated as part of the Broadband System.

4) DESIGN

- a) The Design Plans, shall be deemed approved by the City upon having been presented to the City for review and inspection.
- b) The City shall, upon prior notice to Spectrum, have reasonable access to view and review the Design Plans throughout the Construction Period set for in Section 5 of this Agreement to confirm compliance with this Agreement.
- c) Spectrum asserts the Design Plans are confidential and protected from disclosure as a matter of law, including, but necessarily limited to, The Missouri Uniform Trade Secrets Act, Sections 417.450 to 417.467, RSMo., as amended, and shall be considered a closed record exempt from disclosure pursuant to Section 610.021(14), RSMo., as amended, or such other provisions of law, as may be applicable, unless a court of competent jurisdiction compels the disclosure of the Design Plans.

5) CONSTRUCTION PERIOD/TERM

- a) Construction of the Project shall commence as soon as practicable but not later than seventy five (75) days from the Effective Date of this Agreement.

- b) Construction and installation of the Project shall be completed, as evidenced by submission of the Certificate of Substantial Completion, no later than two (2) years from the date of commencement of construction as set forth in 5(a), subject to Excusable Delay. “Excusable Delay” means any delay that affects completion and is directly caused by (1) Make-Ready Work that is not received by Spectrum within 45 days of Spectrum’s submission of a completed application for utility pole attachments; or (2) any delay in receiving governmental, regulatory, or other third-party permits, licenses, or approvals, despite Spectrum’s good-faith efforts to secure timely approvals, (3) any delay caused by the City’s action or inaction, including, but not limited to, any failure to timely remit a payment, or (4) any other event or occurrence provided for in Section 21 (Force Majeure) of this Agreement.
- c) TERM. This Agreement shall automatically expire ninety (90) days from the date on which Grantee receives final payment from the City following the City’s acceptance of Grantee’s Certificate of Completion.

6) SERVICE REQUIREMENTS

- a) Spectrum shall design, construct, install and operate a Broadband System that is capable of providing Broadband Service in the Service Area and operate and maintain all the necessary Broadband Infrastructure for the Broadband System to the properties identified on the Design Plans.
- b) Spectrum shall offer retail non-promotional residential Broadband Service in the Service Area with pricing equal to or better than that offered to other customers of Spectrum located within the St. Louis County Metropolitan Area to the extent Spectrum offers the same broadband service tiers St. Louis County Metropolitan Area.
- c) Spectrum agrees to maintain its current no data cap policy through May 18, 2023. Spectrum maintains network management practices per applicable industry standards and subject to its terms of service.
- d) In the Service Area, Spectrum will waive its standard residential installation fee for Service Drops of 400 feet or less from the adjacent Rights-of-Way for a period of six (6) months after the City’s receipt of a report from Spectrum, pursuant to Section 10 of this Agreement, confirming that Spectrum has provided notice of a Passing to a residential address.
- e) In the Service Area, Spectrum will charge a flat rate of ninety-nine and 99/100 dollars (\$99.99) for any residential installation that requires a drop in excess of four hundred (400) feet from the adjacent Rights-of-Way for a period of six (6) months after the date of the Milestone notice from Spectrum for the portion of the Project Area covered by each such notice, pursuant to Exhibit B of this Agreement.
- g) The provisions of subsection (d) and (e) of this Section 6 notwithstanding, Spectrum may charge any subscriber an amount not to exceed fifty dollars (\$50.00) for each instance of Wall-Fishing.
- h) In addition to this Agreement with the City, Spectrum would be very interested in discussing approaches utilizing various other grant opportunities through the State of Missouri or the federal government to benefit low-income consumers within the City of Wildwood.

7) FINANCIAL COMMITMENT

- a) The total financial obligation of the City for this Project is \$6,750,000, subject to the provisions of Sections 9 and 13 of this Agreement (the “City Contribution”). The City shall have no further financial obligation in addition to the City Contribution for this Project. It is the understanding of the parties that the City Contribution shall be entirely comprised of Fiscal Recovery Funds actually received by the City. Regardless of the source of the funding, the City shall take all steps necessary to secure the funding required to meet its obligations under the Agreement.
- b) Other than the City Contribution described above, all costs related to the Project are the responsibility of Spectrum. Spectrum will assume any and all financial risk in excess of the City Contribution. Except for any taxes, all revenues from the Broadband System accrue solely to the benefit of Spectrum.

8) SUBSTANTIAL COMPLETION

After substantial completion of the Project, in accordance with the provisions of this Agreement, Spectrum shall furnish a Certificate of Substantial Completion to the City certifying the substantial completion of the Project. The City shall, within forty-five (45) days following receipt of the Certificate of Substantial Completion (the “Inspection Period”), carry out such inspections as the City deems necessary to verify the availability of Broadband Service in the Service Area. If, prior to the expiration of the Inspection Period, the City does not accept, which such acceptance shall not be unreasonably withheld, and execute the Certificate of Substantial Completion or furnish Spectrum with specific written objections to the status of the Project, describing such objections and the measures required to correct such objections in reasonable detail, the Certificate of Substantial Completion will be deemed accepted by the City.

9) PAYMENT SCHEDULE

The City shall remit payment of the City Contribution subject to the Payment Schedule.

10) REPORTING REQUIREMENTS

- a) During the Construction Period, Spectrum shall permit the City to reasonably monitor the Project to ensure that the Project is being carried out in accordance with the terms of this Agreement. The City will assign a project manager to work with Spectrum and to review and verify progress on the Project.
- b) During the Construction Period, Spectrum will provide sufficiently detailed written progress reports to the City Project Manager on no less frequently than a quarterly basis to enable the City to understand the status of the Project. Spectrum shall provide information on, at least, the following: i) the number of Unserved or Underserved homes or businesses in the Service Area and ii) the number of Subscribers connected on the Broadband System in the Service Area. The report shall also include work accomplished and problems encountered.
- c) Spectrum shall provide a sample of the marketing materials that it plans to use in the Project Area and shall provide notice to the City regarding marketing to locations associated with each Milestone in Exhibit B (Payment Schedule). Spectrum may, in its discretion, provide such marketing notice to the City upon commencement of marketing or concurrently with the Milestone notices in Exhibit B.

- d) Spectrum asserts the reports required pursuant to this Section 10 are confidential and protected from disclosure as a matter of law, including, but necessarily limited to, The Missouri Uniform Trade Secrets Act, Sections 417.450 to 417.467, RSMo., as amended, and shall be considered a closed record exempt from disclosure pursuant to Section 610.021(14), RSMo., as amended, or such other provisions of law, as may be applicable, unless a court of competent jurisdiction compels the disclosure of such reports.

11) PERMITS, LICENSES AND ACCESS TO PROPERTY

- a) To the extent feasible and upon terms agreeable by the parties, the City will provide reasonable access to City owned real property for locating certain identified components of the Broadband Infrastructure.
- b) To the extent possible, the City shall provide reasonable assistance with any permitting, licensing or other approvals as may be required for the project, including access to public rights-of-way. Notwithstanding the foregoing, Spectrum shall be responsible, at its sole cost and expense, for the acquisition of any easements or other property necessary to complete the Project.
- c) The City shall waive any fees required pursuant to Chapter 610 of the Code of Ordinances of the City of Wildwood, Missouri, associated with Spectrum's marketing of Broadband services in the Project Area.

12) INFRASTRUCTURE OWNERSHIP AND LICENSE

Spectrum shall retain all ownership interests and rights in the network, materials, equipment, supplies and facilities constructed and deployed in connection with the Project. Except as otherwise provided herein, Spectrum reserves the right to modify the terms and conditions, data usage, speeds and pricing for any of Spectrum's services, subject to the terms of this Agreement.

13) DEFAULT

- a) In the event the City believes that the Spectrum has not complied with the material terms of the Agreement, it shall notify Spectrum in writing with specific details regarding the exact nature of the alleged noncompliance or Event of Default (hereinafter defined).
- b) Right to Cure or Respond. Spectrum shall have forty-five (45) days from the receipt of the City's written notice to: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.
- c) *Events of Default* shall mean the following actions:
 - i) Spectrum fails to maintain insurance required pursuant to this Agreement;
 - ii) Spectrum is adjudicated insolvent or bankrupt, or ceases, is unable, or admits its inability, i) to pay its debts as they mature, or make a general assignment for the benefit of, or enter into an composition or arrangement with creditors; ii) applies for the consent to the appointment of a receiver,

trustee or liquidator of it or of a substantial part of its property, or authorize such application or consent, or proceedings seeking such appointment shall be instituted against it without such authorization, consent or application and shall continue undismissed for a period of sixty (60) days; iii) authorizes or files a voluntary petition in bankruptcy or applies for or consents to the application of any bankruptcy, reorganization in bankruptcy, arrangement, readjustment of debt, insolvency, dissolution, moratorium or other similar law of any jurisdiction, or authorizes such application or consent; or proceedings to such end shall be instituted against it without such authorization, application or consent and such proceeding instituted against it shall continue undismissed for a period of 60 days;

- iii) Spectrum materially breaches any representation or warranty contained herein;
- iv) There is any material deviation in the completion of the Project from the Design Plans by Spectrum and Spectrum fails to remedy the same to the City's satisfaction within forty-five (45) days of the City's written demand to do so.

- d) The City shall be considered in default in the event it has not complied with the material terms of the Agreement and fails to remedy the same to the Spectrum's satisfaction within forty-five (45) days of Spectrums's written demand to do so.

14) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAW

Spectrum, its employees, contractors and agents shall observe all applicable federal, state and local law requirements for all work performed on the Project.

15) WORKER ELIGIBILITY REQUIREMENTS

Spectrum acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Execution of this Agreement for this Project is dependent upon Spectrum's enrollment in the E-Verify Program and providing an Affidavit of Compliance and E-Verify Memorandum-of-Understanding (MOU) between Spectrum and Department of Homeland Security to the City as required by Section 285.530, RSMo. The cover page and signature page of the E-Verify MOU and the Affidavit must be submitted prior to execution of this Agreement. A sample Affidavit of Compliance can be found at the Missouri Attorney General's website at the following link: http://ago.mo.gov/forms/Affidavit_of_Compliance.pdf

This requirement also applies to subcontractors and contract labor, but this Agreement only requires submittal of the verification documents for Spectrum. It is Spectrum's responsibility to verify the worker eligibility of its subcontractors.

16) LIABILITY INSURANCE.

- a) Spectrum shall purchase and maintain in full force and effect, until completion of the Project, insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the work performed under this Agreement by Spectrum, its agents, representatives, employees or subcontractors, including those insurance coverages set forth below. Insurance is to be placed with insurers with a Bests' rating of no less than A-VI. All such insurance policies shall name the City as an additional insured issued using ISO 1985 Broad Form 10 20 11 85 or its equivalent, and shall contain a waiver of subrogation endorsement. Each insurance policy required by this clause shall also contain a "Notice of Cancellation Endorsement", and shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits by the insurer or the insured except after thirty (30) days prior written notice, by certified mail, return receipt requested, has been given to the City, or in the case of non-payment of premium, at least ten (10) days' prior written notice of cancellation so given. Spectrum and its subcontractors shall procure and maintain during the life of this agreement insurance of the types and minimum amounts as follows:

- i) Workers' Compensation in full compliance with the statutory requirements of Federal and State of Missouri law. Employers' Liability coverage in the amount of \$2,500,000.*
- ii) Comprehensive General Liability or Broad Form Comprehensive General Liability (ISO 1985 Broad Form 20 10 11 85, or its equivalent) to cover claims which may arise from operations under this Agreement. The policy will include protection for the following hazards:
 - 1. Premises and Operations – Bodily Injury & Property Damage Liability
 - 2. Independent Contractors Coverage
 - 3. Products & Completed Operations Liability coverage to apply one year beyond completion and acceptance of the work specified by this contract.
 - 4. Personal Injury Liability
 - 5. Broad Form Property Damage
 - 6. Contractual Liability
 - 7. Explosion, collapse, and underground damage, if applicable

The policy shall be written with limits of at least \$500,000 each person, \$2,500,000 each occurrence* and, for Property Damage, at least \$2,500,000 each occurrence and \$2,500,000 aggregate*.

- iii) Comprehensive Automobile Liability, Bodily Injury, providing coverage for all owned, non-owned, and hired vehicles.

Including Death: \$500,000 each person / \$2,500,000 each occurrence*
Property Damage: \$2,500,000 each accident*

* But not less than the sovereign immunity limits established by Section 537.610, RSMo., et seq.

- b) Spectrum's policy shall name the City as an additional Insured. Certificates evidencing such insurance shall be furnished to the City prior to Spectrum commencing the work on this Project. The certificates must state "The City of Wildwood, Missouri, is an additional insured." The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- c) Any deductibles or self-insured retentions must be declared to the City.
- d) Spectrum shall also obtain and pay for insurance policies that contain, or are endorsed to contain, the following provisions:
 - i) Public Liability, Property Damage, General Liability and Automobile Liability coverages for liability arising out of activities performed by, or on behalf of, Spectrum; products and completed operations of Spectrum; premises owned, occupied or used by Spectrum; or automobiles owned, leased, hired or borrowed by Spectrum.
 - ii) Contractor's Contingent or Protective Liability and Property Damage to protect Spectrum from any and all claims arising from the operations of subcontractor employed by Spectrum.
 - iv) The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
 - v) Spectrum's insurance coverage SHALL BE PRIMARY INSURANCE as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of Spectrum's insurance and shall not contribute with it.
 - vi) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
 - vii) Spectrum's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e) All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement.

17) SUCCESSORS AND ASSIGNS.

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

18) AMENDMENT; WAIVER.

No amendment, modification or waiver of any provision of this Agreement shall be effective unless in a writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be enforced.

Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

19) INDEMNIFICATION.

To the extent permitted by law, the City and Spectrum agree to indemnify and hold each other, and each other's officers, directors, agents and employees, harmless from and against any and all claims, suits, actions, losses, damages and liabilities (including, but not limited to, reasonable attorneys' fees and court costs) on account of any claim by a third party for bodily injury or property damage against the indemnified party to the extent caused by the negligent act or omission, or willful misconduct of, or breach of this Agreement by, the indemnifying party or the indemnifying party's employees, contractors, subcontractors or agents, in connection with the performance of their respective obligations under this Agreement. The provisions of this Section shall survive the termination of this Agreement.

Such indemnity shall not be limited by reason of the enumeration of any insurance coverage herein provided.

Nothing contained herein shall be construed as prohibiting the City, its directors, officers, agents, or its employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them.

Notwithstanding anything herein to the contrary, no provision, term, or condition in this Agreement shall constitute, or be construed as, a waiver of the defenses of sovereign immunity, official immunity, or governmental immunity, by whatever name, as set forth in Section 537.600 RSMo. et. seq., for any monetary amount whatsoever, or of any other defenses, howsoever named, that are, or in the future may become, available to the parties by statute or common law.

20) FORCE MAJEURE.

Neither City or Spectrum shall be liable to the other, or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, pandemics, strikes, freight embargoes, or unusually severe weather; provided, however, that the party so affected shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure.

21) CHANGE OF LAW.

In the event that changes to the Interim Final Rule regarding the use of funds materially conflict with any of the provisions of this Agreement, the Parties will negotiate in good faith to amend

this Agreement as may be appropriate in the circumstances. If, the Parties fail to reach agreement within a reasonable period of time, either Party may terminate the Agreement upon reasonable notice to the other Party (“Termination Date”). Within fifteen (15) days of such Termination Date, the City shall remit to Spectrum any as yet unpaid amounts corresponding to the pro-rata number of properties in the Project Area to which Spectrum has constructed Broadband Infrastructure through the Termination Date.

22) LIMITATION OF LIABILITY.

SUBJECT TO THE FOLLOWING SENTENCE, NEITHER SPECTRUM NOR CITY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT APPLY TO, AND SHALL NOT LIMIT: (a) EITHER PARTY’S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, OR (b) DAMAGES ATTRIBUTABLE TO CRIMINAL MISCONDUCT, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY.

23) NO THIRD-PARTY BENEFICIARIES.

This Agreement is intended for the benefit of the Parties only and nothing contained herein will be deemed to give any third party any intended or incidental claim or right of action that does not otherwise exist without regard to this Agreement, against either Party.

24) NO WAIVER OF RIGHTS.

Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, City of Spectrum may have under federal or state law unless such waiver is expressly stated herein.

25) STATE LAW.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Missouri, without regard to the principles of that state’s conflicts of laws.

26) NOTICES.

Any communication to a party required or permitted under this Agreement, including any notice, direction, designation, consent, instruction, objection or waiver, shall be in writing and deemed to have been given (a) at such time as it is delivered personally, (b) upon receipt if sent by facsimile, (c) one (1) day after sending if sent by a nationally recognized overnight courier service, (d) five (5) days after mailing if mailed, postage prepaid, by U.S. first class mail, or (e) on the date indicated on the return receipt for registered or certified mail, addressed to such party at the address listed below or at such other address as such party may by written notice specify to the other party.

If to the City:

City of Wildwood, City Hall
Attn: City Administrator
16860 Main Street
Wildwood, MO 63040
Fax: (636) 458-8641

If to Spectrum:

Charter Communications
Legal Department - Operations
12405 Powerscourt Drive
St. Louis, MO 63131

With a copy to:
Charter Communications
941 Charter Commons Drive
Town & Country, MO 63017

- 27) SEVERABILITY.
The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.
- 28) COUNTERPARTS.
This Agreement may be executed in one or more counterparts.

IN WITNESS WHEREOF, this Broadband Infrastructure Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For City: City of Wildwood, Missouri

By: _____

Title: _____

Date: _____

For Spectrum: Spectrum Mid-America, LLC By: Charter Communications, Inc., its Manager

By: _____

Title: _____

Date: _____

Exhibit A
Service Area

**Exhibit B
Payment Schedule**

CITY OF WILDWOOD PAYMENT SCHEDULE		
Milestone	Percentage (%) of City Contribution	Amount
Spectrum provides notice to the City that Spectrum is capable of providing Broadband Service to 10% of the properties identified on the Design Plan.	10%	\$675,000
Spectrum provides notice to the City that Spectrum is capable of providing Broadband Service to 20% of the properties identified on the Design Plan.	10%	\$675,000
Spectrum provides notice to the City that Spectrum is capable of providing Broadband capable of providing Broadband Service to 30% of the properties identified on the Design Plan.	10%	\$675,000
Spectrum provides notice to the City that Spectrum is capable of providing Broadband Service to 40% of the properties identified on the Design Plans.	10%	\$675,000
Spectrum provides notice to the City that Spectrum is capable of providing Broadband Service to 50% of the properties identified on the Design Plan.	10%	\$675,000
Spectrum provides notice to the City that Spectrum is capable of providing Broadband Service to 60% of the properties identified on the Design Plan.	10%	\$675,000
Spectrum provides notice to the City that Spectrum is capable of providing Broadband Service to 70% of the properties identified on the Design Plan.	10%	\$675,000
Spectrum provides notice to the City that Spectrum is capable of providing Broadband Service to 80% of the properties identified on the Design Plan.	10%	\$675,000
Spectrum provides notice to the City that Spectrum is capable of providing Broadband Service to 90% of the properties identified on the Design Plan.	10%	\$675,000
City has approved the Certificate of Substantial Completion	10%	\$675,000
Total City Payment	100%	\$6,750,000

Payment shall be made by the City to Spectrum within sixty (60) days of notice for each Milestone.

EXHIBIT C

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF SUBSTANTIAL COMPLETION

SPECTRUM MID-AMERICA, LLC (“Spectrum”), pursuant to that certain Broadband Infrastructure Design, Installation and Operation Agreement dated as of _____, 2021 (the “Agreement”), among the City of Wildwood, Missouri (the “City”), and Spectrum hereby certifies to the City as follows:

1. That as of _____, 20____, the Broadband Project has been substantially completed in accordance with the Agreement.

2. The Broadband Project has been completed in a workmanlike manner and in accordance with all applicable zoning, building and other permits issued by the City.

3. Where required by law, lien waivers for the Broadband Project have been obtained.

4. This Certificate of Substantial Completion is being issued by Spectrum to the City in accordance with the Agreement to evidence Spectrum’s satisfaction of all obligations and covenants with respect to the Broadband Project.

5. The City’s acceptance (below) in writing to this Certificate, shall evidence the satisfaction of Spectrum’s agreements and covenants to complete the Broadband Project.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

All certifications or statements made or set forth in this Certificate of Substantial Completion are made solely for the benefit of the City and shall not be relied upon or used for any purpose by any third party in any proceeding, claim or contest of any kind, nature or character.

All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, 20__.

SPECTRUM MID-AMERICA, LLC

By: Charter Communications, Inc., its
Manager

By:

Name:

Title:

ACCEPTED:

CITY OF WILDWOOD, MISSOURI

By:

Name:

Title:

(Insert Notary Form(s))