

Clerks Note: The originally posted resolution did not contain a copy of the franchise agreement with QLOOP Communications Services, LLC.

Resolution No.:	<u>20-205</u>
Introduced:	<u>June 13, 2023</u>
Adopted:	<u>June 20, 2023</u>

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

Lead Sponsor: Council President at the request of the County Executive

SUBJECT: Resolution to Approve a Franchise Agreement with QLOOP Communications Services, LLC for Use of the Public Right-of-Way for Non-cable Wireline Facilities

Background

1. Sections 49-20 and 49-21 of the County Code provide that the County Council may grant a franchise for use of the public right-of-way after:
 - a) the franchise applicant publishes notice of the application once a week for three consecutive weeks in a newspaper of general circulation in the County;
 - b) the Executive holds a hearing on the application if any taxpayer or affected property owner objects to the franchise within 10 days after the last notice of the application is published; and
 - c) the Executive makes a written recommendation to the Council about the franchise, including findings about the value of the franchise, any response to objections that have been raised, and any other relevant issues.
2. On July 18, July 25, and August 1, 2022, QLOOP Communications Services, LLC published notice of its application for a franchise to use the public right-of-way. The Executive received no objections to the franchise by the statutory deadline and was therefore not required to conduct a hearing on the franchise application.
3. On April 19, 2023, the Council received the Executive's recommendation to grant a franchise to QLOOP Communications Services, LLC under a proposed franchise agreement.

Action

The County Council for Montgomery County Maryland approves the following resolution:

The County Council grants the franchise under the terms of the attached franchise agreement, the terms of which are incorporated herein by reference.

This is a correct copy of Council action.

A handwritten signature in black ink, appearing to read 'Sara', written over a horizontal line.

Sara R. Tenenbaum
Clerk of the Council

FRANCHISE AGREEMENT (FOR NON-CABLE WIRELINE FACILITIES)

The County Council for Montgomery County, Maryland, having approved by Resolution No. 20-206 dated the 20 day of June 2023, a Franchise to construct and maintain telecommunications facilities in the Public Right-of-Way, this Franchise Agreement is made as of this 20 day of June, 2023, by and between Montgomery County, Maryland, a body corporate and politic (hereafter the “County”), and QLoop Communications Services, LLC, a Maryland limited liability company (hereafter “QLOOP”).

RECITALS

WHEREAS, under Maryland and County laws, the County has the right and power to regulate the time, location, and manner of attachment, installation, operation, and maintenance of telecommunications facilities in the Public Right-of-Way within the limits of the County; and

WHEREAS, QLOOP wishes to construct, install, operate, and maintain Facilities within the Public Right-of-Way; and

WHEREAS, QLOOP has made application to the County for a franchise to construct, install, operate, and maintain the Facilities in, under, over, and upon the Public Right-of-Way of the County, pursuant to Chapter 49 of the Montgomery County Code 2004, as amended; and

WHEREAS, QLOOP has caused said franchise application to be published once a week for three consecutive weeks in one or more newspapers having general circulation in the County, setting forth the location, character and extent of the franchise sought, and stating the terms and compensation to be received therefor; and

WHEREAS, it appears to Montgomery County that the granting of the requested franchise is proper pursuant to Chapter 49 of the Montgomery County Code 2004, as amended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, this Franchise Agreement is entered into by and between the parties subject to the following terms and conditions:

1. DEFINITIONS.

For the purposes of this Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein. The word “shall” is always mandatory.

1.1 “Affiliate” of a Person means a corporation, partnership, limited partnership, limited liability company, or similar entity that controls, is controlled by, or is under common control with the Person.

1.2 “Agency” means any governmental agency or quasi-governmental agency other than the County, including the FCC and the PSC.

- 1.3** “Agreement” means this Franchise Agreement.
- 1.4** “CAO” means the Chief Administrative Officer of the County or authorized designee.
- 1.5** “County” means Montgomery County, Maryland.
- 1.6** “Effective Date” means the date of the Council resolution approving this Agreement.
- 1.7** “Facilities” means fiber optic cables, conduits, converters, splice boxes, cabinets, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located or to be located by QLOOP in the Public Right-of-Way and used or useful for providing Services.
- 1.8** “FCC” means the Federal Communications Commission.
- 1.9** “Gross Revenues” means all revenues and other consideration derived by QLOOP or its Affiliates, or any other person, from Services provided in the County and from the use, operation, lease, or license of all or part of the Facilities, including but not limited to all revenues and consideration derived from co-location agreements. “Gross Revenues” does not include the local, state, or federal taxes or surcharges collected by QLOOP that have been billed to a Subscriber and separately stated on such bill.
- 1.10** “Law” means any and all judicial decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, administrative order, certificate, order, or other requirement of the Federal Government, State, or County, or other Agency having joint or several jurisdiction over the parties to this Agreement, in effect either on the Effective Date or at any time during the presence of a telecommunications system in the Public Right-of-Way.
- 1.11** “QLOOP” means QLoop Communications Services, LLC, a Maryland limited liability company, and its lawful successors, assigns, and transferees.
- 1.12** “Person” means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association or organization of any kind.
- 1.13** “PSC” means the Maryland Public Service Commission.
- 1.14** “Public Right-of-Way” means any location in, upon, above, along, across, under, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, sidewalks, and places, or other easements now or hereafter held by the County for any public purpose, as the same now or may thereafter exist that are under the jurisdiction of the County. This term shall not refer to property owned by any Person or Agency other than the County, except as provided by applicable Laws or pursuant to an agreement between the County and any such Person or Agency.

1.15 “Services” means the transmission, using the Facilities, of any information, including, but not limited to, voice, video, or data. “Services” includes telephone service and internet service but does not include (i) over-the-air broadcasts to the public at large licensed by the FCC or any successor thereto, (ii) cable service (the one-way transmission to Subscribers of video programming or other programming services, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service), or (iii) OVS service (cable-like services provided through an open video system for which certification is granted by the FCC under Section 653 of the Telecommunications Act of 1996.)

1.16 “Subscriber” means any Person to whom QLOOP provides Services or who, by contract or agreement with QLOOP, uses any part of the Facilities. “Subscriber” includes Persons outside the County who QLOOP has allowed, by contract or agreement, to use the Facilities in the County.

1.17 “Telecommunications System” or “System” means all or any part of the fiber optic cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities placed by QLOOP in the County and used to provide Services.

2. TERM.

This Agreement shall be for a term of ten (10) years, unless it is earlier terminated by either party in accordance with the provisions herein and shall commence on the Effective Date. This Agreement and any permits issued hereunder are subject to any present and future franchise, legislation or resolution that may be enacted by the County Council.

3. SCOPE OF FRANCHISE.

3.1 Any and all rights expressly granted to QLOOP under this Agreement, which shall be exercised at QLOOP’s sole cost and expense, shall be subject to the prior and continuing right of the County under applicable Laws to use any and all parts of the Public Right-of-Way only, exclusively or concurrently, with any other Person or Persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the Public Right-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest a perpetual real property interest in land in QLOOP, including any fee, leasehold interest, or easement. The County makes no representations or warranties with respect to the title to the Public Right-of-Way or the nature of the County’s interest in the Public Right-of-Way. If there are other interests, if any, in the Public Right-of-Way, QLOOP must obtain the necessary consent for its use from each Person who holds any such interest. QLOOP must indemnify and hold the County harmless from any claims or costs arising out of or related to a constitutional takings claim or other legal action by reason of QLOOP’s use of the Public Right-of-Way.

3.2 The County hereby grants a non-exclusive right to QLOOP to construct, reconstruct, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace the Facilities in or upon, under, above, and across the Public Right-of-Way, in

accordance with County laws for use in the provision of Services to Persons located inside or outside the County. During the term of this Agreement, the proposed location of the Facilities by QLOOP or its designee shall be disclosed, in writing, to the County by QLOOP at least fifteen (15) days prior to its construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation. Such proposed locations shall be incorporated into this Agreement as Exhibit A.

3.3 The County hereby further authorizes and permits QLOOP to construct, reconstruct, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace its Facilities in or on street light poles, power poles, or other property owned by public utility companies or other property owners located within the Public Right-of-Way as may be permitted by the public utility company or property owner, as the case may be. To the extent required by Law, QLOOP shall obtain permission from the individual utility or property owner prior to the time that QLOOP undertakes any of the activities permitted by this Agreement. Upon request, QLOOP shall provide documentation of said permission to the County. Prior to undertaking any construction activity, QLOOP shall provide reasonable advance notice to affected property owners as required by Law.

3.4 Except as permitted by applicable Law or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, QLOOP shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliners, cable television, and other telecommunications, utility, and County or municipal property without the express written approval of the owner or owners of each affected property.

3.5 QLOOP shall comply with all applicable Law in the exercise and performance of its rights and obligations under this Agreement. QLOOP hereby acknowledges that the rights granted by this Agreement are subject to the police powers of the County.

3.6 QLOOP represents and agrees that the Facilities subject to this Agreement will be used exclusively for the rendering of Services and no other services, except to the extent that QLOOP is required by State or Federal authorities, in the proper exercise of their jurisdiction over such matters, to make the Facilities available for use by third parties.

4. FEES AND TAXES.

4.1 The compensation set forth herein is for use of the Right-of-Way for Facilities owned solely by QLOOP and used for the provision of Services. QLOOP may use the Public Right-of-Way to provide additional services or other facilities only by an express amendment to this agreement, or by separate franchise agreement with the County for Public Right-of-Way use.

4.2 Without limiting the foregoing, the fees provided for in this Section are not in lieu of any fee or tax to which QLOOP may be subject or relieve QLOOP of any obligation to collect and remit any tax in accordance with applicable Law.

4.3 The County is not presently seeking monetary compensation for QLOOP's use and occupation of the Public Right-of-Way to provide the Services, except that it may charge QLOOP, for any costs that QLOOP requires it to incur, including the fee for negotiating this Franchise (pursuant to section 4.8), and for all permitting fees, inspection fees, and the costs of moving County property to permit the installation or maintenance of the Facilities. QLOOP shall pay compensation for use and occupancy of the Public Right-of-Way to provide the Services as the County may establish which, at the County's option, and to the extent permitted by law, may be based on the costs to the County of maintaining and acquiring the Public Right-of-Way, or up to five (5) per cent of the Gross Revenues derived from the operation of the Facilities to provide the Services, or a per footage fee (which fee may be on linear, square or cubic footage basis) that equates to fees charged to utilities or cable systems for use of the Public Right-of-Way, or reflects the value of the particular property used or proposed to be used; or such other amount approved by the County Council.

4.4 County will provide QLOOP at least six (6) months' notice before assessing fees under subsection 4.3. The County shall be entitled to the maximum compensation permitted under applicable law after providing the notice required by this subsection. If a fee is imposed, QLOOP must pay the fee every six (6) months.

4.5 QLOOP must remove the Facilities within the timeline specified in subsection 5.3 after termination of this Agreement. The County may, at its option, increase any of the fees charged by 2.5 times if QLOOP does not remove its Facilities within this timeline.

4.6 QLOOP will maintain books and records appropriate to permit the County to determine compliance with this Agreement, including the amount owed by QLOOP. The acceptance of any payments shall not be treated as an accord or satisfaction. Upon reasonable notice by the County to audit QLOOP's books and records, QLOOP shall produce its books and records for review at the County's offices, or in such other manner acceptable to the County necessary to determine whether the fees owed under this Agreement are being paid. The County may also inspect Facilities to ensure that the fees owed under this Agreement are being paid. If an audit or inspection shows that QLOOP has underpaid the amount due hereunder by 5% or more for any year reviewed, the cost of the audit or inspection shall be paid by QLOOP.

4.7 Interest will be charged on any late payment at the statutory interest rate on judgments under State law, or if there is no such rate the prime rate charged by the bank the County uses as its main depository, plus 3%.

4.8 QLOOP shall reimburse the County within thirty (30) days of the receipt of a written request in accordance with Section 9, for all reasonable expenses relating to the preparation, issuance, implementation and administration of this Agreement, not to exceed Two Thousand Dollars (\$2,000) in the aggregate. The reimbursement is a one-time fee related to the initial issuance of the Franchise Agreement.

5. REMOVAL AND RELOCATION OF TELECOMMUNICATIONS SYSTEM.

5.1 QLOOP understands and acknowledges that the County may require QLOOP to relocate the Facilities. At the County's request, QLOOP shall, within thirty (30) days after receipt of prior written notice in situations described in subsection (i) below, and immediately in situations described in subsections (ii) and (iii) below, relocate the Facilities, at QLOOP's sole cost and expense, whenever the County reasonably determines that relocation is needed: (i) to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a County project, facility, or service; (ii) because the Facilities are interfering with or adversely affecting proper operation of the County light poles, traffic signals, or other County facilities, or (iii) to protect or preserve the public health, safety, or welfare including, without limitation, any emergency situation. QLOOP must obtain all permits and approvals required by the County before relocating the Facilities. If QLOOP fails to relocate the Facilities as requested by the County in accordance with this paragraph, the County shall be entitled to remove the Facilities at QLOOP's sole cost and expense.

5.2 If any part of the Facilities subject to this Agreement is abandoned by not being placed in service for a period of six (6) months or more, QLOOP promptly shall notify the County, and QLOOP must, at QLOOP's sole cost and expense, promptly remove the abandoned part of the Facilities or dedicate the same to the County. The County shall not issue notice to QLOOP that the County requires removal or dedication of any part of the Facilities, unless and until the County first issues all required County permits and approvals required of the County for such activity and gives thirty (30) days' prior written notice to QLOOP to remove the telecommunications system. If QLOOP shall fail to remove any part of the Facilities as required by the County under this paragraph, the County shall be entitled to remove any part of the Facilities at QLOOP's sole cost and expense. QLOOP shall execute such documents of title as will convey all right, title, and interest in the abandoned Facilities, but in no other property, intellectual or otherwise, to the County.

5.3 Whenever the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities is performed by QLOOP under this Agreement, and such construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation shall cause the Public Right-of-Way to be damaged, QLOOP, at its sole cost and expense, promptly shall repair and return the Public Right-of-Way in which the Facilities are located to its previous condition. If QLOOP does not repair the site as required, then the County shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of QLOOP and charge QLOOP for the proposed costs to be incurred at the County's standard rate, if any, or the actual costs incurred by the County. Upon the receipt of a demand for payment by the County, QLOOP shall reimburse the County for such costs.

6. CONSTRUCTION PERMIT AND SECURITY DEPOSIT.

6.1 If the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities shall require any construction work in the Public Right-of-Way, QLOOP shall apply for the appropriate street opening and other permits required

by Law. QLOOP shall perform such construction work as required by the permits and in accordance with all applicable Laws.

6.2 Within thirty (30) days of the completion of any construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation work, QLOOP promptly shall furnish to the County, in hard copy and electronic format or other format reasonably acceptable to the County, suitable documentation containing a full set of drawings showing, in detail, the exact location of the Facilities in the Public Right-of-Way.

6.3 QLOOP shall deposit or file with the County a cash security deposit, a surety bond acceptable to the County Attorney, or letter of credit acceptable to the County Attorney within thirty (30) days of the Effective Date, in the amount of Fifty Thousand Dollars (\$50,000) as security for the faithful performance by QLOOP of the provisions of this Agreement and the Laws. If QLOOP fails to pay the County any taxes, fees, costs or expenses within ten (10) days of receipt of notice to pay from the County or fails to comply with any provision of this Agreement or the Laws that can be remedied by an expenditure from the security fund, then the County may proceed to immediately withdraw the amount thereof or proceed against the surety bond or the letter of credit. Such action by the County is in addition to any other remedy provided to the County by this Agreement or the Laws. If the Franchise is terminated or revoked for cause by the County, the security fund shall become the property of the County, unless there are no outstanding defaults or moneys owed to the County, in which case, QLOOP may request that the County return the security deposit, the surety bond, or the letter of credit.

7. INDEMNIFICATION AND WAIVER.

7.1 QLOOP agrees at its sole cost and expense to indemnify, protect, defend (with counsel acceptable to the County) and hold harmless the County, the county executive, county council members, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the "Losses") arising, directly or indirectly, in whole or in part, out of the activities or facilities of QLOOP, its officers, employees, agents, consultants, attorneys, and contractors, described in this Agreement, except to the extent arising from or caused by the gross negligence or willful misconduct of the County, the county executive, county council members, officers, employees, agents, or contractors.

7.2 The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

7.3 QLOOP waives any and all claims, demands, causes of action, and rights it may assert against the County on account of any loss, damage, or injury to the Telecommunications System or any loss or degradation of the Services as a result of a sudden or gradual loss or change of electrical power caused by or arising from the installation, maintenance, replacement, or relocation of any County-owned facility in the Public Right-of-Way (except to the extent

caused by or arising from the gross negligence or willful misconduct of the County), or an Act of God, an event or occurrence which is beyond the reasonable control of the County, a power outage, or a lightning strike. Nothing herein shall be construed to waive the County's governmental immunity.

8. INSURANCE.

8.1 QLOOP shall obtain and maintain at all times during the term of this Agreement comprehensive general liability insurance and comprehensive automotive liability insurance protecting QLOOP in an amount of not less than two million dollars (\$2,000,000) (including umbrella or excess coverage) per occurrence (combined single limit), including bodily injury and property damage, and not less than two million dollars (\$2,000,000) (including umbrella or excess coverage) aggregate, for each personal injury, products-completed operations, and each accident. Such insurance shall name the County, the county executive, its council members, officers, employees, agents, and contractors as additional insured for any liability arising out of QLOOP's performance of work under this Agreement, or suitable additional- insured endorsement acceptable to the County. Coverage shall be provided in accordance with the limits specified and the provisions indicated herein. Claims-made policies are not acceptable. Such insurance shall not be canceled or materially altered to reduce coverage until the County has received at least thirty (30) days advance written notice of such cancellation or change. QLOOP shall be responsible for notifying the County of such change or cancellation.

8.2 QLOOP, within thirty (30) days of the Effective Date of this Agreement, shall file the required original certificate(s) of insurance with endorsements with the County, subject to the County's prior approval, which shall clearly state all of the following:

8.2.1 Policy number; name of insurance company; name, address, and telephone number of the agent or authorized representative; name, address, and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts. Each policy of insurance required by this Agreement shall be issued by a responsible insurance company qualified and authorized to do business in the State of Maryland.

8.2.2 those thirty (30) days prior written notice to the County is required for any change or cancellation to the insurance policy.

8.2.3 QLOOP's insurance is primary to any other valid or collectible insurance that the County may possess, including any self-insured retentions the County may have, and any other insurance the County does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

The certificate(s) of insurance with endorsements and notices shall be mailed to:

Chief Administrative Officer
Montgomery County, Maryland
Executive Office Building

101 Monroe Street
Rockville, Maryland 20850

8.3 QLOOP shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than five hundred thousand dollars (\$500,000) or such other amounts required by Maryland law and furnish the County with a certificate showing proof of such coverage.

8.4 Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the County prior to the execution of this Agreement.

9. NOTICES.

All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; (ii) by means of prepaid overnight delivery service; or (iii) by facsimile transmission, if followed by a hard copy of the same delivered through the U.S. mail or by overnight delivery service as just described, as follows:

County: Chief Administrative Officer
Executive Office Building
101 Monroe Street
Rockville, Maryland 20850

With a copy to Technology and Enterprise Business Solutions
100 Maryland Avenue, Suite 2600
Rockville, Maryland 20850
ATTN: Chief Broadband Officer

QLOOP: QLOOP Communications Services, LLC
Attn: VP - Operations
500 E. 4th Street, Suite 333
Austin, Texas 78701

With a required copy to: QLOOP Communications Services, LLC
Attn: General Counsel
500 E. 4th Street, Suite 333
Austin, Texas 78701

Any bond must be delivered or mailed to:

Director, Department of Permitting Services
2425 Reedy Drive, 7th Floor
Wheaton MD 20904

Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next day in the case of overnight delivery. Either party may designate any other address for this purpose by written notice to the other party in the manner set forth above.

10. TERMINATION AND DEFAULT.

10.1 This Agreement may be terminated by either party upon thirty (30) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default (or, if such default is not curable within thirty (30) days, if the defaulting party fails to commence such cure within thirty (30) days or thereafter fails to diligently prosecute such cure to completion), provided that the grace period for any monetary default is ten (10) business days from receipt of notice.

10.2 The County reserves the right to revoke the Franchise, subject to reasonable notice and the opportunity to cure as set forth in Section 11.1 for a material breach of the Franchise, including, but not limited to the following: (i) non-payment of franchise fees, (ii) failure to comply with the provisions of the Laws and this Agreement, (iii) use of the Public Rights-of-Way in violation of this Agreement, and (iv) misreporting any required compensation amount.

10.3 Each party retains all of its rights to enforce this Agreement. The County reserves the right to seek injunctive relief, mandamus, or any other appropriate relief as may be necessary to enforce or correct a violation of the provisions of the Law or this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 QLOOP shall not transfer or assign the franchise, Facilities, or System or any part thereof without the express prior written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. QLOOP shall give the County prior written notice of any proposed assignment or transfer for which the County's consent is required hereunder. The County Council shall give QLOOP written approval or disapproval of any such proposed assignment or transfer within a reasonable time period not to exceed ninety (90) days after the Council receives QLOOP's request therefor, and the County Council's failure to approve or disapprove any such request within such ninety (90) day period shall be deemed an approval. QLOOP shall provide all information and documents reasonably requested by the County relating to the assignment or transfer.

11.2 QLOOP understands that this Agreement does not provide QLOOP with exclusive use of the Public Right-of-Way and that the County shall have the right to permit other providers of telecommunications systems to install equipment or devices in the Public Right-of-Way.

11.3 This Agreement contains the entire understanding between the parties with respect to the subject matter herein and supersedes all prior understandings and agreements, whether written or oral. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

11.4 This Agreement may not be amended except pursuant to a written instrument signed by both parties.

11.5 If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

11.6 QLOOP shall be available to the staff employees of any County department having jurisdiction over QLOOP activities 24 hours a day, 7 days a week, regarding problems or complaints resulting from the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities. The County may contact QLOOP by telephone at the QLOOP Network Control Center, telephone (800) regarding such problems or complaints.

11.7 This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. In the event that suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Maryland, or in the United States District Court of Maryland, Southern Division.

11.8 All exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

11.9 This Agreement is binding upon the successors and assigns of the parties hereto.

11.10 QLOOP acknowledges that the County may develop rules, regulations, and specifications that apply to the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities in the Public Right-of-Way, and such rules, regulations, and specifications, when finalized, shall govern QLOOP's activities hereunder as if they were in effect at the time this Agreement was executed.

11.11 QLOOP agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. QLOOP assures the County that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference, or handicap.

11.12 QLOOP represents that it has not retained anyone to solicit or secure this Agreement from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or a bona fide established commercial selling or leasing agency maintained by QLOOP for the purpose of securing business or an attorney rendering a professional legal service consistent with applicable canons of ethics.

11.13 QLOOP understands that, unless authorized under Section 11B-52 and Chapter 19A of the Montgomery County Code 1994, as amended, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

11.14 It is expressly understood that the County shall not be construed or held to be a partner or associate of QLOOP in the conduct of QLOOP's business.

11.15 In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably condition, delay or withhold its approval or consent.

11.16 Nothing in this agreement shall impair, diminish, supersede, or otherwise affect any authority or remedy that the County may have against QLOOP or any other Person, such as another current or former franchisee. This franchise is granted to QLOOP subject to any such authority or remedy, even if the exercise of that authority or remedy affects the System. QLOOP agrees to cooperate with the County in any action to enforce County law or any franchise agreement against another Person.

WITNESS:

MONTGOMERY COUNTY, MARYLAND

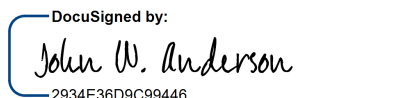
Judy Rupp, Clerk of the Council


By: _____
Evan Glass, President
Montgomery County Council

The Provisions of this Agreement are agreed to and hereby accepted.

WITNESS:

QLOOP Communications Services, LLC

DocuSigned by:

2934E36D9C99446

DocuSigned by:

By: _____
FC224A04E8FE48E...
Title: CEO
Date: 3/14/2023



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/7/2022

9/1/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 3280 Peachtree Road NE, Suite #250 Atlanta GA 30305 (404) 460-3600	CONTACT NAME: PHONE (A/C, No. Ext): FAX (A/C, No): E-MAIL ADDRESS: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: Underwriters at Lloyds of London</td> <td>10736</td> </tr> <tr> <td>INSURER B: Starstone Specialty Insurance Company</td> <td>44776</td> </tr> <tr> <td>INSURER C: Technology Insurance Company, Inc.</td> <td>42376</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Underwriters at Lloyds of London	10736	INSURER B: Starstone Specialty Insurance Company	44776	INSURER C: Technology Insurance Company, Inc.	42376	INSURER D:		INSURER E:		INSURER F:	
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INSURER F:															
INSURED 1509116 Quantum Loophole, Inc. 500 E. 4th Street, Suite 333 Austin TX 78701															

COVERAGES**CERTIFICATE NUMBER:** 18834351**REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	N	SCG1028722	7/7/2022	7/7/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/>			NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	N	N	SCX1034922	7/7/2022	7/7/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ XXXXXXXX
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	TWC4031850	10/7/2021	10/7/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Excess Liability	N	N	771600220ALI	7/7/2022	7/7/2023	\$5,000,000 Each Occurrence \$5,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

THIS CERTIFICATE SUPERSEDES ALL PREVIOUSLY ISSUED CERTIFICATES FOR THIS HOLDER, APPLICABLE TO THE CARRIERS LISTED AND THE POLICY TERM(S) REFERENCED.

Additional Named Insureds: QLoop, LLC and QLOOP Communications Services, LLC

Montgomery County, Maryland, the county executive, its council members, officers, employees, agents, and contractors are included as Additional Insured as respects to General Liability.

RE: Access to the Public Right-of-Way for construction, installation, operation, and maintenance of telecommunication facilities in the Public Right-of-Way

CERTIFICATE HOLDER**18834351**

Chief Administrative Officer
 Montgomery County, Maryland
 Executive Office Building
 101 Monroe Street
 Rockville, MD 20850

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORDTM**CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)
10/27/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER McGriff Insurance Services 5850 Waterloo Road, Suite 240 Columbia, MD 21045 410 480-4400	CONTACT NAME: Kristen Harris-Powell	
	PHONE (A/C, No, Ext): 410 480-4429	FAX (A/C, No): 866-548-4197
	E-MAIL ADDRESS: Kristen.Harris-Powell@McGriff.com	
INSURED Quantum Maryland LLC 500 E 4th St. Austin, TX 78701	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Allmerica Financial Benefits	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			AWQJ052577	06/15/2022	06/15/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N / A			PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Montgomery County is included as Additional Insured on the Automobile Liability.

CERTIFICATE HOLDER**CANCELLATION**

Montgomery County, Maryland
Executive Office Building
101 Monroe Street
Rockville, MD 20850

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

David J. Saul

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Ad # 12391404 Name OFFIT KURMAN PA c/o Megan Akram
Class 820 PO# Authorized by

Size 59 Lines

T0003

Account 2010310963

PROOF OF PUBLICATION

District of Columbia, ss., Personally appeared before me, a Notary Public in and for the said District, Kareem Jones well known to me to be BILLING SUPERVISOR of The Washington Post, a daily newspaper published in the City of Washington, District of Columbia, and making oath in due form of law that an advertisement containing the language annexed hereto was published in said newspaper on the dates mentioned in the certificate herein.

I Hereby Certify that the attached advertisement was published in The Washington Post, a daily newspaper, upon the following date(s) at a cost of \$2,132.76 and was circulated in the Washington metropolitan area.

Published 3 time(s). Date(s): 18 and 25 of July 2022

01 of August 2022

Account 2010310963

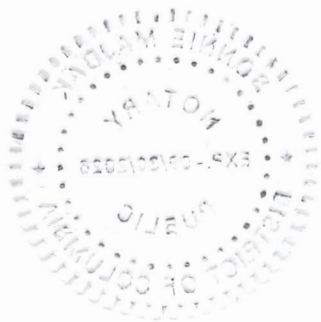
Witness my hand and official seal this 2nd day of August 20 22

Bonnie Majdak

My commission expires 09.30.26



PUBLIC NOTICE Proposed Award by Montgomery County, Maryland of Non-Exclusive Franchise to QLoop Communications Services, Inc. QLOOP Communications Services, Inc. has submitted an application for a non-exclusive franchise in Montgomery County, Maryland to attach, install, operate, construct and maintain telecommunications facilities within the Public Rights-of-Way throughout the County for the purpose of operating its telecommunications system. QLOOP has proposed to pay Montgomery County's reasonable expenses relating to the preparation, issuance, implementation and administration of this Agreement, not to exceed two thousand dollars (\$2,000.00) in the aggregate. QLOOP has proposed to collect and remit to the County any applicable Users Tax that has been collected from subscribers. The County has reserved the right to charge franchise fees. QLOOP will indemnify the County for claims arising from its occupation of the Public Rights-of-Way. The franchise agreement shall be for a term of ten (10) years. Any objection to the proposed granting of the franchise by the County must be filed, in writing, with the County Executive by the close of business on August 11, 2022 at the Executive Office Building, 2nd Floor, 101 Monroe Street, Rockville, Maryland 20850. Copies of the proposed franchise agreement are available at the Office of the County Attorney, 101 Monroe Street, 3rd Floor, Rockville, Maryland 20850. For further information, contact QLOOP at Qloop Communications Services, LLC, 500 E 4th Street Suite 333, Austin TX 78701, Attn: legal department.



11.12 QLOOP represents that it has not retained anyone to solicit or secure this Agreement from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or a bona fide established commercial selling or leasing agency maintained by QLOOP for the purpose of securing business or an attorney rendering a professional legal service consistent with applicable canons of ethics.

11.13 QLOOP understands that, unless authorized under Section 11B-52 and Chapter 19A of the Montgomery County Code 1994, as amended, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

11.14 It is expressly understood that the County shall not be construed or held to be a partner or associate of QLOOP in the conduct of QLOOP's business.

11.15 In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably condition, delay or withhold its approval or consent.

11.16 Nothing in this agreement shall impair, diminish, supersede, or otherwise affect any authority or remedy that the County may have against QLOOP or any other Person, such as another current or former franchisee. This franchise is granted to QLOOP subject to any such authority or remedy, even if the exercise of that authority or remedy affects the System. QLOOP agrees to cooperate with the County in any action to enforce County law or any franchise agreement against another Person.

WITNESS:

MONTGOMERY COUNTY, MARYLAND

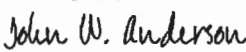
Judy Rupp, Clerk of the Council

By: _____
Evan Glass, President
Montgomery County Council

The Provisions of this Agreement are agreed to and hereby accepted.

WITNESS:

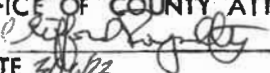
QLOOP Communications Services, LLC

DocuSigned by:

2934E36D9C99446

DocuSigned by:

FC224A04E8FE48E...

By: _____
Title: CEO
Date: 3/14/2023

APPROVED AS TO FORM AND LEGALITY
OFFICE OF COUNTY ATTORNEY
BY 
DATE 3/14/23