

TRI-PARTY PREVAILING WAGES AGREEMENT

This Tri-Party Prevailing Wages Agreement (“**Agreement**”) is dated and effective as of June 23, 2020 (the “**Effective Date**”), by and among the City of Manhattan Beach, a California municipal corporation (“**City**”), Charter Communications, Inc., a Delaware corporation, dba Charter Communications, Inc. (“**Charter**”), and Hot Line Construction, Inc., a California corporation (“**Hot Line**”). City, Charter, and Hot Line are sometimes collectively referred to herein as the “**Parties**”, and individually as a “**Party**”.

RECITALS

A. WHEREAS, City has formed Underground Utility Assessment District Number 19-12 (“**District 12**”) at the request of a majority of the property owners located within District 12.

B. WHEREAS, Charter, Southern California Edison Company (“**Edison**”), and Frontier Communications Corporation (“**Frontier**”) own various facilities in District 12.

C. WHEREAS, City has requested that Charter, Edison, and Frontier underground certain facilities located in District 12 (the “**Undergrounding Project**”).

D. WHEREAS, funds generated from District 12 have been paid to Charter for the Undergrounding Project.

E. WHEREAS, Edison conducted a competitive procurement process on behalf of itself, Charter, and Frontier to select a contractor to perform the utility undergrounding work in District 12 (the “**Competitive Procurement Process**”).

F. WHEREAS, Charter and Edison entered into agreements with Hot Line and City entered into an agreement with Hot Line on Frontier’s behalf under which Hot Line agreed to perform the utility undergrounding work in District 12 as a result of the Competitive Procurement Process.

G. WHEREAS, the Parties have determined that, pursuant to Labor Code Section 1720 *et seq.*, Hot Line is required to pay prevailing wages for all construction work performed in connection with the Undergrounding Project.

H. WHEREAS, Charter’s contract with Hot Line did not include the requirement to pay prevailing wages in connection with the Undergrounding Project.

I. WHEREAS, the Parties have agreed that City will pay Hot Line the difference in cost between Hot Line’s non-prevailing wage rates under its contract with Charter for the Undergrounding Project (“**Charter/Hot Line Contract**”) and the requisite prevailing wage rates for work performed under the Charter/Hot Line Contract, and Hot

Line will pay prevailing wage rates and comply with all applicable provisions of the California Labor Code.

NOW, THEREFORE, in consideration of the mutual obligations, covenants, and conditions hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Scope of Agreement.** Charter and Hot Line acknowledge that the Undergrounding Project requires the payment of prevailing wages pursuant to Labor Code Section 1720 et seq. Charter and Hot Line also represent to the City that, as of the date of this Agreement, the Charter/Hot Line Contract does not require the payment of prevailing wages. Charter hereby authorizes City to pay Hot Line the difference in cost between Hot Line's non-prevailing wage rates under the Charter/Hot Line Contract and the requisite prevailing wage rates for the services covered by the Charter/Hot Line Contract. Hot Line shall comply with **Exhibit A**, "Terms for Compliance with California Labor Law Requirements," in performing services under the Charter/Hot Line Contract, and shall cause all of its subcontractors to comply with **Exhibit A**.
- 2. Payment.** In reliance on Section 1 of this Agreement, City agrees to pay Hot Line up to Ninety-Three Thousand Seven Hundred Twenty-Nine Dollars and Fifty-Two Cents (\$93,729.52) ("**Prevailing Wage Payment**"), in accordance with Section 3.
- 3. Method of Payment.** Charter shall notify City in writing of the total contract amount of the Charter/Hot Line Contract and shall notify the City in writing of the amount paid by Charter to Hot Line for each individual progress payment for work performed under the Charter/Hot Line Contract. City shall then pay Hot Line the percentage of the Prevailing Wage Payment set forth above in Section 2 of this Agreement that is the equivalent percentage as that of the individual progress payment that Charter paid to Hot Line under the Charter/Hot Line Contract in relation to the total amount due under the Charter/Hot Line Contract. City shall make each such payment of a portion of the Prevailing Wage Payment to Hot Line within 30 days of receiving a notification from Charter of an individual progress payment for work performed under the Charter/Hot Line Contract.
- 4. Labor Code Requirements.** The document titled "Terms for Compliance with California Labor Law Requirements" is attached hereto as **Exhibit A**. Charter and Hot Line agree to incorporate **Exhibit A** into the Charter/Hot Line Contract and shall comply with all provisions of **Exhibit A**.
- 5. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

- 6. Attorneys' Fees.** In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,
a California municipal corporation

Company:

Charter Communications, Inc.,
a Delaware corporation

By: _____

Name: Bruce Moe
Title: City Manager

By: _____

Name: _____
Title: _____

ATTEST:

By: _____

Name: _____
Title: _____

By: _____

Name: Liza Tamura
Title: City Clerk

Company:

APPROVED AS TO FORM:

Hot Line Construction, Inc.,
a California corporation

By: _____

Name: Quinn M. Barrow
Title: City Attorney

By: _____

Name: _____
Title: _____

APPROVED AS TO FISCAL IMPACT:

By: _____

Name: Steve S. Charelian
Title: Finance Director

By: _____

Name: _____
Title: _____

APPROVED AS TO CONTENT:

**PROOF OF AUTHORITY TO BIND
CONTRACTING PARTY REQUIRED**

By: _____

Name: Stephanie Katsouleas
Title: Public Works Director

EXHIBIT A
TERMS FOR COMPLIANCE WITH CALIFORNIA LABOR LAW REQUIREMENTS

1. The Charter/Hot Line Contract to which this Exhibit is attached calls for services that, in whole or in part, constitute “public works” as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code (“Chapter 1”). Further, Hot Line acknowledges that the Charter/Hot Line Contract is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. Therefore, in performing the Charter/Hot Line Contract, Hot Line shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

3. Hot Line shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to the City of Manhattan Beach prior to the Effective Date of this Agreement. Hot Line shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Hot Line and subcontractors shall maintain their registration with the DIR in effect throughout the duration of the Charter/Hot Line Contract and this Agreement. If Hot Line or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Hot Line shall immediately notify City.

4. Pursuant to Labor Code Section 1771.4, Hot Line’s Services are subject to compliance monitoring and enforcement by DIR. Hot Line shall post job site notices, as prescribed by DIR regulations.

5. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Charter/Hot Line Contract are on file at the Manhattan Beach Public Works Facility (3621 Bell Avenue, Manhattan Beach, CA 90266) and will be made available to any interested party on request. Hot Line acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Hot Line shall post such rates at each job site covered by the Charter/Hot Line Contract.

6. Hot Line shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Hot Line shall, as a penalty to the City of Manhattan Beach (“City”), forfeit \$200.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to the Charter/Hot Line Contract by Hot Line or by any subcontractor.

7. Hot Line shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Hot Line and each subcontractor to: keep accurate payroll records and

verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform City of the location of the records. Pursuant to Labor Code Section 1771.4, Hot Line and each subcontractor shall furnish such records to the Labor Commissioner, at least monthly, in the form specified by the Labor Commissioner.

8. Hot Line shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Hot Line shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under the Charter/Hot Line Contract, Hot Line shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding work pursuant to the Charter/Hot Line Contract, Hot Line and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under the Charter/Hot Line Contract.

9. Hot Line shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. Hot Line and Subcontractors shall not be debarred or suspended throughout the duration of the Charter/Hot Line Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If Hot Line or any subcontractor becomes debarred or suspended during the duration of the project, Hot Line shall immediately notify City.

10. Hot Line acknowledges that eight hours labor constitutes a legal day's work. Hot Line shall comply with and be bound by Labor Code Section 1810. Hot Line shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. Hot Line shall, as a penalty to City, forfeit \$25.00 for each worker employed in the performance of the Charter/Hot Line Contract by Hot Line or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Hot Line in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

11. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Hot Line hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

12. For every subcontractor who will perform work on the project, Hot Line shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Hot Line shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Hot Line shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Hot Line shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent permitted by law, Hot Line shall indemnify, hold harmless and defend (at Hot Line's expense with counsel reasonably acceptable to City) City and Charter, their officials, officers, employees, and agents from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Hot Line, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Charter/Hot Line Contract or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Hot Line under this Section shall survive the termination of the Charter/Hot Line Contract and this Agreement.