

RESOLUTION NO. _____

A RESOLUTION OF THE CHAIRPERSON AND MEMBERS OF THE MIAMI BEACH REDEVELOPMENT AGENCY (RDA), APPROVING, IN SUBSTANTIAL FORM, AMENDMENT NO. 1 TO THE ROOFTOP LEASE AGREEMENT, DATED SEPTEMBER 9, 2015, BETWEEN THE RDA (LANDLORD) AND CROWN CASTLE FIBER, LLC (CROWN CASTLE), AS SUCCESSOR BY MERGER TO CROWN CASTLE NG EAST LLC, FOR THE USE OF APPROXIMATELY 3,630 SQUARE FEET ON THE ROOFTOP OF THE PARKING GARAGE (LEASED PREMISES) LOCATED AT 1550 COLLINS AVENUE (PROPERTY) FOR THE OPERATION OF TELECOMMUNICATIONS FACILITIES; SAID AMENDMENT, IN MATERIAL PART, (1) APPROVING THE INSTALLATION OF ADDITIONAL FIBER ON THE PROPERTY, TO BE CONNECTED TO CROWN'S FACILITIES ON THE LEASED PREMISES; (2) IDENTIFYING THE LOCATION OF THE NEW IMPROVEMENTS ON THE PROPERTY; (3) INCREASING THE RENT PAYMENT UNDER THE AGREEMENT BY \$425 PER MONTH, TO A TOTAL OF \$4,927.04 PER MONTH; (4) ACKNOWLEDGING THE TRANSFER OF TENANT'S INTEREST IN THE AGREEMENT TO CROWN CASTLE; AND (5) UPDATING OTHER MISCELLANEOUS PROVISIONS OF THE AGREEMENT; AND FURTHER AUTHORIZING THE EXECUTIVE DIRECTOR AND SECRETARY TO EXECUTE THE FINAL AMENDMENT.

WHEREAS, on September 9, 2015, the Miami Beach Redevelopment Agency (RDA) and Crown Castle NG East LLC (Original Tenant), executed a Rooftop Lease Agreement ("Agreement"), granting Original Tenant the right to utilize 3,630 square feet of rooftop space ("Leased Premises") of a City parking garage with ground floor retail spaces, located at 1550 Collins Avenue ("Property"), for the construction, operation and maintenance of certain telecommunications facilities; and

WHEREAS, on or about December 31, 2018, Original Tenant merged with and into Crown Castle Fiber LLC, a New York limited liability company, with Crown Castle Fiber LLC being the surviving entity ("Tenant"); and

WHEREAS, pursuant to the terms of the Agreement, Crown Castle currently pays the RDA \$54,024.48 per year (\$4,502.04 per month) for the use of the Leased Premises to install and operate its telecommunication facilities ("Facilities"), which includes existing fiber installations, located in a portion of the underground areas of the Property, connecting to the Facilities located on the Leased Premises; and

WHEREAS, in order to upgrade its Facilities, which will accommodate 5G technology, Crown Castle has requested approval to install additional conduits for fiber optics and electrical cabling, to be installed underground, as well as the use of additional spaces (i.e. vertical and horizontal risers and conduits) within the Property, as depicted in Exhibit "B-1" to the proposed Amendment No. 1; and

WHEREAS, in consideration for this additional use, during the term of the Agreement, Crown Castle will pay the RDA additional rent, in the amount of \$425 per month, increasing the total current monthly rent to \$4,927.04 per month, plus applicable sales tax; and

WHEREAS, the additional access and use provided to Crown Castle will satisfy the needs of Crown Castle to upgrade their wireless communications facilities within the City of Miami Beach and provide current technology to its customers; and

WHEREAS, the Executive director recommends that the Chairperson and Members of the Miami Beach Redevelopment Agency approve, in substantial form, Amendment No. 1 to the Rooftop Lease Agreement, incorporated herein by reference and attached to the RDA Memorandum as Attachment "A".

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Chairperson and Members of the Miami Beach Redevelopment Agency (RDA) hereby approve, in substantial form, Amendment No. 1 to the Rooftop Lease Agreement, dated September 9, 2015, between the RDA (Landlord) and Crown Castle Fiber, LLC (Crown Castle), as successor by merger to Crown Castle NG East LLC, for the use of approximately 3,630 square feet on the rooftop of the parking garage (Leased Premises) located at 1550 Collins Avenue (Property) for the operation of telecommunications Facilities; said amendment, in material part, (1) approving the installation of additional fiber on the Property, to be connected to Crown's Facilities on the Leased Premises; (2) identifying the location of the new improvements on the Property; (3) increasing the rent payment under the Agreement by \$425 per month, to a total of \$4,927.04 per month; (4) acknowledging the transfer of tenant's interest in the Agreement to Crown Castle; and (5) updating other miscellaneous provisions of the Agreement; and further authorize the Executive Director and Secretary to execute the final amendment.

PASSED AND ADOPTED this 22nd day of April, 2020.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

4-14-20

Date

GNT

**AMENDMENT NO. 1 TO ROOFTOP LEASE AGREEMENT
BETWEEN
MIAMI BEACH REDEVELOPMENT AGENCY (RDA)
AND
CROWN CASTLE FIBER LLC**

This Amendment No.1 ("Amendment") to the Rooftop Lease Agreement, dated September 9, 2015 ("Agreement"), by and between the Miami Beach Redevelopment Agency (RDA), a Florida redevelopment agency created under chapter 163, Florida Statutes, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (City), and Crown Castle Fiber LLC, a New York limited liability company, as successor by merger to Crown Castle NG East LLC, and authorized to do business in the State of Florida, having its principal place of business at 2000 Corporate Drive, Canonsburg PA 15317 ("Tenant"), is entered into this ____ day of _____, 2020 (Effective Date):

RECITALS

WHEREAS, on September 9, 2015, the City and Crown Castle NG East LLC (Original Tenant), executed a Rooftop Lease Agreement granting to Original Tenant the right to construct, operate and maintain certain telecommunications facilities, as described more fully in the Rooftop Lease Agreement, on property owned by the City located at 1550 Collins Avenue, Miami Beach Florida ("Property"); and

WHEREAS, on or about December 31, 2018, Original Tenant merged with and into Crown Castle Fiber LLC, a New York limited liability company, with Crown Castle Fiber LLC being the surviving entity; and

WHEREAS, on April 22, 2020, the Mayor and City Commission adopted Resolution No. _____ approving, in substantial form, Amendment No. 1 to the Agreement, said amendment, in material part, (1) approving the installation of additional fiber on the Property, to be connected to Crown's Facilities on the Leased Premises; (2) identifying the location of the new improvements on the Property; (3) increasing the rent payment under the Agreement by \$425 per month, to a total of \$4,927.04 per month; (4) acknowledging the transfer of tenant's interest in the Agreement to Crown Castle; and (5) updating other miscellaneous provisions of the Agreement.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the RDA and Tenant hereby agree to amend the Agreement as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

ATTACHMENT "A"

2. **MODIFICATIONS.**

The Agreement is hereby amended as follows:

- (a) As a result of a merger process, by operation of law, the interest of Crown Castle NG East LLC in this Agreement has merged into Crown Castle Fiber LLC. For purposes of interpreting the Agreement, all references to Crown Castle NG East LLC or Tenant shall hereinafter be deemed to refer to Crown Castle Fiber LLC.
- (b) The Rent under the Agreement shall be increased by \$425.00 per month, plus applicable sales tax.
- (c) Section 2. **Definitions – the definition of “Leased Premises”** is hereby deleted in its entirety and replaced with the following:

“Leased Premises” means that portion of the rooftop of the Building located on the Property with the address of 1550 Collins Ave, Miami Beach, FL, consisting of approximately 3,630 square feet of space on the rooftop of the Building, as defined in Exhibit B. The Leased Premises shall include the non-exclusive path of access to, from and through the Building connecting from the public right of way(s) to the rooftop via new or existing conduits to be installed by Tenant, and including use of underground spaces on the Property and the Building’s existing telephone distribution systems, boxes and facilities, as well as vertical and horizontal risers and conduits in and outside the Building, for the purposes of installing electrical power for Equipment and connecting the Equipment to the fiber optic cables at the Building’s demarcation point, as more particularly described in Exhibit “B-1”, attached hereto and incorporated herein by reference (collectively, the “Licensed Area”).

- (d) The last sentence in Section 6 of the Agreement is hereby deleted in its entirety, as follows:
~~Tenant shall pay Lessor interest on unpaid annual payments at the rate of one percent (1%) per month until the payment is made.~~
- (e) Subsection (a) of Section 13, titled “Installation and Maintenance” is hereby deleted in its entirety and replaced with the following, and the remainder of Section 13 is hereby amended as follows:

13. **Installation and Maintenance.**

- (a) Exhibit B includes detailed engineering plans and specifications of the Leased Premises (“Tenant’s Plans”) for Lessor’s approval, which approval shall not be unreasonably withheld, conditioned or delayed. Exhibit “B-1” includes detailed engineering plans and specifications of the Licensed Area, which approval shall not be unreasonably withheld, conditioned or delayed. While these initial improvements have been approved by Lessor, in its proprietary capacity, all subsequent improvements, upgrades or maintenance (“work”) performed on the Leased Premises or Licensed Area, having a value of \$ _____ or more, shall be subject to the consent of Lessor, which consent shall not be unreasonably withheld or delayed, provided said work shall not unreasonably impair the Lessor’s use of its Property and is contained within the Leased Premises or Licensed Area. In connection with these approvals, Lessor may require Tenant to post a

construction bond and/or provide other related construction insurance coverages which Lessor deems necessary, in Lessor's sole and reasonable discretion. Tenant shall apply for all required permits and zoning approvals necessary for the Permitted Use, as may be required by the City of Miami Beach, and comply with the condition of said zoning approvals or permits. Said zoning approvals and permits are required and may not be waived. In the event Lessor does not provide to Tenant a written request for modifications to Tenant's Plans within thirty (30) business days of its receipt of Tenant's Plans, then Tenant's Plans shall be deemed approved by Lessor.

- (b) Tenant shall manage all engineering services, including intermodulation studies and all site engineering and construction necessary to install, operate and maintain Equipment on the Leased Premises and Licensed Area. The parties acknowledge that in order to connect areas of the Leased Premises that are needed to make the Equipment operational, Tenant shall have the right to install conduit, sleeves and cables connecting such locations and Equipment, all as more fully described in Exhibit B-1.
- (c) Tenant or its agents shall install, construct and maintain their Equipment on the Leased Premises and Licensed Area at no cost to the Lessor.
- (d) Tenant shall, at its expense, keep and maintain the Equipment located on the Leased Premises and Licensed Area in good, safe, and clean order during the Lease Term. Tenant's alterations to the Leased Premises are to be performed in a workmanlike manner. In compliance with Section 712.10, Florida Statutes, Tenant covenants that no mechanics', laborers' or materialmen's liens are to be recorded against the Property. Tenant shall promptly pay for all materials supplied and work done in respect of the Leased Premises and Licensed Area by, through, or under Tenant so as to ensure that no lien is recorded against any portion of the Leased Premises, Licensed Area, Property, or against Lessor's or Tenant's interest therein. If a lien is so recorded, Tenant shall discharge it promptly by payment or bonding. If any such lien against the Leased Premises, Licensed Area, Property or Lessor's interest therein is recorded and not discharged by Tenant as above required within fifteen (15) calendar days following written notice to Tenant, Lessor shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately from Tenant to Lessor. Lessor and Tenant expressly agree and acknowledge that no interest of Lessor in the Leased Premises or Property shall be subject to any lien for improvements made by Tenant in or for the Leased Premises, or Licensed Area, and Lessor shall not be liable for any lien for any improvements made by Tenant, such liability being expressly prohibited by the terms of this Agreement. In accordance with applicable laws of the State of Florida, Lessor has filed in the public records of Dade County, Florida, a public notice containing a true and correct copy of this paragraph, and Tenant hereby agrees to inform all contractors and material suppliers performing work in or for or supplying materials to the Leased Premises or Licensed Area of the existence of said notice. A breach of this provision may expose Tenant to liability for damages for, among other claims, slander of title. In the event that Lessor prevails against Tenant on any claim for equitable relief or damages, Tenant shall be liable to Lessor for its reasonable attorney's fees and costs. Tenant shall require all subtenants, agents, assigns, contractors, and subcontractors to be placed on notice of this covenant and to affirm that they are prohibited from recording liens against Lessor's Property.

- (e) All work, installations and operations in connection with this Agreement shall comply with all federal, state, and local laws, codes and regulations. Lessor assumes no responsibility for the licensing, operation or maintenance of the Equipment.
- (f) Lessor shall be responsible for the structural maintenance of the Building ("**Building Work**"). As the Tenant's facilities are installed upon the roof of the Building, there may come a time that repairs are needed for the roof, or roof replacement may be required. Tenant shall be responsible for all costs associated with temporary or permanent relocation of the Equipment during the period the roof is being repaired or replaced. The Building and Property are adjacent to the ocean, and in an area exposed to the elements and potential hurricane and tropical storm events. As such, the parties agree and recognize that roof work to the Building may be required, and provided this Agreement is not terminated pursuant to provision 31(C), Tenant shall be solely responsible for the temporary relocation of its Equipment during the repair or replacement. The Lessor shall not be responsible for the Tenant's loss of signal, transmission, or services due to the replacement or repair of the roof. Tenant acknowledges that a material inducement in entering into this Agreement is Tenant's acceptance of this condition. Tenant agrees to reasonably cooperate with Lessor to facilitate any Building Work, provided however, to the extent practicable, the Building Work should minimize the effects to Tenant's Equipment, and include suggestions as to the most cost effective measures to minimize disruption to Tenant's Equipment. Lessor agrees to provide at least ninety (90) calendar days' notice to Tenant of its intention to perform Building Work; except in the case of emergency Building Work in which case Lessor shall give as much notice as possible under the circumstances.
- (g) Lessor shall be solely responsible for ensuring that the Building is operated in compliance with all applicable federal, state, and local laws, codes and regulations (the "**Building Regulations**"). Tenant may give Lessor written notice of its failure to comply with said Building Regulations. In the event Lessor fails to correct said violation(s) of the Building Regulations within thirty (30) calendar days upon receipt of said notice, Tenant shall be entitled, but not obligated, to cause such work to be done as is necessary to make the Leased Premises (and the Equipment located thereon) comply with such Building Regulations, and deduct the cost of such work from future Rent otherwise due and payable by Tenant as set forth under this Agreement.
- (h) Tenant, and its employees, agents or invitees, shall take reasonable measures not to damage any portion of the Building. Tenant shall be responsible for any damage to the Building or Property caused during installation or repair of the Equipment onto the Leased Premises or Licensed Area. Tenant shall have no duty to reimburse Lessor for any expense associated with the normal wear and tear on the roof, or any other expense not reasonably related to Tenant's use and occupancy of the Leased Premises or Licensed Area.
- (i) Tenant shall use only licensed contractors and subcontractors approved in writing by Lessor to complete the construction and installation of Tenant's work at the Leased Premises or Licensed Area, which approval shall not be unreasonably withheld or delayed ~~at the Leased Premises~~.

(f) Section 14 of the Agreement is hereby amended as follows:

14. Personal Property/Removal/Restoration.

- (a) Personal Property/Removal of Equipment. All improvements, Equipment or other property attached to or otherwise brought onto the Leased Premises or Licensed Area shall, at all times, remain the personal property of Tenant and, at Tenant's option, may be removed by Tenant at any time during the Lease Term, as more particularly described herein and in Section 13, provided, however, the Equipment shall be removed within thirty (30) calendar days after the termination or expiration of this Agreement pursuant to the terms of Section 25. Lessor waives any and all rights it may have, including any rights it may have in its capacity as Lessor under this Agreement to assert any liens, encumbrances or adverse claims, statutory or otherwise, related to or in connection with the Equipment or a portion thereof. Tenant, in its sole discretion may remove the Equipment or any portion of the Equipment at any time during the Lease Term of the Agreement, provided reasonable notice is provided to the Lessor prior to commencing the removal process, and provided a payment and performance bond, in the amount acceptable to Lessor, is provided to the Lessor, to secure the repairs to the Building or Property, if applicable. ~~Tenant will not be required to remove from the Leased Premises, or the Property any foundation or underground utilities.~~
- (b) Restoration. Tenant will be responsible for the replacement of any trees, shrubs or other vegetation damaged during the removal process. Additionally, Tenant will restore the surface area and surrounding area to its original or better condition, ensuring that any hardscape and landscape that was disturbed during the removal process look uniform and not patched up. The provisions of this section shall survive termination or expiration of this Agreement.
- (c) Section 16 of the Agreement is hereby amended to add the following new paragraph at the end of the section:

However, nothing contained in this section or the Agreement shall constitute a waiver by Lessor of its sovereign immunity or the provisions of Section 768.28, Florida Statutes. The provisions of this section and of this indemnification shall survive termination or expiration of this Agreement.

- (d) Section 18 of the Agreement is hereby amended as follows:

18. Taxes and Assessments. Lessor shall pay all real estate taxes on the Property. Tenant agrees to reimburse Lessor for any documented increase in personal or ad valorem property taxes levied against the Leased Premises or Licensed Area that are directly attributable to Tenant's use of the Leased Premises or Licensed Area. Lessor agrees to provide Tenant any documentation evidencing the increase and how such increase is attributable to Tenant's use of the Leased Premises or Licensed Area. Tenant reserves the right to challenge any such assessment, and Lessor agrees to cooperate with Tenant in connection with any such challenge. Tenant shall pay all personal, intangible, sales or use taxes associated with the installed Equipment on the Leased Premises.

- (e) Section 20 of the Agreement is hereby amended as follows:

20. Hazardous Material

- (a) Tenant's Obligation and Indemnity. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Material on or from the Leased Premises or Licensed Area in any manner prohibited by law.
- (b) If Tenant or its employees, agents, or contractors shall ever violate the provisions of subsection (a), above, then Tenant shall clean up, remove, and dispose of the Hazardous Material causing the violation, in compliance with all applicable governmental standards, laws, rules, and regulations and repair any damage to the Leased Premises, Licensed Area or Property within such period of time as may be reasonable under the circumstances after written notice by Lessor, provided that such work shall commence not later than thirty (30) calendar days from such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Lessor of its method, time, and procedure for any clean up or removal of Hazardous Materials under this provision; and Lessor shall have the right to require reasonable changes in such method, time, or procedure or to require the same to be done after normal business hours if reasonably required for the protection of other tenants or occupants of the Building or Property.
- (c) Unless such claims or damages are the result of Lessor's negligence, Tenant agrees to defend, indemnify, and hold harmless Lessor, against any and all claims, costs, expenses, damages, judgments, penalties, costs, liability, losses, and the like (including any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees), which Lessor may hereafter be liable for, suffer, incur, or pay arising under any applicable environmental laws, rules, and regulations and resulting from or arising out of any breach of the covenants contained in this Section ~~24~~20, or out of any act, activity, or violation of any applicable environmental laws, rules, and regulations on the part of Tenant, its agents, employees, or assigns. Tenant's liability under this Section ~~20~~ 20 shall survive the expiration or any termination of this Agreement.
- (d) Lessor's Obligation. Lessor shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Material on or from the Property or the Leased Premises in any manner prohibited by law.
- (f) Section 21 of the Agreement is hereby amended as follows:

21. Interference with Tenant's Business. Tenant shall have the non-exclusive right to construct, install and operate Equipment that emit radio frequencies on the Property. Lessor agrees that it will not permit the construction, installation or operation on the Property of any equipment or device that directly interferes with the Permitted Use; provided, however, that Tenant will operate its Equipment in a manner that will not cause harmful interference to the public safety communication system used by the City of Miami Beach, Florida or any other local governmental agencies for public safety purposes ("Public Safety Telecommunications Equipment") at or near the Property, even if the Public Safety Communications Equipment were installed after the effective date of the Agreement. In the event that Tenant's Equipment causes harmful interference with any Public Safety Telecommunications Equipment, and such interference is not cured within forty-eight (48) hours after Tenant's receipt of written notice from

Lessor, Tenant shall, if directed by Lessor, cease operation of its Equipment until Tenant is able to cure and eliminate the interference to the satisfaction of Lessor.

(g) Section 22 of the Agreement is hereby amended as follows:

22. Default/Payment and Performance Bond.

- (a) Notice of Default; Cure Period. In the event that there is a default by Lessor or Tenant (the “**Defaulting Party**”) with respect to any of the material provisions of this Agreement or Lessor’s or Tenant’s obligations under this Agreement, the other party (the “**Non-Defaulting Party**”) shall give the Defaulting Party written notice of such default. After receipt of such written notice, the Defaulting Party shall have thirty (30) calendar days in which to cure any monetary default and sixty (60) calendar days in which to cure any non-monetary default. The Defaulting Party shall have such extended periods, which shall not exceed ninety (90) days (“Extended Cure Period”), as may be required beyond the sixty (60) calendar day cure period to cure any non-monetary default if the nature of the cure is such that it reasonably requires more than sixty (60) calendar days to cure, and Defaulting Party commences the cure within the sixty (60) calendar day period and thereafter continuously and diligently pursues the cure to completion within the Extended Cure Period. The Non-Defaulting Party may not maintain any action or effect any remedies for default against the Defaulting Party unless and until the Defaulting Party has failed to cure the same within the time periods provided in this Section.
- (b) Consequences of Tenant’s Default. In the event that Tenant is in default beyond the applicable periods set forth above, Lessor may, at its option, upon written notice: (i) terminate this Agreement ~~provided that Lessor has been materially and substantially harmed by such default;~~ (ii) take any actions that are consistent with Lessor’s rights, including pursuing the collection of the Payment and Performance Bond described in subsection (d) below; or (iii) sue for injunctive relief, sue for specific performance, or sue for damages. In no event shall Tenant be liable to Lessor for consequential, indirect, speculative or punitive damages in connection with or arising out of any default.
- (c) Consequences of Lessor’s Default. In the event that Lessor is in default beyond the applicable periods set forth above, Tenant may, at its option, upon written notice: (i) terminate this Agreement, vacate the Leased Premises and be relieved from all further obligations contained herein; ~~(ii) perform the obligation(s) of Lessor specified in such notice, in which case any expenditures made by Tenant in so doing shall be deemed paid for the account of Lessor and Lessor agrees to reimburse Tenant for said expenditures upon demand;~~ (iii) take any actions that are consistent with Tenant’s rights; or ~~(iiiiv)~~ sue for injunctive relief, sue for specific performance, sue for damages, or set-off from Rent any amount expended by Tenant as a result of such default. In no event shall Lessor be liable to Tenant for consequential, indirect, speculative or punitive damages in connection with or arising out of any default.
- (d) Payment and Performance Bond. Tenant shall, within thirty (30) days from the Effective Date of Amendment No. 1 to the Agreement, furnish to the Executive Director or Contract Manager a Payment and Performance Bond in the penal sum stated below for the payment of which Tenant shall bind itself for the faithful performance of the terms and conditions of this Agreement. A Payment and Performance Bond, in the amount of Twenty (\$20,000.00) Dollars, shall be provided by Tenant in faithful observance of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the Executive Director or Contract Manager, in his sole and reasonable

discretion. The form of the Payment and Performance Bond or alternate security shall be approved by the Executive Director or Contract Manager. In the event that a Certificate of Deposit is approved, it shall be a Twenty Thousand (\$20,000.00) Dollar one-year Certificate of Deposit in favor of Lessor, which shall be automatically renewed, the original of which shall be held by the Contract Manager. Tenant shall be so required to maintain said Payment and Performance Bond or alternate security in full force and effect throughout the Term of this Agreement. Tenant shall have an affirmative duty to notify the Executive Director or Contract Manager, in writing, in the event said Payment and Performance Bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Tenant, except in an event of default, in which case the Lessor shall be entitled to all interest that accrues after the date of default.

All bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey of B V or better.

(h) Subsection (f) of Section 23 of the Agreement is hereby amended as follows:

(f) Lessor shall have no liability to the Tenant for future profits or losses in the event of termination under this Section 2423.

(i) Section 25 of the Agreement is hereby amended as follows:

25. Surrender of the Property. Upon the expiration or early termination of this Agreement, Tenant shall, within thirty (30) calendar days, remove its Equipment and restore the Leased Premises and Licensed Area to its original condition, reasonable wear and tear excepted and pursuant to the restoration provisions set forth in subsection 14(b). Lessor and Tenant agree and acknowledge that all of the Equipment is and shall remain the personal property of the Tenant. Subject to Tenant's performance of its obligations hereunder, Tenant shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. Tenant will not be required to remove from the Property any foundation or underground utilities or Equipment, unless Lessor, at its sole discretion, requires Tenant to remove such foundation or underground utilities or Equipment.

(j) Subsection 32 of the Agreement is hereby amended as follows:

32. Sovereign Immunity, Maximum Liability, Waiver of Certain Damages and Attorney's Fees.

(a) Lessor does not waive sovereign immunity under 768.28, Florida Statutes, ~~for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs. Section 768.28, Florida Statutes provides that the Lessor shall not be liable to pay a claim or a judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment or portions thereof, which when totaled with all other claims or judgment arising out of the same incident or occurrence, exceeds the sum of \$300,000.~~

(b) In any proceeding against Lessor its maximum liability to Tenant for breach of contract shall not exceed its annual payment to Tenant for the year in which the liability arose or \$10,000.00, whichever is less. Lessor shall not be liable to Tenant for damages, penalties or expenses in excess of its annual payment to the Tenant for the year in which the liability arose or \$10,000.00, whichever is less.

(c) Nothing contained herein shall be construed or interpreted as denying to either party any remedy or defense available to such party under the laws of the State of Florida or federal law. Tenant and Lessor each waives any claims that each may have against the other with respect to consequential, incidental, punitive or special damages, however caused, based on any theory of liability.

(k) Section 38 of the Agreement is amended as follows:

38. Record Retention. Tenant shall comply with the State of Florida public record retention requirements and shall maintain a copy of all documents reflecting services rendered to the Lessor for three (3) years after the termination of this Agreement, and final payment has been made and all other pending matters are closed. Further, Tenant shall provide access to the Lessor, or any of Lessor's duly authorized representatives, to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions. However, Tenant shall not be obligated to provide to Lessor any third party agreements which Tenant has entered into with other parties, except to the extent necessary to verify the number of tenants occupying the Leased Premises, which in such case, Tenant shall only be obligated to furnish the cover and signature pages, as well as that portion of the agreement pertaining to dates of tenancy. Notwithstanding the foregoing, Tenant shall provide a complete copy of such third party agreements to Lessor to the extent reasonably required by Lessor's auditor, accountant, attorney, or to any federal, state or local governmental unit or agency thereof with jurisdiction if required by regulation, subpoena or government order to do so. Additionally, any document or information, regardless of physical form, created pursuant to this Agreement, in connection with the transaction of the Lessor's official business, shall not be considered trade secret information including, without limitation, the terms of this Agreement, Rent or any other payments or statements in connection with this Agreement.

(l) A new Section 43 is hereby added to the Agreement as follows:

43. Inspector General Audit Rights

- (a) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City. Tenant agrees to bound by this City Code Provision
- (b) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the

power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Tenant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

- (c) Upon ten (10) days written notice to the Tenant, the Tenant shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Tenant its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- (d) The Inspector General shall have the right to inspect and copy all documents and records in the Tenant's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the Agreement, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (e) The Tenant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
 - i. If this Agreement is completely or partially terminated, the Tenant shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

- ii. The Tenant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (f) The provisions in this section shall apply to the Tenant, its officers, agents, employees, subcontractors and suppliers. The Tenant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Tenant in connection with the performance of this Agreement.
- (g) Nothing in this section shall impair any independent right to the Lessor to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the Lessor by the Tenant or third parties.
- (h) A new Section 44 is hereby added to the Agreement as follows:

44. No Discrimination.

In connection with the performance of the Services, the Tenant shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Tenant shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

- (i) A new Section 45 is hereby added to the Agreement as follows:

45. Tenant's Compliance With Florida Public Records Law

- (a) Tenant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (b) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the Lessor.
- (c) Pursuant to Section 119.0701 of the Florida Statutes, if the Tenant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Tenant shall:
 - (1) Keep and maintain public records required by the Lessor to perform the service;
 - (2) Upon request from the Lessor's custodian of public records, provide the Lessor with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed

the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Tenant does not transfer the records to the Lessor;
- (4) Upon completion of the Agreement, transfer, at no cost to the Lessor, all public records in possession of the Tenant or keep and maintain public records required by the Lessor to perform the service. If the Tenant transfers all public records to the Lessor upon completion of the Agreement, the Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Tenant keeps and maintains public records upon completion of the Agreement, the Tenant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Lessor, upon request from the Lessor's custodian of public records, in a format that is compatible with the information technology systems of the Lessor.

(d) REQUEST FOR RECORDS; NONCOMPLIANCE.

- (1) A request to inspect or copy public records relating to the Lessor's contract for services must be made directly to the Lessor. If the Lessor does not possess the requested records, the Lessor shall immediately notify the Tenant of the request, and the Tenant must provide the records to the Lessor or allow the records to be inspected or copied within a reasonable time.
- (2) Tenant's failure to comply with the Lessor's request for records shall constitute a breach of this Agreement, and the Lessor, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- (3) A Tenant who fails to provide the public records to the Lessor within a reasonable time may be subject to penalties under s. [119.10](#).

(e) CIVIL ACTION.

- (1) If a civil action is filed against a Tenant to compel production of public records relating to the Lessor's contract for services, the court shall assess and award against the Tenant the reasonable costs of enforcement, including reasonable attorneys' fees, if:
 - a. The court determines that the Tenant unlawfully refused to comply with the public records request within a reasonable time; and
 - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Tenant has not complied with the request, to the Lessor and to the Tenant.
- (2) A notice complies with subparagraph (1)(b) if it is sent to the Lessor's custodian of public records and to the Tenant at the Tenant's address listed on its contract with the Lessor or to the Tenant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic

format.

- (3) A Tenant who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(f) **IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

MIAMI BEACH REDEVELOPMENT AGENCY
ATTENTION: RAFAEL E. GRANADO, SECRETARY
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

**MIAMI BEACH REDEVELOPMENT
AGENCY**

ATTEST:

By: _____
Rafael E. Granado, Secretary

**Jimmy L. Morales, Executive
Director**

FOR TENANT:

**CROWN CASTLE FIBER LLC, a
New York limited liability
company,**

ATTEST:

By: _____
Witness

Print Name

Date

Title

Print Name

Exhibit “B-1”

DRAFT

NORTH ENTRANCE

UNDERGROUND FOOTAGE = 16'

OPEN CUT TRENCH = 16'

E/W PULL ROPES

ISP FOOTAGE = 252'

NEW 2-1728CT FOC = 235'

NEW EMT CONDUIT

ATTACHED TO WALL

NEW 2-1728CT FOC = 17'

YELLOW INNERDUCT

TOTAL FOOTAGE = 268'

EAST ENTRANCE

UNDERGROUND FOOTAGE = 292'

OPEN CUT TRENCH = 292'

E/W PULL ROPES

ISP FOOTAGE = 229'

NEW 2-1728CT FOC = 20'

SCH RIGID CONDUIT

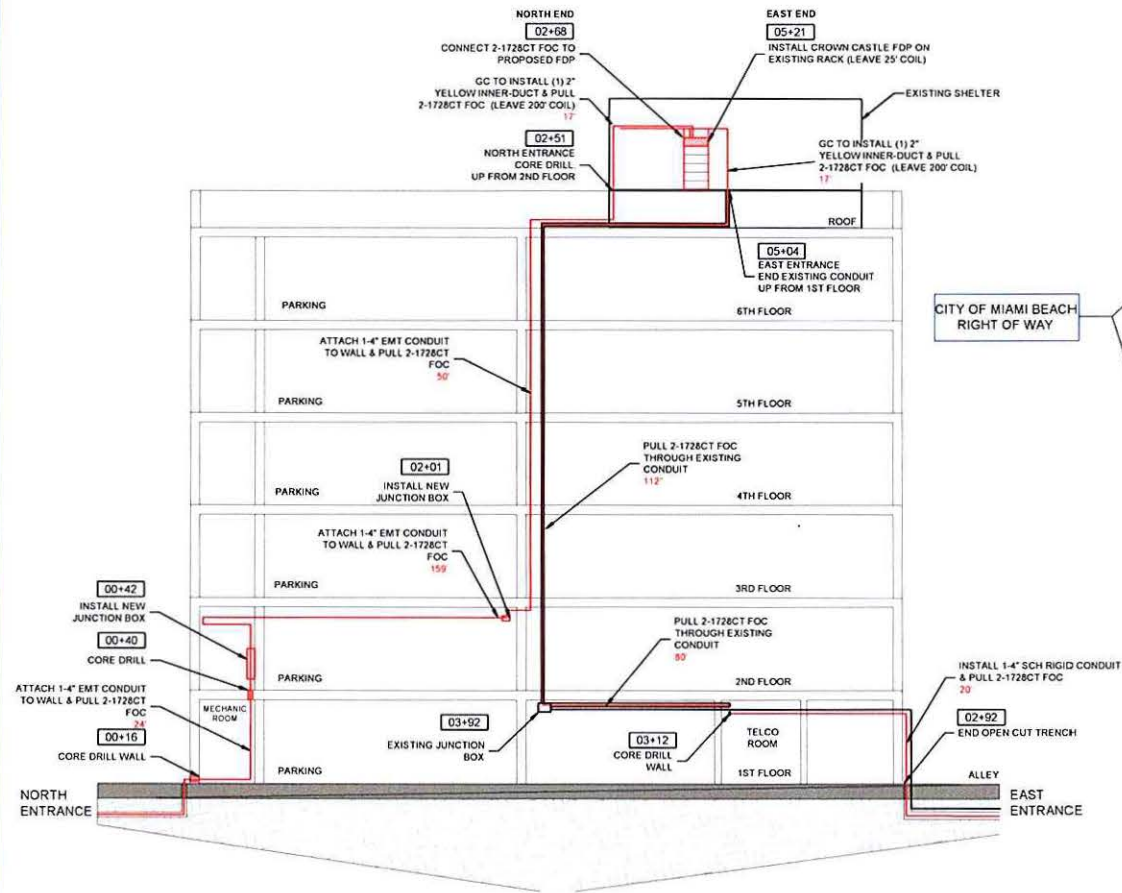
NEW 2-1728CT FOC = 192'

EXISTING CONDUIT

NEW 2-1728CT FOC = 17'

YELLOW INNERDUCT

TOTAL FOOTAGE = 521'



OVERALL MAP

FILE NAME: J0517131550 COLLINS AVE MIAMI BEACH FL 33174

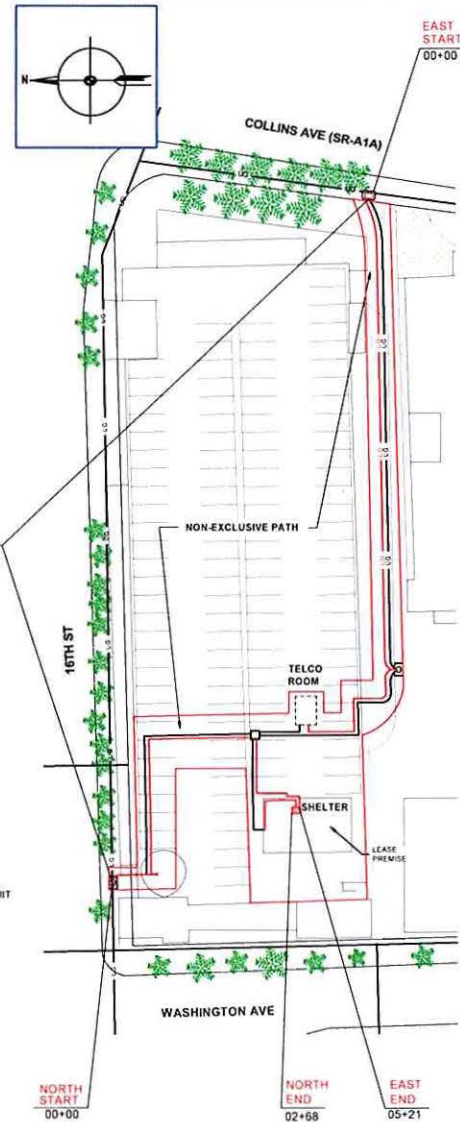


EXHIBIT B1

PREPARED BY



17555 SW 137ND ST MIAMI FL 33156



CROWN CASTLE FIBER
9250 W. FLAGLER ST
MIAMI, FL 33174

NO	DATE	DESCRIPTION
1	3/11/2020	ORIGINAL SUBMITTAL

DRAWN BY: GENXC
CHECKED BY: JUAN M. GARCIA
DRAWING DATE: 3/11/2020

SITE NUMBER	
SITE NUMBER: TBD	
JDE NUMBER: JDE519713	
SITE NAME	
1550 COLLINS AVE	
BUSINESS UNIT NUMBER	
SITE ADDRESS	
1550 COLLINS AVE	
MIAMI BEACH	
MIAMI DADE	
FL 33136 - USA	
SHEET TITLE	
OVERALL MAP	
SHEET NUMBER	

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