

**DISTRIBUTED ANTENNA SYSTEM (DAS) AND SMALL CELL
FRANCHISE AGREEMENT**

This Franchise Agreement, (the "Agreement" or "Franchise") is made and entered into this ____ day of _____, ____ (the "Effective Date"), by and between the City of Gaithersburg, Maryland, a municipal corporation of the State of Maryland ("City") and _____, a _____ corporation with its principle office at _____ ("Franchisee"). Capitalized terms herein shall have the meaning specified in Section 1, below.

WHEREAS, the City, is authorized under Section 19 of the City Charter and §5-204 of the Local Government Article of the Annotated Code of Maryland to grant and renew non-exclusive franchises for the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the public rights of way within the City; and

WHEREAS, it is the practice of the City to permit entry into the corporate limits and such use of the streets and public rights of way for the provision of communication services and facilities by telecommunications service providers, subject to the duty and authority of the City to manage its streets, public property and rights-of-way for public use, and to require fair and reasonable compensation for the use thereof in a manner consistent with applicable law; and

WHEREAS, Franchisee desires to obtain from City as permitted by law, and City desires to grant to Franchisee, a Franchise for the right to construct, install, maintain, repair, operate, relocate, replace and remove Facilities relating to the placement of Small Cells or of Distributed Antenna Systems in the Rights of Way within the City, in a manner consistent with this Agreement, which Facilities may consist of fiber optic cable, strand and conduit connecting a Central Communications Hub Site or sites, or a core network to Nodes; and equipment necessary to the functioning of the Nodes as described more particularly below.

NOW, THEREFORE, AND IN CONSIDERATION of mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions

1.1. "Agreement" or "Franchise" means this Agreement, together with Appendices and Exhibits attached this Agreement, if any, and any amendments or modifications.

1.2. "Applicable Law" or "Law" means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations.

1.3. "Authorizations" means the permissions Franchisee must have in addition to this Franchise to deploy Facilities and/or provide Services, which may include licenses, permits, zoning approvals; variances, exemptions; grants of authority to use private rights of way and/or easements or facilities; agreements to make attachments to poles, ducts, conduits, Towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

1.4. "Authorized Facilities" means Facilities that comply with the requirements of this Franchise, City Regulation No. ____ ("Regulation"), and have all necessary Authorizations in full force and effect.

1.5. “Central Communications Hub Site” refers to a site that receives signals from DAS Nodes, and includes equipment that propagates and/or converts, processes or controls the communications signals transmitted and received from the DAS Nodes

1.6. “Construction and Maintenance” and variations of those terms refer to any activity performed in the Rights of Way with respect to the Facilities, including construction, modification, replacement, repair, operation, maintenance, removal or relocation.

1.7. “Distributed Antenna System” or “DAS” means multiple, spatially separate antenna Nodes connected to a Central Communications Hub Site via a high capacity transport medium (such as fiber optic cable), for the purpose of providing wireless service within a geographic area.

1.8. “Facility” or “Facilities” means any and all equipment and installations of any kind owned by Franchisee or by Franchisee’s customers and under the control of Franchisee that are reasonably necessary and appropriate for the provision of Services including, but not limited to any optical repeaters, converters, power amplifiers, radios, multiplexers, remote radioheads, antenna, aboveground and underground fiber optic and coaxial cable, conduit, wires, meters, pedestals, power switches, cabinets, enclosures, and control boxes, and supporting structures, whether new, existing or replacement structures, and whether referred to singly or collectively.

1.9. “Franchise” means the non-exclusive right granted, by ordinance and subject to this Agreement, to Franchisee to Construct and Maintain the Facilities on, over, under, upon, across, and along the Rights of Ways within the Franchise Area.

1.10. “Franchise Area” shall mean the boundaries of the City of Gaithersburg as the same may expand or contract during the Franchise term.

1.11. Gross Revenue: Means all revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee or any of its Affiliates from the operation of Facilities in the City to provide Services. Gross Revenue shall include by way of example and without limitation: monthly or annual per-site payments made to Franchisee by its customers for the provision of Services enabled by its Facilities located in the City’s Public Way; any revenue generated by Franchisee through any means that has the effect of avoiding the payment of compensation that would otherwise be paid to the City for the rights granted to Franchisee in this Agreement; late fees and administrative fees; revenue derived from forfeited deposits; revenue derived from commissions; any actual bad debt that is written off but subsequently collected (such bad debt shall be included as Gross Revenue for the period in which it is collected); and other revenues that may be posted in the general ledger as an offset to an expense account. Gross Revenue shall not include: any revenues received by Franchisee for the construction of Facilities in the City; any compensation awarded to Franchisee based on the City’s condemnation of property of Franchisee; and to the extent consistent with generally accepted accounting principles, consistently applied, actual bad debt write-offs taken in the ordinary course of business.

1.12. “Node” means a Facility or set of Facilities at a fixed location that includes one or more radiofrequency transmitters or antennas, which wirelessly connects to mobile stations and which is connected along with other Nodes via a high capacity transport medium to a core network.

1.13. “Master License” is a license issued by the City pursuant to Master License Agreement that licenses placement of a Node at a particular location in the Rights of Way.

1.14. “Person” means any natural or corporate person, business association or business entity including, but not limited to, an individual, a partnership, a sole proprietorship, a political subdivision, a public or private agency or any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

1.15. “Rights of Way” means the space in, upon, above, along, across and over the public streets, roads, highways and public ways owned or controlled by the City, as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include (a) any county, state or federal rights of way or any property owned by any person or entity other than the City, public utility easements or public improvement easement, whether owned by the City or others, except as provided by applicable Laws or pursuant to any agreement between the City and any such person or entity, or (b) any property owned by the City, such as a park or property on which City buildings are located, that is not a street or right of way, which the City may authorize the Franchisee to use, and which are appropriate for placement of the Facilities. By way of example and not limitation, the term does not include structures, buildings, or other improvements, regardless of whether they are situated in a right of way.

1.16. “Services” means any telecommunications service provided by means of the Facilities installed by Franchisee in accordance with this Franchise, for which Facilities Franchisee holds a valid authorization issued by the Maryland Public Service Commission; or the leasing, operation or maintenance of the same by Franchisee in accordance with this Franchise. Without limitation, the term Services does not include cable service, open video services or other video services, whether provided by Franchisee or its customers.

1.17. “Small Cell” refers to a low-powered radio access Node as the term is generally known in the telecommunications industry and that is designed to serve a small geographic area.

1.18. “Tower” means any structure built for the sole or primary purpose of supporting any Federal Communications Commission (“FCC”)-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. A Tower shall have the same meaning as the term as used in FCC regulations, including 47 C.F.R. §1.40001. This definition does not include Utility Poles.

1.19. “Utility Pole” means a free-standing mast, pole that supports or is designed to support the wire lines of public service corporations; that is not built for sole for the sole or primary purpose of supporting FCC licensed or authorized antennas and their associated facilities; and that is subject to regulation pursuant to 47 U.S.C. § 224, or Maryland laws that may regulate utility poles in lieu of 47 U.S.C. § 224.

2. Grant of Franchise

2.1. Grant. The City grants to Franchisee the nonexclusive right to Construct and Maintain Small Cells or a DAS comprised of Authorized Facilities within the Rights of Way that it operates on its own behalf or on behalf of its wireless customers for the purpose of providing Services, which Franchise shall be exercised at Franchisee’s sole cost and expense, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Rights of Way. Such grant shall be subject to all City Code and Regulation provisions and requirements that may apply to the Facilities and that may affect, without limitation, the location of the Facilities within the Franchise Area. The Franchise does not grant Franchisee any property interest in the Rights of Way, or provide it a right to occupy or continue to occupy any particular location within the Rights of Way. The Franchise is not divisible, and Franchisee may not grant any person the right to use or occupy the Rights of Way. The grant does not extend to any other service, and Franchisee may be required to obtain an additional Franchise or an amendment to this Franchise before using and occupying the Rights of Way to provide additional services. Likewise, its customers will require a Franchise should they provide other services in the City.

2.2. Special Conditions on Grant.

2.2.1. Franchisee may place Nodes and wireline Facilities, and the Facilities immediately associated with the same (but not, by way of example, the Central Communications Hub Sites) in the Rights of Way.

2.2.2. Each Node shall be placed subject to such conditions as the City may establish pursuant to the City Code and Regulation provisions and requirements. Except as limited by the design approval or agreement, and subject to the conditions in Sections 2.2.5 and 2.42.4, the City will promptly approve a Node if the Franchisee is willing to use a design that has been approved for a similar site by the City during the year prior to submission of a request for placement of a Node, except where, for historical, aesthetic, environmental or safety or other reasons related to prudent management of the Right of Way, the design or location must be modified to be suitable. In all cases, the City may require that the installed Facility be painted, set back and landscaped appropriately for the location approved. The City may direct Franchisee which approved design to use in particular locations if it is determined that one design is more consistent with the surrounding areas than others. The City will not unreasonably refuse to approve other designs or locations for Nodes if the City determines that the design (a) otherwise complies with applicable law (including Section 2.2.5 and Section 2.4); (b) is subject to concealment elements and aesthetic requirements that minimize visual impacts and ensure the Facilities will be consistent in size and shape as authorized by Regulations; and (c) does not contain lighting elements (other than City approved street lighting elements) or produce noise in excess of that allowed by Regulations. Ground-mounted cabinets associated with the Nodes are not permitted other than with the express review and approval of the City, and in no event where the ground cabinet would be adjacent to residential properties, unless Franchisee demonstrates that denial of an application for a Node Site, including ground-mounted cabinets, would prohibit or have the effect of prohibiting the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7), as interpreted by precedent binding in the Fourth Circuit U.S. Court of Appeals. In approving locations, the City may ensure that the Node Facilities are placed to minimize impacts on adjoining property owners, and other Right of Way users. A Node Site will not be approved in an area prohibited by Regulations or where the lines of the incumbent local exchange carrier are underground, except where the Facilities can be concealed within or on an existing structure to the reasonable satisfaction of the City, or an existing structure may be replaced with a structure of a design satisfactory to the City; unless Franchisee demonstrates that denial of the application would prohibit or have the effect of prohibiting the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7), as interpreted by precedent binding in the Fourth Circuit U.S. Court of Appeals.

2.2.3. Franchisee need not own all components of a Node placed in the Rights of Way, and may permit its customers to maintain ownership of Facilities. However, (1) the Node must be wholly under the control and management of Franchisee; and Franchisee shall be liable for all acts or omissions, and all harms associated with the Node and all its components whether the same are its acts or omissions, or the acts or omissions of the owner of the Node components; and (2) Franchisee acknowledges and agrees that no rights of ownership by Franchisee's customers shall permit any such customer to enter upon, or use the Rights of Way, in any other manner or at any other place, including to add to, or modify or install Facilities at a Node site, which shall be Franchisee's sole responsibility. Further, Franchisee may not install Facilities it does not own at a Node site, unless the entity for on whose behalf the equipment has been installed acknowledges and agrees, in a form acceptable to the City Manager, that the City has not granted it a franchise or consent to be in the Rights of Way for any purpose; that it is bound by Franchisee's representations; that it shall have no rights or claims against the City of any sort related to the Facilities; that its facilities may be subject to taxes, fees or assessments as provided in Section 5 and that City may treat any equipment owned by such entity as if it were owned by Franchisee for all purposes (including, but not limited to, removal and relocation); and the Facilities

may only be used for the Services as defined herein. The acknowledgement and agreement may be provided for all Nodes within the City, and need not be provided separately, site by site.

2.2.4. Subject to the City's permitting requirements, Franchisee may repair and replace Facilities, so long as the appearance of the Facilities or property affected by the repair or replacement does not change. *Provided that*, nothing herein relieves a Franchisee of any obligation to bring Facilities into compliance with then applicable Codes and Regulation provisions and requirements should it repair or replace Facilities.

2.2.5. Except as provided in this Section, Franchisee's aboveground Facilities (other than ground-mounted cabinets that comply with the requirements of this Section 2.1) shall be placed on, or replace, existing structures in the Rights of Way. Unless otherwise agreed, any such replacement structure shall be substantially similar in size and appearance to the structure being replaced. If placement would affect a street light pole for which the City paid or pays a fee for installation or service, the City may require Franchisee to provide City title to that street light pole as a condition of use. Lines and associated Facilities may be placed aboveground in areas to the extent comparable distribution facilities of the incumbent local exchange carrier are aboveground, and below ground where comparable distribution facilities are below ground, provided that the size and quantity of Facilities are similar.

2.2.6. No Towers may be placed in the Rights of Way. For purposes of this Section, a replacement structure authorized under 2.1 is not a Tower.

2.3. Compliance with Law. The exercise of Franchise rights by Franchisee is subject to, and strictly conditioned upon compliance with the terms of this Agreement and applicable law now existing or hereinafter enacted.

2.4. No Waiver of Other Permits and Authorizations. All work upon the streets and public places of the City shall be in accordance with all applicable standards, regulations codes, and ordinances, and will be done under the general supervision of the City Manager or designee. Nothing in this Agreement shall be construed as a waiver of any laws, regulations or rules of the City or of the City's right to require the Franchisee to secure the appropriate permits or Authorizations, or to pay the applicable fees associated with the same. Nothing in this Agreement shall act as a waiver of the City's police powers. Nothing herein prevents Franchisee from challenging the applicability of a particular fee or regulation to it on the ground that it is unduly discriminatory or preempted by state or federal law.

2.5. Conditions Precedent. The Franchise shall commence upon the Effective Date, provided that the Franchisee shall have met each of the conditions precedent set forth below and otherwise in this Agreement (unless the City agrees to waive any of the conditions precedent), at which time it shall become effective: The Franchisee shall have secured its insurance policies as set forth in Section 12 of this Agreement and delivered the certificate of insurance to the City Manager, together with evidence that the premium for each of such policies have been paid, that the policies will be in effect on or before the Effective Date, and that the policies are in accordance with this Agreement.

2.6. Conditions Subsequent: RF Emissions. Without limiting the other provisions of this Agreement, Franchisee must cease its operations if it is not in compliance with FCC regulations governing RF emissions (including but not limited to any standards that may be adopted in the future with respect to cumulative multi-point emissions), as the same may be amended from time to time, except to the extent that the FCC or other Order, Ruling or Regulation permits it to continue to operate. The issuance of this Franchise is not intended to insulate Franchisee from any claim or any remedy based on RF emissions. On request by the City, or to the extent that Franchisee is aware of any non-conformance, Franchisee shall submit a report identifying applicable standards, measured emissions, and any area where it has Facilities that do not comply with applicable standards. The report will not be treated as confidential.

2.7. Other Authorizations. As a condition of this grant, Franchisee is required to obtain and is responsible for any Authorization that may be required for the installation, operation or maintenance of the Facilities.

2.8. Franchisee's Expense. Except as specifically provided otherwise, all costs incurred by Franchisee in connection with its compliance with, or enjoyment of, this Franchise shall be borne by Franchisee and not by City, and all work that must be performed in order to permit the placement of Facilities at particular locations (including work required to comply with applicable law relating to persons with disabilities) shall be paid for by Franchisee.

2.9. Application to Subcontractors. Franchisee is responsible for ensuring that all contractors and subcontractors comply with the requirements of this Franchise and applicable law when performing work on behalf of Franchisee, and is jointly and severally responsible for their acts and omissions.

2.10. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person (other than the City and Franchisee), including, but by no means limited to, Franchisee's customers, any right, benefit or remedy under this Agreement of any nature whatsoever.

3. Relation to Attachment Rights and Placement of Facilities Outside the Rights of Way.

This Franchise does not confer upon Franchisee any right to place or attach Facilities directly upon or to structures located in the Rights of Way that are owned by the City or by a third party, or to install Facilities on land or structures owned by the City or a third party outside the Right of Way.

4. Term.

This Agreement shall be in force and effect for an initial term of five (5) years, and shall automatically be renewed for three (3) additional five (5) year terms, unless properly terminated by either party. Either party may terminate the Agreement at the end of its initial five-year term, or at any time thereafter, by giving written notice of its intention to do so no less than one hundred eighty (180) days before the proposed date of termination. Upon termination, all of City's consents to use and occupancy of Rights of Way, and Franchisee's rights to use and occupy the Rights of Way are also terminated. Notwithstanding the foregoing, all Franchisee's duties related to use of the Rights of Way, and its duties to indemnify the City, shall survive termination until the Facilities are removed and the affected property is restored in accordance with the City Code and Regulation, or Franchisee's obligations terminate by agreement of the parties. It is understood and agreed that the decision of whether to renew or to terminate this Agreement pursuant to this Section shall be made by those elected officials then in office under such circumstances as may then obtain, and that the Franchisee has no reasonable expectation of renewal or non-termination.

5. Compensation for Use of Rights of Way

5.1. The compensation set forth herein is for use of the Rights of Way for the provision of Services by Franchisee. Franchisee may use the Rights of Way to provide additional services only with the agreement and consent of the City. Likewise, Franchisee's customers may use the Rights of Way to provide additional services only with the agreement and consent of the City. Without limitation, for example, should a customer of Franchisee wish to provide cable services, it would be required to obtain a cable franchise from the City, or other appropriate authorization.

5.2. Franchisee may install two distinct types of facilities: wireline facilities to provide the Services, and wireless Nodes. It must pay separate compensation for each use.

5.3. For wireline Facilities to the extent used to provide Services, Franchisee will pay a fee equivalent to the fee the City charges similarly situated wireline providers of telecommunications

services for use of the Rights of Way, which amount shall be five percent (5%) of gross revenues derived from the operation of the wireline facilities in the Franchise Area.

5.4. For Nodes which do not involve any ground cabinet and which are not placed on City Facilities, Franchisee will a fee of \$500 per node for the first use of each Node, and \$200 for each additional use of each Node. This amount shall be adjusted annually based on the percentage increase in the annual average CPI-U for the Washington, D.C. Metropolitan Region, with the 2017 annual average serving as the reference period and with the first adjustment being made for the calendar year 2019.

5.5. The fee for each ground cabinet shall be specified as part of the approval of the Node, and shall reflect the property used and the impact on alternative uses.

5.6. During any holdover period, City may, at its option, increase any of the fees charges by 2.5 times.

5.7. The amounts due for use of any Facility shall be paid in accordance with this paragraph. Fees shall be due quarterly, within 45 days of the end of the calendar quarter, based on the preceding quarter. Node fees will be based on the maximum number of Nodes occupied during the preceding quarter. Franchisee shall furnish to the City with each payment a statement, executed by an authorized officer of the Franchisee, or designee, showing the amount of Gross Revenues for the period covered by the payment.

5.8. The acceptance of any payments shall not be treated as an accord or satisfaction. Franchisee may audit books and records, and inspect facilities as necessary to ensure rents owed are being paid.

5.9. In addition to the fees specified above, Franchisee shall compensate the City for costs of negotiating this Franchise in the amount of \$10,000.

5.10. Should Franchisee, after the parties' execution and delivery of this Agreement, enter into a right-of-way franchise or use agreement with another municipality or County in the State of Maryland, which agreement contains financial benefits for such municipality or County which, taken as a whole and balanced with the other terms of such agreement, are in the City's opinion superior to those in this Agreement, the City shall have the right to require that Franchisee modify this Agreement to incorporate the same or similar superior benefits and such other terms and burdens by substitution, mutatis mutandis, of such other agreement or otherwise.

5.11. Interest will be charged on any late payment at the maximum rate permitted under State law, or if there is no such rate, the prime rate charged by the bank the City uses as its main depository, plus 3%.

6. Work in the Rights of Way.

6.1. No Limitation on Obligation to Comply With Applicable Laws. Without limiting its obligations under Section 2, Franchisee shall comply with the requirements of this Section, which are minimum requirements for work in the Rights of Way.

6.2. No Interference.

6.2.1. No Right of Way or other public place shall be obstructed longer than necessary during its work of Construction or Maintenance, and shall be restored to the same condition existing prior to the commencement of the Work. No part of any Right of Way, or other public place of the City, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be damaged. However, should any such damage occur, the Franchisee shall repair the same as promptly as possible, and, in default thereof, the City may make such repairs and charge the reasonable cost

thereof to and collect the same from the Franchisee. In no event may Facilities be constructed or maintained in a manner that creates a hazardous condition, or a condition that is inconsistent with applicable law protecting persons with disabilities.

6.2.2. If City receives multiple requests for placement of Facilities similar to those authorized hereunder, City, after providing Franchisee and other affected entities an opportunity for comment, may require consolidation of Facilities or develop a non-discriminatory means of allocating sites that may be appropriate for placement of facilities in the Rights of Way.

6.3. Closing of Rights of Ways. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Rights of Ways. In the event that all or part of the Rights of Ways within the Franchise Area are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services comparable to Services; or (2) vacated or abandoned or if ownership of the land in, under or over the affected Rights of Ways is otherwise transferred to another Person, all rights and privileges granted pursuant to this Agreement with respect to such Rights of Ways, or any part of such Rights of Ways so abandoned, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and Franchisee shall remove its Facilities from such Rights of Ways. Nothing herein is meant to preclude Franchisee from pursuing any rights it may have under state law against a private Person if the Right of Way is vacated for the benefit of that Person. The City shall provide reasonable prior written notice to Franchisee of any such closing, vacation, or transfer to allow Franchisee to remove its Facilities where the right to continue to occupy and use such Rights of Way is not reserved for Franchisee.

6.4. Relocation of Facilities.

6.4.1. Franchisee may be required to remove and relocate its Facilities, subject to such notice as may ordinarily be provided to users of similar structures, if: the structures to which they are attached or located within are removed, ordered to be removed or relocated; or to accommodate the use of the Rights of Way by other entities; or to ensure that the facilities or structures to which they are attached or located within do not interfere with the use of the Rights of Way by the public, or present a risk to public health or safety. To the extent that Franchisee is required to remove or relocate its Facilities to accommodate the use of the Rights of Way by a third party (other than the City, the State of Maryland, or a department, agency or subdivision of the State of Maryland), nothing herein prevents Franchisee from seeking compensation from that third party.

6.4.2. If Franchisee's Facilities are located aboveground in the Right of Way and the distribution lines of the incumbent local exchange carrier or electric utility subsequently are placed underground, Franchisee's aboveground Facilities (other than those comparable to any Facilities of the incumbent local exchange carrier which are permitted to remain aboveground) shall be placed underground at the same time, except for such Facilities as may be permitted to remain aboveground pursuant to Section 2.2.2

6.4.3. The rights and privileges granted hereby shall not be in preference or hindrance to the right of the City, or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works, public improvements or public projects. In the event that the Facilities interfere in any way with the construction, maintenance or repair of such public works, public improvements, or public projects, the Franchisee shall (a) immediately commence work to remove or relocate the object of such interference if emergency circumstances exist or (b) otherwise, within ten (10) days of notice of such interference, protect or relocate its Facilities, as may be directed by the relevant authority.

6.4.4. The City shall cooperate with Franchisee in finding a suitable alternative location for any relocated Facilities removed pursuant to this Section in a manner that, to the extent reasonably

consistent with other provisions of this Franchise, and which allows Franchisee to continue to provide Service to its customers, including, but not limited to, expediting approval of any necessary Permits required for the relocation of Facilities.

6.4.5. If Franchisee defaults in its obligations hereunder, the City may remove or relocate the Facilities and charge the reasonable cost thereof to and collect the same from the Franchisee.

6.5. All Work Performed Safely. Construction and Maintenance shall be done in a workmanlike manner. All work involved in the Construction and Maintenance of the Facilities shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. The Franchisee shall comply with applicable codes, regulations and industry standards, as amended from time to time. The Franchisee shall employ ordinary care at all times and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public. In addition, the Franchisee shall, at its sole cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, and to comply with safety requirements of all permits, licenses, and other forms of approval or authorization. Franchisee will comply with City requirements for identification of the Facilities and for identification of employees, subcontractors, vehicles and equipment when performing work within the Right of Way.

6.6. Maintenance.

6.6.1. Franchisee shall maintain the Facilities in good condition and neat and orderly appearance, and in compliance with all applicable laws, permits, Authorizations and site licenses.

6.6.2. Franchisee shall keep the Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the City gives Franchisee written notice of a failure by Franchisee to maintain the Facilities, Franchisee shall use its best efforts to remedy such failure within twenty-four (24) hours after receipt of such written notice. If Franchisee defaults in its obligations hereunder, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Franchisee.

6.6.3. Franchisee shall at all times keep and maintain the Facilities free of all graffiti located thereon. If City notifies Franchisee that graffiti is located on Facilities, Franchisee shall remove the graffiti within three (3) days of the written notice. If Franchisee defaults in its obligations hereunder as provided for in Section 9, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Franchisee.

6.7. Emergency Notification. The Franchisee shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the Franchisee, not voice mail or a recording, can be contacted in the event of an emergency. At City's request, a contact number will also be placed on Franchisee's Facilities in such manner as the City may reasonably direct. The Franchisee shall respond immediately to address a reported emergency.

6.8. Excavation Notices. Franchisee must contact Miss Utility, Maryland, or successor association, and comply with the requirements for excavation notification.

6.9. Inspection by City. The City shall have commercially reasonable access to inspect any work conducted by Franchisee during the Construction or Maintenance of Facilities.

7. Removal Due to Termination or Abandonment.

Following the termination of the Franchise for any reason, or in the event Franchisee ceases to operate and abandons any Facilities, Franchisee shall, within sixty (60) days, remove such Facilities from the Rights of Way and restore the Rights of Way in accordance with the Regulations. Alternatively, the City may allow Franchisee, in the City's sole and absolute discretion, to abandon Facilities in place and convey the Facilities to the City free and clear. If Franchisee defaults in its

obligations hereunder as set forth in Section 9, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Franchisee.

8. Required Reports.

8.1. Upon request, the Franchisee shall provide City an “as-built” map clearly indicating the location of the Facilities in the Rights of Way, which maps shall identify the owner of any structure on or within which Franchisee’s Facilities are located.

8.2. Upon request, and to the extent not expressly required under a permit, Franchisee will keep City apprised of the status of any work in the Rights of Way.

8.3. Upon request, Franchisee shall provide any required certificate of public convenience and necessity, and shall provide other proofs that it has authority to construct, maintain and provide Services.

9. Default and Remedies

9.1. Defaults. The following are defaults under this Franchise:

9.1.1. If either Party fails to perform or comply with any of the conditions or covenants of this Franchise and such failure continues for a period of thirty (30) calendar days after written notice thereof, unless the performance cannot be reasonably completed within the thirty (30) day period, and the Party has commenced good faith efforts to perform and is diligently proceeding to complete performance to the satisfaction of the other Party; or

9.1.2. If Franchisee fails to pay any sums herein specified when due and does not pay within fifteen (15) calendar days after receipt of written notice of said default; or

9.1.3. Franchisee’s acts or omissions create an imminent hazard to persons or properties which Franchisee cannot or does not immediately correct.

9.2. Default by Franchisee. In the event of default by Franchisee as specified in the preceding section, the City shall have the right to terminate this Franchise, by giving thirty (30) calendar days written notice to Franchisee, and in addition may pursue any other remedies available to it at law or equity. The thirty-day notice period is not an additional cure period.

9.3. Default by City. In the event of default by the City, Franchisee shall have the right to terminate this Franchise while any default continues, beyond any applicable cure period, by giving thirty (30) calendar days written notice to Franchisee, and in addition may pursue any other remedies available to it for injunctive relief. Franchisee shall have no recourse for damages against the City except as required by state law, whether resulting from enforcement or non-enforcement of this Franchise or any provision of applicable law.

10. City Termination Right.

City shall have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the Rights of Way; or (ii) if Franchisee’s licenses to operate the Facilities and/or provide Service are terminated, revoked, expired, or otherwise abandoned; or (iii) if any term related to the design or placement of the Facilities is unenforceable.

11. Indemnification

The Franchisee shall save the City, its officers, employees, contractors and agents harmless from all liability or damage (including judgments, decrees, court costs, and defense costs) arising out of or related in any manner to the Franchisee's operations within the corporate limits of the City, the exercise of the privileges granted to the Franchisee by City, or the acts or omissions of the Franchisee, its officers, employees, contractors, or agents.

12. Insurance and Performance Bond.

12.1. Insurance. Franchisee shall procure and maintain insurance for the duration of this Agreement against any and all claims for injuries to persons or damages to property which may in any way arise from, or in connection with, the Construction or Maintenance of Facilities or activities Franchisee, its agents, representatives or employees may perform pursuant to this Agreement (the “Work”). Such insurance shall be in the following minimum amounts, which assume that no hazardous materials will be associated with any of the Facilities, and that the Facilities will be of a kind and type regularly installed in the Rights of Way. The City may require additional insurance if, in the City’s reasonable view, the Facilities present additional risks to it, the public or property.

12.2. Minimum Coverages and Limits:

12.2.1.	General Liability	\$5,000,000 per occurrence
12.2.2.	Automobile Liability	\$1,000,000 per occurrence
12.2.3.	Workers’ Compensation	Statutory Limits
12.2.4.	Employer’s Liability	\$500,000/\$500,000/\$500,000

12.3. Certificates. Certificates showing proof of such insurance shall be submitted to City prior to commencement of any Work. Further, it shall be an affirmative obligation upon Franchisee to advise the City’ Manager within two (2) days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement.

12.4. Endorsements. The General Liability policy is to contain or be endorsed to name City, its officers, officials, agents and employees as additional insureds as respects the liability arising out of the Work. Such coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

12.5. Workers’ Compensation. Franchisee shall maintain Workers’ Compensation Insurance for all of Franchisee’s employees who are in any way connected with the Work. Such insurance shall comply with all applicable state laws and provide a waiver of subrogation against the City, its officers, officials, agents and employees.

12.6. Liability. Franchisee and/or its insurers are responsible for payment of any liability arising out of Workers’ Compensation, unemployment or employee benefits offered to its employees. Insurance is to be placed with insurers with a current A.M. Best’s rating of not less than A:VII and licensed to do business in the State of Maryland, unless otherwise approved by City; and Franchisee shall not self-insure in satisfaction of any of the insurance requirements set out herein without the express written consent of City.

12.7. Performance Bond. Franchisee shall, as a material condition of its Franchise Agreement, and prior to the commencement of any Work in the Rights of Way, deliver to the City a performance bond in the amount of \$100,000, payable to the City to ensure the appropriate and timely performance of Work in the Right of Way and compliance with the obligations of its Franchise. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Maryland, and satisfactory to the City Attorney in form and substance, and must be maintained until all obligations to City under this Franchise (including obligations to remove and restore) are satisfied.

13. Transfer

The Franchise, or control of the Franchise or of Facilities within the Right of Way may not be assigned or transferred directly or indirectly by any means without the prior written consent of City which consent shall not be unreasonably withheld, conditioned or delayed; if Franchisee is in compliance with this Agreement and provided, that the transfer or assignment does not create any additional burden upon the Right of Way, or adversely affect the City's interests under this agreement and Franchise. An assignee or transferee must accept all obligations of the Franchisee, and responsibility for all acts and omissions of Franchise known and unknown, if the transaction results in a change in Franchisee. A license or lease of capacity on Facilities owned or controlled by Franchisee is not a Transfer under this Section.

Franchisee may mortgage, pledge, or hypothecate its interest in Facilities without consent to any financing entity, or agent on behalf of any financing entity to whom Franchisee (1) has obligations for borrowed money or in respect of guaranties thereof, (2) has obligations evidenced by bonds, debentures, notes or similar instruments, or (3) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof. Any such assignment to a financing entity or its agent shall be subordinate to the terms of this Franchise Agreement, will not permit any person to succeed to the rights of Franchisee under the Franchise without the City's consent, and will not result in any lien extending to municipal property or the Franchise itself.

14. Notices

14.1. All notices, requests, demands, and other communications hereunder which are required to be in writing shall be deemed given if personally delivered or by sent to the following addresses by certified mail, return receipt requested; or by an overnight delivery service providing proof of delivery:

City:

City of Gaithersburg
Attn: City Manager
31 S. Summit Avenue
Gaithersburg, MD 20877
(ph) 301-258-6310

With a copy to (which shall not constitute notice):

City of Gaithersburg
Attn: City Attorney
31 S. Summit Avenue
Gaithersburg, MD 20877
(ph) 301-258-6310

Franchisee:

With a copy to:

All invoicing to Licensee may be made to the address above “ATTN: Department of Finance and Administration.

14.2. Other Notices. Franchisee shall identify an entity to which notice may be provided by email or telephone call, twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the construction or maintenance of Facilities, or conditions affecting the safety or integrity of the Facilities (downed poles or lines, for example), including matters that may require immediate relocation or removal of Facilities. Initially, that notice may be provided to _____.

14.3. Changing Notice. Either party may change the person, address, email or telephone to which notice may be provided by written notice to the other party. Each party must ensure that the other has accurate information as to where notices are to be provided.

15. Miscellaneous

15.1. Materials and Claims. All materials furnished for any work done in the Franchise Area by Franchisee shall be at Franchisee’s sole cost and expense. Franchisee agrees to protect the Facilities installed in the Rights of Way and property of the City, and City, from all claims of contractors, laborers and material men. Franchisee shall promptly pay all contractors and materialmen, so as to minimize the possibility of a lien attaching to the any property of the City or the Facilities in the Rights of Way. Should any such lien be made or filed, Franchisee shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

15.2. No Advertisement. Franchisee shall not place any advertisement or other notice on or about the Facilities which identifies the Franchisee in any way (except for emergency notification postings).

15.3. Merger. This document contains the entire Agreements of the Parties hereto with respect to the Franchise. No provision of this Franchise may be amended or added to except by an agreement in writing signed by the parties hereto or respective successors in interest.

15.4. Non-Waiver. Failure of City to insist on strict performance of any of the conditions, covenants, terms or provisions of this Franchise or to exercise any of its rights hereunder shall not waive such rights, but City shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Franchisee to City after a breach of this Franchise shall not be deemed a waiver of such breach unless expressly set forth in writing.

15.5. Force Majeure. If either City or Franchisee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.

15.6. Governing Law; Jurisdiction.

15.6.1. This Franchise Agreement shall be construed in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. If suit is brought by a Party to this Agreement, the Parties agree that trial of such action shall be vested exclusively in the Circuit Court for Montgomery County Maryland or the United States District Court for the District of Maryland.

15.7. Change in Law and Severability. If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision. If, as a result of a change in law by statute, rule, ruling or otherwise, the total compensation to the City arising as a result of Franchisee's occupation of the Rights of Way (including attachments on City-owned facilities therein) is materially reduced, the Parties agree to negotiate in good faith to amend this Agreement to ensure that total compensation to the City remains substantially comparable, to the extent permitted under applicable law.

15.8. Representations.

15.8.1. Each of the Parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the Parties' respective obligations hereunder and that such obligations shall be binding upon such Party.

15.8.2. Franchisee represents that it is validly existing and in good standing under the laws of the State of Maryland, that it is qualified to do business under the laws of the State of Maryland, and that it has the power and authority to own its properties, to carry on its business as now being conducted, to enter into this Franchise and carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Franchise.

IN WITNESS THEREOF, the parties hereby bind themselves legally to the terms and conditions set forth in this Agreement, as evidenced by the signature of their duly authorized representatives.

WITNESS:

THE CITY OF GAITHERSBURG

By: _____
City Manager

WITNESS:

By: _____

Approved as to Form:

City Attorney

