

MASTER LICENSE AGREEMENT FOR ATTACHMENTS TO LICENSOR FACILITIES

THIS MASTER LICENSE AGREEMENT FOR ATTACHMENTS TO LICENSOR FACILITIES (“License”), made and entered into this _ day of _____, 2017, (the “Effective Date”) by and between the **City of Gaithersburg**, a municipal corporation of the State of Maryland, with its principal offices located at 31 S. Summit Avenue, Gaithersburg, Maryland 20877, hereinafter referred to as “Licensor”, and _____, a _____ corporation, with offices located at _____, hereinafter referred to as “Licensee” (collectively referred to as the “Parties”).

WITNESSETH

1. PROPERTY TO BE LICENSED

The Licensor owns certain vertical structures which may be capable of accommodating Licensee’s facilities (the Licensor’s Facilities”). Per the terms and conditions as hereinafter set forth, Licensor does hereby agree to license unto Licensee a non-exclusive right to use Licensor’s Facilities appropriate for the placement of certain wireless equipment necessary for Licensee’s operation of its wireless communications network, including but not limited to fiber optic and coaxial cables, antennas, receivers and transceivers, mounting hardware, power supplies, grounding or bonding wires and other equipment which may be owned by Licensee or Licensee’s third party customers subject to the limitations herein. (“Licensee’s Equipment”). The right of use is subject to the terms and conditions set forth in this License, and requires the execution of a Schedule A for Licensee’s use of any Licensor Facility, which Schedule shall identify specifically the property to be licensed (including any structure that will be used and any real property that will be used), the location of the property, the Licensee’s Equipment that will be permitted to be placed at or near the site, the design and location of those facilities, the conditions upon, and the means of access to the Premises, the compensation for the site license, and any special conditions on the use of the property. It is discretionary with the Licensor to execute a Schedule A, and the Licensor may determine not to grant access to any of its facilities. Once a Schedule A becomes fully executed, the property licensed to Licensee and identified in Schedule A shall be hereinafter referred to as the “Premises.” Any fully executed Schedule A is made a part hereof for all purposes.

2. TERM

The License shall be for an initial term of five (5) years, commencing on the date that the Distributed Antenna and Small Cell Franchise dated _____(the “Franchise Agreement) between the parties is fully executed by both Parties (“Effective Date”) and ending on the fifth (5th) anniversary of the Effective Date, provided that, without limiting the other provisions of this License related to termination, the License shall terminate if the Franchise Agreement, or if any material terms of that agreement (or any schedule thereto) or this License are unenforceable. Unless otherwise terminated as specified herein, this License shall automatically renew for up to three (3) additional five (5) year terms, unless either party notifies the other Party of its intent to terminate the License at least one hundred eighty (180) days before the termination of the then current term; or for any particular Premises, if the parties are unable to agree to terms for compensation for continued use. Terms governing the use of, and the conditions under which third parties may own equipment on, the Premises are material.

3. AUTHORIZED USE

Licensee shall use the Premises only for purposes authorized under its Franchise Agreement. Licensee agrees to inform Licensor if Licensee needs to abandon or vacate the Premises during the term hereof. In the event that Licensee abandons or vacates the Premises, Licensee’s obligation to remit Rent shall terminate on the date

that Licensee has removed Licensee's Equipment from the Premises, restored Lessor's Facilities and other property affected by the use of the Lessor's Facilities to its prior condition, and complied with any special conditions that may apply to any particular Licensor Facility. Licensee agrees not to use the Premises and not to permit them to be used for any offensive, noisy, or dangerous trade or business, or in violation of any law, ordinance, or regulation of any governmental body or authority having jurisdiction thereof.

No toxic materials may be stored or used at the Premises unless specifically identified and permitted under Schedule A, and subject to such additional indemnities, and assumptions of liability as the City may decide are appropriate.

Licensee use of the Premises is secondary, and shall not prevent use of the Premises for other purposes or interfere with the primary uses of the Licensor's Facilities. If the City determines that it is in its interest to alter the Premises, or to remove Licensor's Facilities to which Licensee's Equipment is attached, City may require Licensee, at Licensee's sole cost and expense, to relocate or otherwise reconfigure Licensee's Equipment on the Premises, or may terminate any respective Schedule A as it relates to a specific Licensor Facility, with not less than One Hundred Eighty (180) days prior written notice, or sooner if an emergency situation exists. Licensor shall make good faith efforts to find an alternative Licensor Facility to which Licensee's Equipment may be attached. In all events, Licensee shall promptly remove Licensee's Equipment at its expense. Licensee is responsible for all activities associated with its use of the Premises, and without limitation shall ensure that those activities are conducted in a manner that does not cause interference with any Licensor communications system, or any public safety communications system associated with the Premises.

Without limitation, Licensee must clearly identify by signage approved by the City, any hazards created by Licensee's Equipment to persons who may access the Premises. Licensor may require Licensee to immediately cease operations of any of Licensee's Equipment as City deems appropriate to permit it or any public agency, or anyone authorized by them, to perform work upon or near the Premises.

Licensee may not attach to any City Facilities, including those on Schedule A, until it has provided a complete description and cost estimate for the work associated with the use of the City Facilities, including costs and work associated with providing electricity to the Premises; all structures have been certified as safe for use at the location specified (e.g., where a breakaway pole is required, a breakaway pole is proposed; where there is an applicable setback recommendations for road placement, those recommendations are satisfied); and all necessary permits have been obtained.

4. RENT

a. **Initial Rents.** The rents for use of City Facilities that are not in rights of way shall be established in the applicable Schedule A, and shall be set by mutual agreement of the parties. For City Facilities in the rights of way (primarily street lights and traffic signals) rents shall be charged as provided in this Section. To the extent that Licensor consents to the attachment of any Licensee's Equipment to a City Facility, City shall require rent in the amount of One Thousand Dollars (\$1,000), per year per pole for the approved attachment and first use of those attachments, and an additional \$500 for each additional use of the attachment. Each additional use after the first is treated as an "additional use," even if the additional uses are installed at the same time as the first.

b. **Rent Adjustments.** The cash rent 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. In addition, the parties agree that the rents reflected in this agreement represent their best estimate of the value of the benefits each party is providing to the other. The parties agree to adjust the rents upward or downward commencing on the fifth anniversary of this agreement to reflect prices being paid for similar access to similar property in public rights of way in reasonably comparable communities in Mid-Atlantic Region, but not including communities where the rate that may be charged is regulated or set by the state. The parties will meet in good faith six months prior to the fifth anniversary of this agreement to set a rate. The parties agree that the amount

paid by others for access to similar facilities in Gaithersburg (taking into account other benefits exchanged) is the best measure for comparison.

c. **Time for Payments.** The annual rent due for use of any Licensor Facility shall be paid in advance in accordance with this paragraph. On the first day of month following approval of a Schedule A, for any Facility, Licensee shall pay the City the rent owed for the approved facility times a percentage equal to the number of remaining months in the year divided by 12. Thereafter, on February 1 of every year, it shall pay the City the annual rent owed for the use of Lessor's Facility. If an additional user or attachment is made, from the date of installation, for each attachment and user, Licensee shall pay the City the rent at a percentage equal to the number of remaining months in the year divided by 12. Thereafter, on February 1 of every year, it shall pay the City the rent owed for the additional attachments or users. If Licensee ceases to use a Licensor Facility, Licensor will rebate an allocable portion of the rent paid in advance, based upon the date all of Licensee's Facilities are removed, and the Premises restored in accordance with this agreement.

d. **No Accord or Satisfaction.** The acceptance of any rent shall not be treated as an accord or satisfaction. Licensor may audit books and records, and inspect facilities as necessary to ensure rents owed are being paid.

5. TAXES

A. During the term of this License, Licensee shall pay the taxing authorities directly for payment of all taxes and assessments of any type which may become due and payable for the Premises, if any, whether known or unknown, and whether now existing or later.

B. Licensee shall, during the term of this License, and of any and all extensions or renewals thereof, pay the taxing authorities directly, as the same shall become due and payable, all sales tax, personal property tax, occupancy tax or use tax, and business license fees, if any, imposed by federal, state or local law, upon any and all property or improvements installed on the Premises by Licensee for use in Licensee's business, or upon inventory stored on the Premises by Licensee.

C. Neither the rents nor the taxes described in Sections 4 or 5(A)-(B) are in lieu of any other taxes that Licensee may owe to the City or the State.

6. INDEMNITY

Notwithstanding anything herein to the contrary, Licensee shall indemnify and hold the Licensor, its employees, officers, officials, contractors, agents and/or representatives, free and harmless from and against any and all liabilities, losses, claims, demands, suits, judgments, causes of action and/or expenses of any kind or nature, including the payment of reasonable attorneys' fees, resulting from property damage and/or personal injury, including death, resulting from or in any way arising out of Licensee's use of the Premises, except to the extent arising out of the gross negligence or willful misconduct of the Licensor. The foregoing indemnity shall survive the expiration or termination of this License.

All property kept, stored, or maintained in or on the Premises shall be kept, stored, or maintained at Licensee's sole risk and expense, and Licensee agrees to pay and discharge any and all mechanic's, materialman's or other liens against the Premises arising from Licensee's use thereof.

7. INSURANCE

Licensee shall procure and maintain insurance for the duration of this License 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 Licensee's use of the Premises hereunder. Such insurance shall be in the following minimum amounts:

Minimum Coverages and Limits:

a.	Commercial General Liability	\$5,000,000 per occurrence
b.	Comprehensive Automobile Liability	\$1,000,000 per occurrence
c.	Workers Compensation	\$1,000,000
d.	Employers Liability	\$500,000/\$500,000/\$500,000

Certificates showing proof of such insurance shall be submitted to Licensor prior to the Effective Date of this License. Further, it shall be an affirmative obligation upon Licensee to advise the City Manager, within two 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 License.

The General Liability policy is to contain or be endorsed to name Licensor, its officers, officials and employees as additional insureds as respects the liability arising out of the activities performed by Licensee under this License. Such coverage shall be primary to the extent of Licensee’s negligence and/or willful misconduct, 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.

Licensee shall, to the extent required by law, maintain Workers’ Compensation Insurance for all of Licensee’s employees who are in any way connected with the performance under this License. Such insurance shall comply with all applicable state laws and provide a waiver of subrogation against the Licensor, its officers, officials, agents and employees, unless otherwise approved by Licensor.

Insurance shall 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 Licensor. Licensee shall not self-insure in satisfaction of any insurance requirement set out herein without the express, written consent of City.

Licensee shall be fully and solely liable for any costs or expenses arising as a result of a coverage deductible, co-insurance penalty, or self-insured retention, including any loss not covered because of the operation of such deductible, co-insurance penalty or self-insured retention.

Licensee shall cause each of its contractor’s performing services hereunder, if any, to purchase and maintain insurance of the type specified herein, unless Licensee’s insurance provides coverage on behalf of each contractor.

8. ALTERATIONS TO PREMISES

Except for maintenance and repairs of Licensee’s Equipment which do not alter the physical characteristics of Licensee’s Equipment or the Premises, Licensee shall not make any changes, alterations, or additions to the Premises without the express, written consent of the Licensor. Any and all permitted changes, alterations, or additions to the Premises made by Licensee shall be at Licensee’s sole cost, risk, and expense. However, upon the termination of this License, any and all such improvements shall automatically become the property of Licensor, without compensation necessary therefor; except that Licensee shall remove Licensee’s Equipment, except any of Licensee’s Equipment as to which Licensor has an indefeasible right of use. Licensee shall restore the Premises to their prior condition, or such other condition as the Licensor may approve.

9. REPAIR AND CARE OF LICENSED PREMISES

Licensee shall not commit any waste of the Premises and shall promptly pay for any and all damages to the Premises caused by Licensee, its employees, agents, contractors or its customers. Licensee shall not use or permit the use of the Premises in violation of any present or future law of the United States or the State of Maryland or in violation of any present or future City or municipal ordinance or regulation. Licensee shall promptly give Licensor notice of any accident or damage to the Premises.

Licensee shall at all times keep the Premises in clean and orderly condition.

Licensee shall be responsible for all maintenance of the Licensee's Equipment on the Premises, which shall be maintained in good order, and so that the appearances contemplated by Schedule A for the Premises and Licensee's Equipment are maintained. This requires, without limitation, removal of graffiti promptly, repainting facilities, ensuring wiring is properly attached and neatly installed, and ensuring equipment cabinets are locked and sealed. Licensee shall not interfere with, or conduct activities on the Premises that prevent, Licensor from otherwise maintaining the Premises. Licensor owes no duty to repair or maintain to Licensee. The forgoing notwithstanding, Licensor reserves the right to take immediate steps to remove and/or otherwise mask graffiti. Such action does not relieve the Licensee from its obligation to restore the Premises to its original appearance.

10. UTILITIES

Licensee shall pay all charges for utilities it uses on the Premises through direct billing from the utility. Utility equipment and facilities must be installed in a manner acceptable to the Licensor, to the extent not specifically shown in Schedule A. Failure to comply with this requirement may result in non-renewal or termination of the License. Notwithstanding the forgoing, Licensor may permit Licensee to utilize Licensor's existing electrical services, except as impermissible under applicable tariffs provided the parties agree to the manner of calculating and paying for Licensee's energy utilization. Either party may terminate such an arrangement, provided at least thirty (30) days written notice is provided to permit installation of any required meter. The formation of any such arrangement shall not release Licensee of its obligation to pay for all utilities associated with its use of the Premises.

11. REMOVAL OF IMPROVEMENTS

All furnishings, trade fixtures, equipment and other personal property installed in or on the Premises by Licensee shall remain the property of Licensee and may be removed by Licensee at any time, subject to Section 8. of this Agreement.

12. ASSIGNING AND SUBLETTING

Without the written consent of the other party, neither party may assign, sub-license, or transfer in any manner, in whole or in part, its rights, duties or obligations under this License. A change in control of Licensee or its parent shall be considered a transfer. Such consent shall not be unreasonably withheld, conditioned, or delayed by Licensor. Notwithstanding the foregoing, to allow for internal restructuring Licensee shall have the right to assign this License and all rights and obligations accorded Licensee to a wholly-owned subsidiary or a parent entity of Licensee without the prior written consent of Licensor, provided that the change is not part of a transaction that results in a change of control or an assignment of assets to an entity that is not under the control and ownership of the entity that is the ultimate parent of Licensee as of the Effective Date. In the event Licensee assigns this License to a subsidiary or parent entity, Licensee shall provide Licensor with prior written notice of such assignment, and such entity must agree to be bound by this agreement, become the Licensee, and to accept liability for all acts and omissions of the prior Licensee. Further, notwithstanding the foregoing, any entity to which the Licensee may assign, sub-license, or transfer any of its rights, duties or obligations to under this License, shall have all required approvals from the Maryland Public Service Commission.

Neither this License nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto. Notwithstanding the foregoing, any transfer of the rights granted hereunder, in whole or in part, from Licensee by merger, consolidation, liquidation or otherwise by operation of law, shall constitute an unapproved assignment or subletting, hereunder, and this License shall immediately terminate therewith, without any further action necessary on Licensor's part, and without any refund or proration of rent. The ordinary use of capacity or services on Licensee's network is not a transfer, provided that allowing any person to place equipment at the Premises is a

transfer, subject to the following paragraph. Licensor shall be deemed to have consented to placement of property owned by Licensee's customers and placed wholly within facilities owned by Licensor, provided that (a) the third party use complies with the conditions of the Franchise Agreement, Section 2.2.3; (b) the third party agrees that it shall be jointly and severally liable for any damage caused by use of the Premises for which Licensee would be liable; (c) that Licensor is only obligated to Licensee as provided in this License, and not such third party, and Licensor owes no duty to such third party, including any duty of care with respect to such third party's property; and (d) that any third party property may be treated as the property of Licensee for all purposes under this License.

13. SURRENDER OF LICENSED PREMISES

Licensee shall surrender the Premises at the expiration or earlier termination of this License, or any extension thereof, or of any other holdover tenancy, in as good a condition as when the Premises were delivered to Licensee, normal wear and tear excepted.

14. HOLDOVER

Should Licensee holdover the Premises, or any part thereof, after the expiration of any then current term of this License, then such holding over shall constitute a tenancy from day to day, only, and Licensee shall pay the rent owed, plus an additional 50% of the then existing rent until such time as all of Licensee's Equipment is removed from the Premises.

15. TERMINATION

During the term of this License, either party may terminate any respective Schedule A by giving the other party one hundred eighty (180) days written notice of the intent to terminate. Should a material breach or violation of any provision of this License occur, either party may terminate this License or any individual Schedule A issued hereunder, upon written notice to the other, provided that the defaulting party shall be given a reasonable time to cure such breach or violation, but in no event more than 30 days after said written notice.

Licensor may terminate if Licensee engages in a pattern of acts or omissions that create a hazard to persons or properties and Licensee has failed to discontinue such acts or omissions upon prior notice by Licensor. Licensor shall not be required to provide more than one (1) written notice to Licensee of the existence of any specified hazard.

Licensor may also terminate if Licensee takes any action that impairs the ability of the Licensor or any utility or government agency to provide services (including but not limited to safe or adequate street lighting or traffic signalization).

16. WAIVER OF COVENANTS

The waiver by Licensor or Licensee of a breach of this License shall not operate as a waiver of any subsequent breach. No delay in acting with regard to any breach of this License will be construed to be a waiver of the breach.

17. ACTS OF GOD AND UNAVOIDABLE INTERRUPTIONS

Neither Licensor nor Licensee shall be liable for failure to perform any obligation hereunder, or for any delay in doing so, when such failure or delay is caused by strike, lockout, governmental restriction, Acts of God, or any other similar cause beyond the control of the parties hereto, only to the extent and for the period that such interruption continues, save and except that the provisions of this Section shall not excuse a nonpayment of rental or other sums due hereunder on the due date thereof.

18. ACCESS TO PREMISES

Licensee may access the Premises and Licensee's Equipment at all reasonable times, with notice to Licensor except as otherwise specified in a Schedule A. Licensor or Licensor's agents shall have the right to access Licensee's Equipment at all reasonable times for the purpose of inspecting or examining Licensee's Equipment, or as necessary to make such repairs to the Premises as Licensor shall deem necessary or required hereunder. Licensor shall notify the Licensee at: _____ when it will access Licensee's Equipment, or requires Licensee's Equipment to be shut down.

19. NOTICES

All notices required hereunder shall be in writing and shall be deemed to have been duly given if either hand delivered or mailed by certified or registered mail, postage prepaid, addressed to the party to whom intended at the address provided below or at such other address as such party shall hereinafter designate to the other party in writing as prescribed by this Section 19:

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

With a Copy to:

City of Gaithersburg
Attention: City Attorney
31 S. Summit Avenue
Gaithersburg, MD 20877

LICENSEE:

With a copy to:

20. RIGHTS OF SUCCESSORS AND ASSIGNS

The rights and obligations herein shall inure to and be binding upon the parties hereto, their successors and assigns.

21. SPECIAL RULES APPLICABLE TO STREET LIGHTS AND TRAFFIC SIGNALS

The provisions of this Section are in addition to, and not a replacement for, the other provisions of this Master License, and apply whenever Licensee seeks to attach to a Public Street Light (as defined below).

A. Definitions.

1) “Luminaire” means the luminaire, the supporting arm, and the electrical wires and controls for the luminaire.

2) “Public Traffic Signal” means a structure primarily designed for actively controlling or monitoring vehicular traffic flow on a right of way, including the supporting pole, traffic signals, arms, control equipment and equipment cabinets on site and electric power wire, and associated equipment required to serve the structure from the point of service by the electric utility serving the Public Traffic Signal, including any conduit, foundations, internal dividers, hand holes, vaults, pedestals, and bases. Traffic signs and their supporting posts are not Public Traffic Signals. This term does not include (i) traffic signals attached to a utility pole, building, or similar structure, or (ii) any facility that is privately owned.

3) “Public Street Light(s)” means a structure primarily designed for lighting a public right-of-way or other property owned or controlled by Licensor, including the supporting pole, Luminaire, arms, electric power wire, and associated equipment required to serve the structure from the point of service by the electric utility serving the Public Street Light, including any conduit, foundations, internal dividers, hand holes, vaults, pedestals, and bases. A Public Street Light does not include (i) a lighting system attached to a utility pole, traffic signal pole, building, or similar structure, or (ii) any facility that is privately owned.

B. Public Traffic Signal and Street Light Poles Available For Use.

1) Public Traffic Signal and Street Light Poles that the Licensor agrees may be used by Licensee must be under the ownership of Licensor, or transferred to the ownership of the Licensor prior to use by Licensee. Licensee shall be responsible for all costs incurred by the Licensor in connection with the replacement of Public Traffic Signals or Street Lights, or the installation of Licensee’s Equipment on existing Public Traffic Signals or Street Lights, including but not limited to costs to the Licensor for equipment to monitor or control the Public Traffic Signals or Street Lights as replaced or modified. Licensee is also required to bear all costs of any necessary relocation or modification of facilities owned by entities other than the Licensor and authorized and in place on the Public Traffic Signals or Street Lights prior to Licensor’s use of the Public Traffic Signals Street Lights.

2) Licensee will be responsible for all costs associated with installing, maintaining, replacing and relocating any Public Traffic Signals and Street Light it uses under this License in accordance with the Regulations. If Licensee fails to properly and timely maintain the Public Traffic Signals or Street Lights as required herein, Licensor may do either or both of the following, in addition to exercising any rights it may have under law or equity: (i) terminate the use of the Public Street Light; and (ii) cause the Public Street Lights to be maintained and bill Licensee for the cost thereof.

3) Licensor will be responsible for the monthly electrical costs associated with the Luminaire, and any other facilities it may install that use power; *except that*, if the costs to the Licensor are higher because of the replacement or use of the Public Street Light by Licensee, Licensee will pay those additional costs. Licensor will also be responsible for any costs associated with replacing the Luminaire or installing additional facilities for its own use after the installation of Licensee’s Equipment and installation of any replacement pole. In addition to other termination rights provided in this License, Licensor may refuse to allow replacement or use of a Public Street Light or terminate use of any or all of the Public Street Lights if Licensor determines permitting use or replacement of Public Street Lights would (i) alter the tariff under which it is able to purchase electric service; (ii) create unsafe conditions or (iii) otherwise increase the costs of providing Public Street Lighting.

C. Location and Design of Wireless Facilities on Public Traffic Signals or Street Lights.

1) The Licensor must specifically approve the design of any of Licensee's Equipment attached to a Public Traffic Signal or Street Light, and the design of any replacement Public Traffic Signal or Street Light. Licensor may designate the Luminaire to be installed as part of the replacement at any time prior to construction of the replacement Public Traffic Signal or Street Light. The Licensor is under no obligation to approve use of additional Public Street Lights or Traffic Signals with designs approved for any particular location, as the approvals with the design shown is site-specific; nor is it under any obligation to approve a modification to any design.

2) The Licensor's approval is not in lieu of required permits or other authorizations required by the Licensor Code's or Regulations, state law, or federal law.

D. Emergency Response Plan and Costs. Prior to performing any work on any Public Street Light or Public Traffic Signal (including but not limited to the initial installation of Licensee's Equipment), Licensee must have a Licensor-approved emergency response plan that identifies Licensor-approved contractors who will respond in the event of an emergency involving Public Street Lights or Public Traffic Signals that are being used by Licensee. The response plan must include (i) adequate response times and (ii) contact information for emergencies twenty-four hours a day and seven days a week. Without limiting the other provisions of this agreement, Licensee must pay all costs associated with emergency responses to hazards involving the Public Street Lights or Public Traffic Signals it uses, including any cost incurred by the Licensor in emergency responses involving the Licensee's Equipment. In addition, to the extent not addressed by the foregoing, there must be an approved plan, acceptable to the City, for the inspection and maintenance of the Public Street Lights or Public Traffic Signals that are being used by Licensee.

E. Inventory. Licensee shall maintain within or near the Licensor, an inventory of replacement Public Street Lights or Public Traffic Signals of the same design, size, and color as the replacement Public Street Lights or Public Traffic Signals that have been installed pursuant to this License to ensure that, in the event of a failure of a replacement Public Street Light or Public Traffic Signal, whether caused by the Licensee's Equipment or by any other event, including an Act of God, it may be promptly replaced with a Public Street Light or Public Traffic Signal of the same design. The inventory shall be the largest whole number of replacement Public Street Lights and Public Traffic Signals equal to 10% times the number of Public Street Light and Public Traffic Signals to which Licensee's Equipment are attached pursuant to this License.

F. Street Lighting, Traffic Signals, and Other Government Purposes Paramount. The main purpose of the Public Street Lights, including the replacement Public Street Lights, is to provide effective, efficient, safe street lighting, consistent with the plan for the Licensor and the main purpose of Public Traffic Signals is to provide for the safe and effective control and monitoring of traffic. Licensor may cause or authorize the Public Street Lights or Public Traffic Signals, or any part thereof, to be modified, replaced or removed at any time and for any reason, but will work with Licensee so that Licensee's Equipment can continue to be accommodated within or upon the Public Street Lights or Public Traffic Signals if reasonably feasible, or will work with Licensee in good faith to identify alternative locations for the Licensee's Equipment if not feasible. The Licensor (or such other governmental agency as may be responsible for work) shall not bear any costs associated with modifying, relocating, replacing or removing the Licensee's Equipment even if those costs are caused by the Licensor's actions, or the actions of another governmental agency. A modification of a Public Street Light or Public Traffic Signal would include, but not be limited to, the addition of cameras, sensors, traffic signs, banners, and communications equipment for use by any governmental agency for its own purposes or to provide services to the public.

G. Disconnect. Unless inconsistent with the other requirements of this License, Licensee shall install a Disconnect device at each Public Street Light or Public Traffic Signal on which or within which it installs Licensee's Equipment so that in case of emergency, the Licensor may disconnect such Equipment from its power source and safely shut it down in an emergency.

H. New Street Light. At Licensor’s option, upon abandonment of Licensee’s Equipment on a Public Street Light or termination or expiration of this License, Licensee shall, in addition to taking such other actions as may be required by this License, bear all costs associated with removing the Licensee’s Equipment and replacing any replacement Public Street Lights with new street lights satisfactory to the Licensor and similar in design to other Public Street Lights in the same area. Should the Licensor determine that it no longer wishes to use a particular replacement Public Street Light, it may require Licensee to remove such replacement Public Street Light. The obligation in this section includes but is not limited to the obligation to remove any foundation installed as part of a replacement Public Street Light, and to install an appropriate foundation, and restore the surrounding area to its prior condition.

I. Financial Security.

In order to secure the performance of its obligations under this License, Licensee will provide to the Licensor, in the form of a bond or an irrevocable Letter of Credit with a Maryland bank acceptable to the City Attorney in the amount of \$ 20,000.00 per Public Street Light or Public Traffic Signal occupied (“the Financial Security”) up to a total of \$100,000 for the first ten occupied. Should licensee occupy more than a cumulative total of ten Public Street Lights or Public Traffic Signals, Licensee shall provide additional security in amount determined by the City Manager to adequately protect the Licensor from the risks related to the use of its Public Street Lights and Public Traffic Signals.

- 1) If Licensee fails to comply with any terms or conditions of this License, including failing to pay any amount when due, or performing any act it is required to perform, Licensor may draw upon the Financial Security including the full amount of any compensation, or costs it may incur, plus costs and reasonable attorneys’ fees up to the full amount of the Financial Security.
- 2) Licensee must restore the Financial Security to its full amount within thirty (30) days after written notice from the Licensor that any amount has been recovered from the Financial Security.
- 3) Failure to maintain the Financial Security, or to restore the Financial Security to its full amount within thirty (30) days will constitute a material breach of this License. Licensee will be relieved of the foregoing requirement to replenish the Financial Security during the pendency of an appeal from the Licensor’s decision to draw on the Financial Security.
- 4) The rights reserved by the Licensor with respect to the Financial Security are in addition to all other rights and remedies the Licensor may have under this License, or otherwise.

22. AS IS CONDITION

Licensor Facilities licensed to Licensee pursuant to this License are licensed to and accepted by Licensee “as is” and with all faults. The Licensor makes no representation or warranty of any kind as to the present or future condition of or suitability of the Licensor Facilities for Licensee’s use and disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of the Licensor Facilities and their merchantability or fitness for a particular purpose. Licensee is solely responsible for investigation and determination of the condition and suitability of any Licensor Facilities.

23. REPORT DAMAGE AND REIMBURSE THE LICENSOR

Licensee, its personnel, agents and contractors shall exercise reasonable caution to avoid damaging the facilities and property (including the rights of way) of Licensor and shall make an immediate report to Licensor of the occurrence of any such damage caused by its personnel, agents, or contractors. Licensee agrees to

reimburse Licensor for all reasonable costs incurred by Licensor for repair of such facilities and property damaged by Licensee, its personnel, agents, and contractors.

24. RISK OF LOSS OF EQUIPMENT

Licensee bears all risks of loss or damage of the Licensee's Equipment from any cause, and the Licensor shall not be liable for any damages or loss associated with loss or damage of the Licensee's Equipment, including, without limitation, damage caused by the Licensor's removal of the same.

25. AS-BUILT DRAWINGS

Upon the completion of each installation, Licensee must promptly furnish to the Licensor an "as-built" map that identifies the exact location of the Premises and the location of all facilities associated with the Licensee's Equipment. The information must be provided in a format that is compatible with Licensor's GIS system. It must also provide as-built drawings showing all the components of the Licensee's Equipment as constructed.

26. NO PROPERTY INTEREST CONVEYED; NO INTERFERENCE

Nothing in this License may be deemed to grant, convey, create, or vest in Licensee a real property interest in land or any structure, including any fee, leasehold interest, or easement. No reference herein to a right of way or to Licensor Facilities shall be deemed to be a representation or warranty by Licensor that its interest is sufficient to permit its use for Licensee's purposes, and Licensee shall be deemed to gain only those rights to use as are proper in Licensor, and as Licensor may have the undisputed right and power to give. Licensee's use may not interfere with any public uses of any public property. If such interference should occur, Licensee shall discontinue using the Licensee Equipment, methodology or technology that causes the interference until Licensee takes corrective measures to eliminate such interference. In the event that such interference does not cease promptly, Licensee acknowledges that continuing interference may cause irreparable injury and harm, and therefore, in addition to any other remedies, and without limitation of any other remedy, Licensor shall be entitled to seek temporary and permanent injunctions against the breach of this subsection.

27. CONTINUED OBLIGATIONS

Licensee's obligations to indemnify, to maintain insurance, to maintain the Financial Security, and to take any action required upon termination or abandonment shall survive termination until all obligations are satisfied.

28. ENTIRE AGREEMENT

This License constitutes the entire agreement between the parties hereto, and the parties hereto agree that neither Licensor nor Licensor's agents or representatives have made any other promises or representations to Licensee regarding the Premises or the rights granted herein. This License may not be modified or amended except in writing signed by both parties hereto. The material terms of this Agreement are not severable.

29. GOVERNING LAW

This License shall be governed by, construed and enforced in accordance with the laws of the State of Maryland.

IN WITNESS WHEREOF, the parties hereto have caused this License to be executed as of the day and year first above written.

WITNESSESS:

CITY OF GAITHERSBURG

BY: _____

ITS: City Manager _____

Approved as to Form:

Legal Department

WITNESSESS:

BY: _____

ITS: _____

Form of Schedule A

Pursuant to the Master License Agreement for Attachments to Licensor Facilities between the City of Gaithersburg, a municipal corporation of the State of Maryland, with its principal offices located at 31 S. Summit Avenue, Gaithersburg, Maryland 20877 ("Licensor"), and _____, a _____ corporation with offices located at _____ ("Licensee").

1. Site Address: (street address if known)
2. Site Latitude and Longitude:
3. Commencement Date:
4. Monthly Rent:
5. Term: See Paragraph 2 of the License.
6. Site Licensor-Owned: _____ or Licensor-Licensed: _____.
If licensed, Term of Underlying License:
7. Special Access Requirements:
8. Licensor Contact for Access for Emergency:
9. Licensee Contact for Emergency:
10. Licensee's Address for Notice Purposes:

REVIEWED BY:

**APPROVED
CITY OF GAITHERSBURG**

Department of Planning and
Code Enforcement

BY: _____

Department of Public Works

ITS: City Manager

WITNESS:

BY: _____

_____ ITS: _____

Attachments:

- Schedule 1: Site Plans of Premises
- Schedule 2: Equipment
- Schedule 3: Special Conditions on Use of Facilities
- Schedule 4: Proof of Compliance with Applicable Law

SCHEDULE 1

SITE PLANS OF PREMISES

Pursuant to the Master License Agreement for Attachments to Licensor Facilities between the City of Gaithersburg, a municipal corporation of the State of Maryland, with its principal offices located at 31 S. Summit Avenue, Gaithersburg, Maryland 20877 ("Licensor"), and _____, a _____ corporation with offices located at _____ ("Licensee").

The Premises are depicted as follows: See attached Site Plans and Specifications

A photosimulation of the proposed facility showing all of Licensee's Equipment and associated metering and electrical wiring that will be installed in relation to the surrounding area:

SCHEDULE 2

EQUIPMENT

Pursuant to the Master License Agreement for Attachments to Licensor Facilities between the City of Gaithersburg, a municipal corporation of the State of Maryland, with its principal offices located at 31 S. Summit Avenue, Gaithersburg, Maryland 20877 ("Licensor"), and _____, a _____ corporation with offices located at _____ ("Licensee").

Licensee's Equipment shall be the following:

Licensor Facility Type: ____ Attachment to Public Street Light, traffic or other Licensor owned pole.
____ Replacement of Public Street Light, traffic or other Licensor owned pole.

Type and Size of Equipment Cabinet: _____

Make of Antennas: _____

Number of antennas: _____

Number of feed lines: _____

Size of Feed Lines: _____

Other desired equipment: _____

Hazardous Materials at Site: _____

SCHEDULE 3

Special conditions on use of Licensor Facilities at proposed location:

Compensation required? If so, what is the compensation?

SCHEDULE 4

Proof of compliance with applicable law: construction may not begin at any location, and facilities may not be replaced until Licensee shows that it has obtained all necessary approvals under state, federal or local law.

Federal:

1. Licensee's Equipment licensed by FCC?
2. Is NEPA applicable? If so, provide proof of compliance; if exempt provide, basis for exception.
3. Is NHPA applicable? If so, provide proof of compliance; if exempt provide, basis for exception.
4. State what FAA requirements apply, and provide proof of compliance.
5. Provide a certification that facilities will comply with applicable RF requirements.

State:

Maryland Public Service Commission authorization?

Local:

Building permits?

Electrical permits?

Other permits?

Compliance with zoning requirements.

Compliance with franchise requirements

