

REGULATION NO. _____

REGULATIONS ENACTED PURSUANT TO CITY CODE §2-10
TO IMPLEMENT CITY CODE §§19-9A, 20-62(J), AND 24-167A(D),
ESTABLISHING APPLICATION PROCESSES, REQUIREMENTS, NOTICES
AND APPEALS FOR INSTALLATION OF FACILITIES
WITHIN CITY CONTROLLED RIGHTS OF WAY



Table of Contents

I. REGULATIONS APPLICABLE TO ALL APPLICANTS FOR USE OF THE CITY RIGHTS OF WAY

- 1. Protection of City Rights of Way Page 1**
- 2. Applicability Page 7**
- 3. Definitions Page 8**
- 4. Minimum Requirements and Findings Required Ffor Approval Of All Applications Page 14**
- 5. Requirements for All Installations in City Rights of Way Page 16**
- 6. Excavations and Rights of Way Repair and Restoration Page 21**
- 7. Permit Inspections Page 24**
- 8. Relocation and Removal Page 25**
- 9. Liability and Insurance Page 29**
- 10. Ongoing Maintenance and Post-Installation Inspections Page 32**

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

II. ADDITIONAL REGULATIONS APPLICABLE TO WORK IN THE RIGHTS OF WAY

- 1. Permit Application and Appeal Processes Page 33**
- 2. Overall Construction, Reconstruction, Repair and Maintenance Requirements Page 40**
- 3. Minimum Overall Site Construction Standards Page 42**
- 4. Specific Installation Requirements Applicable to Work in the Right of Way Page 44**

III. ADDITIONAL REGULATIONS APPLICABLE TO WIRELESS FACILITIES

- 1. Permit Application and Appeal Processes for Wireless Facilities Which Provide Personal Wireless Services Page 54**
- 2. Installation, Construction and Maintenance of Wireless Facilities on Investor Owned Existing Utility Poles (“IOP”) Page 58**

IV. STANDARD CONDITIONS FOR INSTALLATION, CONSTRUCTION AND MAINTENANCE OF WIRELESS FACILITIES ON CITY-OWNED OR CONTROLLED TRAFFIC SIGNALS AND/OR STREET LIGHTS

- Installation, Construction and Maintenance of Wireless Facilities Used in the Provision of Personal Wireless Services on City-Owned Traffic Signals and/or Street Lights Page 67**

I. REGULATIONS APPLICABLE TO ALL PUBLIC SERVICE COAPPLICANTS FOR USE OF CITY RIGHTS OF WAY

1. Protection of City Rights of Way

These Regulations are enacted pursuant to City Code §2-10 to recognize the City's primary role as chief steward of the rights of way in the City and the City's duty to its citizens to manage the rights of way and any incursions into the rights of way, which are intended for public use for transportation for pedestrians and vehicles, while recovering the costs of doing so, as well as minimizing disruption, visual impact or inconvenience to the public, preserving the public health, safety and welfare; and complying with all applicable local, state and federal law.

These Regulations establish conditions of occupancy and construction for all users of the City's rights of way, including those seeking to perform work, excavation, provision of services, or to install, construct, maintain, or repair facilities or any equipment thereon, including, but not limited to public service companies, adjacent landowners and entities that the City may permit to place or maintain permanent facilities in the rights of way, including but not limited to providers of cable services and providers of ~~personal~~ wireless and telecommunications services.

In establishing these conditions, the intent of these Regulations is ~~to~~, to the extent required by law, to treat each Applicant or right-of-way user in a competitively neutral and nondiscriminatory manner with considerations that may be unique to the technologies and situation and legal status of each particular Applicant or request for right-of-way use. It is further the intent of these Regulations ~~to~~ ensure that the City knows what entities are occupying its rights of way and what facilities have been installed by them; ~~to~~ ensure that entities understand their obligations with respect to use of the rights of way; to ensure that entities occupying the rights of way do not harm the public or property, or unduly interfere with, or delay public or private projects that require use of the rights of way or otherwise unnecessarily incommode the public; and to minimize the size and number of facilities in the City rights of way in order to advance public safety, ~~to minimize clutter and enhance the appearance of the community, minimize the size and number of facilities in the City rights of way.~~

These Regulations provide application requirements and processes, installation and approval standards, maintenance and repair requirements, notice requirements and appeal rights for installation of facilities in a City right of way (other than facilities of a governmental entity), including but not limited to poles, wires, or any fixtures of any kind ("Facility" or "Facilities"), and further including, as provided by City Code §19-9A, wireless facilities used in the provision of personal wireless

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

services.

The Regulations anticipate that, except as the City may agree, or as may be required by law, every entity which occupies the City rights of way will have a franchise, license, or similar consent that describes generally what it may place in the rights of way, ~~and what services can be provided via the facility, and conditions upon the exercise of the rights granted.~~ It anticipates that each person who will have Facilities that occupy the City rights of way will obtain a Master Permit for any work performed by it or on its behalf in the rights of way (unless the work is exempt from the Master Permitting requirement by law or by virtue of these Regulations). An entity which seeks to perform any work in the rights of way may be required to obtain special permits depending on what is proposed, such as building permits, excavation permits and permits for placement of wireless facilities. The Regulations identify minimum conditions that may apply to authorizations to use the rights of way, and obtain the Master Permits, and the special permits. In addition, the Regulations establish a process for meeting with potential Applicants to discuss proposed projects, identify what permits may be required, and to work out a process for staging and managing the process in order to simplify deployment.

Permits issued pursuant to these Regulations are not in lieu of the requirement of any user to obtain a franchise, license or consent from the City to use and occupy the rights of way, but such franchises, licenses or consents shall be consistent with these regulations. Likewise, permits issued pursuant to this Section are not in lieu of leases, licenses or easements that may be required to use or occupy other public or private property in the rights of way. No permit issued hereunder shall be valid in the absence of the same.

In particular, no permit granted by the City to allow installation or attachment of any Facility for any purpose shall extend, or be deemed to extend, to any City-owned Poles or any other Municipal Facilities. Rather, the City will require an entity that wishes to use Facilities to negotiate with the City. As part of those negotiations, the City will be exercising rights that any proprietary owner is entitled, ~~could be expected to exercise, including defining precisely what may be permitted, how it will integrate with the existing facilities and the compensation for use.~~ However, while the City retains all its rights with respect to permitting attachments to its properties, it does intend to adopt standardized conditions on use so that it may promptly respond to requests for use of the Facilities. Initial standard conditions are set out for all applications in these Regulations.

These Regulations are intended to be comprehensive in scope, but for specific applications for installations off rights of way, additional standards or requirements may apply, and additional permits may be

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

required.

It is anticipated that these Regulations and the standard conditions in Part IV thereof related to wireless facilities will require revisions from time to time, and the City reserves the right to modify these regulations at any time as well as require Facility upgrades when ~~practical~~ necessary to comply with federal, state or local law or when necessary to protect the public health, safety and welfare ~~meet these revisions~~. Revisions to standard conditions may be made from time to time, and their applicability may depend on the conditions of the contract under which use of a City-owned or controlled structure is permitted.

Facilities which have been installed prior to adoption of these Regulations do not require a Master Permit, but may require a Master Permit upon modification or replacement. However, all Facilities whether requiring a Master Permit or not, are subject to the Applicable Standards, and must be installed, maintained, removed, relocated and repaired in a manner consistent with the Applicable Standards and these Regulations.

The following activities do not require a Master Permit:

- (a) Installation of aerial service drops from the right of way to a customer’s premises.
- (b) Routine maintenance of existing facilities. Replacement of utility poles or activities that require excavation are not routine maintenance.
- (c) Installation by an entity licensed or franchised by the City of wireless facilities that may be installed pursuant to that license or franchise where the wireless facility is less than ~~2~~ 2.5 cubic foot in volume, and will be installed on an existing vertical structure or on strand between two utility poles that contain no other wireless facility.

To ensure protection of the City’s rights of way, the following provisions shall apply to all work performed under any permit and with respect to continued occupancy of the rights of way, whether or not subject to a permit:

- A. The use of rights of way by any Right of Way Occupant is a secondary use, subordinate to the use by the public and by other governmental entities. Installation of Facilities may not interfere with or disturb the public use of roads, or the convenience of any landowner more than is unavoidable.
- B. The Right of Way Occupant shall be responsible upon City approval to take any and all adequate measures to protect and defend its Facilities and Equipment in the right of way from harm and damage.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- C. Permittees and Right of Way Occupants are each responsible and liable for their own acts and omissions and the acts and omissions of those performing work on their behalf, and a reference to the acts and omissions of Permittees or Right of Way Occupants includes the acts and omissions of those acting on their behalf. The references to “Permittee and Right of Way Occupant” do not imply that those entities will be separate entities; a Permittee will either be a Right of Way Occupant, or a contractor for a Right of Way Occupant. Where the entities are separate, the liability is joint and several.

- D. The Right of Way Occupant shall install and maintain Facilities in accordance with Applicable Standards. Permittees shall perform work in accordance with the Applicable Standards. Whether specifically stated or not, each permit issued is deemed to include Applicable Standards unless specifically stated otherwise, including, but not limited to, obligations of Permittee with respect to Miss Utility.

- E. The City shall not be liable for any damage to or loss of any of the Right of Way Occupant’s Facilities within the right of way, except as may be required by State law and then subject to limits that may be established by law, including but not limited to damages or losses that may be a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City. Nothing in these Regulations is intended to waive any immunities that the City may have, or to prevent the exercise of any rights the City may have, including rights of eminent domain.

- F. Right of Way Occupants and Permittees each shall be responsible to the City for all damages suffered it, arising out of their acts and omissions, including but not limited to delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the Right of Way Occupant or Permittee to timely perform any obligations under these Regulations or Applicable Standards.

- G. Permittee shall be responsible for contacting Miss Utility to ensure marking of any prior installations and for taking any other reasonable precautionary measures.

- H. The City, by granting permits, does not warrant that it has the authority to issue a permit for particular locations, or that the location is suitable for use or that use may be maintained at that location; nor does the City grant any property interest by issuing a

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- permit.
- I. Any Right of Way Occupant or Permittee who performs any work in the right of way other than excavations and leaves any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be appropriately covered or enclosed and shall comply with all Applicable Standards, including but not limited to the Manual on Uniform Traffic Control Devices (“MUTCD”) and the Americans with Disabilities Act, and shall further provide any appropriate temporary traffic control signs and barriers to ensure that motorized and non-motorized traffic is warned, controlled and protected. Right of Way Occupant shall produce a traffic plan compliant with the MUTCD which shall be approved by the City’s Public Works Department. Cartways, if left open, shall be plated to permit safe vehicular traffic. Sidewalks and multi-use paths shall use material which is properly secured around the excavation or the disruption. Requirements applicable to excavations are addressed in Section 6 of Part One (I) of these Regulations.
- J. Whenever any Right of Way Occupant or Permittee performs any work that requires it to block any portion of the right of way used for vehicular traffic, including but not limited to any road, street, sidewalk, alley, driveway approach or any other right of way area, it shall be its duty to produce a traffic plan which is in full compliance with MUTCD and approved by the City Public Works Department, prior to being implemented.
- K. The City, upon the review and approval of a plan and details for trimming trees in the right of way, may for any Right of Way Occupant not otherwise authorized to do so by the Maryland Public Service Commission, grant permission to a Permittee to trim trees upon and overhanging the right of way so as to prevent such trees from coming in contact with the Equipment or Facilities of the Right of Way Occupant, subject to any property owner rights if by improper trimming the trees are severely disturbed or damaged to the detriment of the health or safety of the trees.
- L. In the event the Right of Way Occupant or Permittee severely disturbs or damages the root structure of any tree in the right of way to the detriment of the health and safety of the tree, the Right of Way Occupant and Permittee will be required with City approval to remove and replace the tree at their sole cost and expense. Further, in review of any plan for construction, the City in its discretion may require the Permittee to directionally bore around any tree in the right of way.
- M. All of Right of Way Occupant’s Facilities shall be maintained in good

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- order, with excess cabling and wiring promptly removed.
- N. The City may establish fees for any Application or installation of Facilities, and fees for inspecting, supervising or enforcing these Regulations. The City may also establish fees for use of rights of way and fees for use of other Municipal Facilities as permitted by law.

 - O. All work that an Applicant, Permittee, or Right of Way Occupant is required to perform shall be performed at no cost to the City, whether or not expressly stated otherwise or within these Regulations.

 - P. Each Right of Way Occupant shall keep, maintain and provide to the City accurate records and as-built drawings, drawn to scale and certified by a professional engineer ~~to the City~~ as accurately depicting the location of all of Right of Way Occupant’s Facilities in the rights of way, and in an electronic format that will permit City to import the information into its GIS systems. City may specify any standard GIS format for submission of the information. If an Right of Way Occupant believes that it is prohibited by law from providing the information to the City, with respect to any Facility, it will notify the City of the limitations that apply, and if the City agrees that the Right of Way Occupant is prohibited by law from providing the information to the City, the Right of Way Occupant shall be permitted to provide such information as it may lawfully provide to City.

 - Q. Where a Facility will contain equipment of multiple Right of Way Occupants, each is obligated to comply with these regulations unless each Right of Way Occupant has designated a single Person (the “Designee”) to install and maintain the Facilities on behalf of all Right of Way Occupants, and the Right of Way Occupants and that Person have entered into an agreement satisfactory to the City Attorney. That agreement must provide, at a minimum: (i) no Right of Way Occupant other than the Designee may enter, or have the right to enter into the rights of way to perform any work related to the Facilities; (ii) each Right of Way Occupant accepts joint and several liability for the acts and omissions of the Designee; (iii) the City may treat the entirety of the Facility as if it were owned by Designee for all purposes, including but not limited to, removal or relocation; (iv) the Designee has a franchise issued by City for installation and maintenance of the Facilities; (v) a breach of any Right of Way Occupant’s obligations (including a failure to pay any fees owed to the City) may be treated as a breach of the Designee’s obligations.

2 Applicability

These Regulations apply to installation of any and all facilities, including poles, wires, equipment or any fixtures of any kind by any person within City controlled rights of way, but shall not be applied to create any conflict with applicable state law or applicable and enforceable agreements or easements, including the following State law provisions, pre-existing agreements and/or easements:

- A. The Maryland Public Utilities Code Ann., §1-101 et seq., as applied to Gas companies who are Natural Gas providers, as defined by Maryland Public Utilities Code Ann., §7-102;
- B. The Maryland Public Utilities Code Ann., §1-101 et seq., as applied to Electric Companies who are electric providers, as defined by Maryland Public Utilities Code Ann., §7-103;
- C. The Maryland Public Utilities Code Ann., §1-101 et seq., as applied to Electric Cooperatives who are electric providers, as defined by Maryland Public Utilities Code Ann., §7-104;
- D. The Maryland Public Utilities Code Ann., §1-101 et seq., as applied to Water Companies who are water providers, as defined by Maryland Public Utilities Code Ann., §7-105;
- E. The Maryland Public Utilities Code Ann., §16-101 et seq., as applied to the Washington Suburban Sanitary Commission, as defined by Maryland Public Utilities Code Ann., §16-101(b);
- F. The terms of any existing, unexpired and applicable Franchise Agreement between the City and any person, which is in force and enforceable; or
- G. Any applicable and enforceable utility easement owned by the Applicant, including the Public Utility Easements granted to Potomac Electric Power Company, Chesapeake and Potomac Telephone Company of Maryland and Washington Gas Light company, and their successors and assigns, with the terms and provisions as set forth in the “Declaration of Terms and Provisions of Public Utility Easements,” recorded in Liber 3834 at Folio 457 among the Land Records of Montgomery County, Maryland

3. Definitions

1. *Applicable Standards:* All applicable engineering and safety standards governing the installation, maintenance and operation of any Facility, and the performance of all work in or around any Facility, and includes the most current versions of the National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the regulations of the Federal Communication Commission (“FCC”) and the Occupational Safety and Health Administration (“OSHA”); and the provisions of these Regulations, City building and zoning codes, and other applicable requirements or guidelines of the City or other federal, State or County authority with jurisdiction over the City, the specific Facility installation or the Applicant, which include but are not limited to the Manual on Uniform Traffic Control Devices (“MUTCD”).

2. *Antenna:* A device, dish, array, or similar device used for sending and/or receiving electromagnetic waves for FCC licensed or authorized wireless communications.

3. *Applicant:* Any public or private entity or entities that apply for a permit to install any Facility or perform any work in the rights of way, whether the permit sought is a Master Permit, excavation permit, building permit, wireless facility permit or otherwise, or that requests that the City enter into a lease or license for use of any City-owned or controlled utility pole, traffic signal pole or street light within a right of way. The term includes the persons ~~that~~ who will be the owners of the Facility or on whose behalf the work will be performed, as well as the person ~~that~~ who may submit an application, which shall in any case be signed by the entity which will own the Facility or on whose behalf the work is performed.

4. *Base Station:* A structure or equipment at a fixed location used for the provision of personal wireless services and that enables Federal Communications Commission-licensed or authorized wireless communications between user equipment and a communications network. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable at the site, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term does not include a tower or other support structure, as defined herein, and it does not include Facilities (other than wireless devices at the Base Station) that connect a base station at a fixed location to other elements of a communications network at other locations. The term does not include metering equipment or disconnects required to provide power to the Base Station.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- 5. *City*: The City of Gaithersburg, Maryland or, as appropriate in the case of specific provisions of these Regulations, any board, bureau, authority, agency, commission, department or any other entity of the City of Gaithersburg, Maryland, or any authorized officer, official, employee or agent thereof, or any successor thereto.
- 6. *Conduit*: Enclosed underground raceways capable of protecting any cables, including but not limited to fiber optic and other communications and electrical cables. The term shall include associated individual ducts, inner ducts, manholes, handholes, vaults, pull-boxes, and trenches.
- 7. *City Street Classification*. City streets are classified in two different manners by Master Plan Celass and by Road Code Class, but for purposes of these Regulations, the applicable Master Plan classification is being used, as noted below:

| MASTER PLAN CLASS | ROAD CODE CLASS |
|-------------------|---|
| Freeway | None |
| Major Arterial | Major Controlled |
| Arterial | Business District Major Limited Control |
| Collector | Residential Collector |
| Minor Collector | Residential Primary |
| Local | Residential Tertiary Residential Secondary |

- 8. *Construct*: Includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right of way.
- 9. *Day or days*: A calendar day unless otherwise specified.
- 10. *Emergency*: A condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a user.
- 11. *Equipment Cabinet*: The enclosure or enclosures at a Base Station, whether attached to the exterior of a supporting structure or ground-mounted that contain all the elements of the Base Station other than the antenna and cabling.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

12. *Equipment Cabinet for Utilities*: The enclosure or enclosures of equipment attached to the exterior of a supporting structure or ground-mounted structure which contains equipment used by utilities or other entities other than those entities providing personal wireless services.
13. *Equipment Housing*: The enclosure or enclosures of equipment attached to the exterior of a supporting structure or ground-mounted structure such as an IOP, SLP or TSP which contains equipment used by entities providing personal wireless services.
14. *Excavate*: Includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material, paving, concrete, blacktop or earth within in the right of way
15. *Facility or Facilities*: Facilities, equipment and installations of any kind, including but not limited to any lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, or other equipment. A reference to a Facility refers both to the Facility considered as a whole and the individual elements of a Facility. .
16. *FCC*: The Federal Communications Commission, any subordinate or sub-agency under its authority, or any successor thereto.
17. *Install*: The placing of a Facility in the right of way, whether initially or as part of the repair, modification, replacement, removal or expansion of an existing Facility, and includes any process by which a Facility is placed within a right of way, including but not limited to attachment, construction, digging, excavation, placement, pulling and the like.
18. *Interconnecting Wire Cabling*: Wire or cabling connecting any utilities, including the Equipment Housing and antenna; includes any underground power or other supporting wire interconnections as well, including to third party providers of connectivity (fiber).
19. *IOP*: For wireless telecommunications, facilities investor-owned existing utility poles or street light poles which are not owned, controlled or operated by the City.
20. *Large Project*: A project providing new communications, wireless telecommunications, or other utility service but which does not include regular maintenance or repair of any existing Facility, the installation of private facilities on private property, or street excavation which

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does not interfere with traffic.

- 21. *Master Permit*: Any written or electronic authorization by the City allowing an Applicant to install, make, maintain or remove its Facilities within the City’s right of way, pursuant to the requirements of these Regulations and the City Code and in accord with any individual, special or other permit required for work on a specific Facility.

- 22. *MCDOT Standards*: Current Montgomery County Department of Transportation Standards or Montgomery County Road Code Standards, including any applicable future amendments.

- 23. *Mid-Wire Base Station*: A base station which is installed and used on existing above ground wires and which is less than 2 2.5 cubic foot in volume.

- 24. *MSHA Standards*: Current Maryland State Highway Administration Standards and Specifications for Construction and Materials, including any applicable future amendments.

- 25. *Municipal Facilities*: Any City-owned, controlled or operated structure, equipment, land, building, fixture or vehicle, including but not limited to streetlight poles, traffic lights, traffic light poles, lighting fixtures, or electroliers located in or near the right of way, and may refer to such facilities in the singular or plural, as appropriate in the context in which used.

- 26. *MUTCD*: Latest Edition of the Maryland Manual on Uniform Traffic Control Devices, as amended.

- 27. *Omni/Dome Antenna*: An antenna for a Facility which radiates radio wave power uniformly in all directions.

- 28. *Permit*: Any written or electronic authorization by the City allowing an Applicant to install, make, maintain or remove any Facility pursuant to the requirements of these Regulations and the City Code or to perform work in the City’s right of way.

- 29. *Permittee*: Any person who obtains a permit under these Regulations; or a person performing emergency repairs where a permit is obtained after the repair.

- 30. *Person*: 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 of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- 31. *Pole*: Any street, utility, traffic signal, streetlight or any other pole in the right of way which is used in any way or otherwise designed to support any Facilities, in addition to Wireless Facilities.
- 32. *Reserved Pole*: An SLP which has been reserved under these Regulations.
- 33. *Right of Way*: 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, 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.
- 34. *Right of Way Occupant*: Any person, other than a governmental entity which is not an adjoining landowner, that owns or operates Facilities in the rights of way, or on whose behalf work is to be performed to install Facilities that person will own in the rights of way.
- 35. *Signalization box*: Equipment boxes which include Facilities providing signals for City traffic lights.
- 36. *SLP*: Street light poles owned or controlled by the City which are located on a City right of way, which are considered one but not the only location for Wireless Facilities.
- 37. *Stick or Stick-Type Antenna*: A straight antenna for a Wireless Facility. Such antennas shall not exceed 2 inches in diameter and shall not extend more than 36 inches in length or height.
- 38. *Supporting Structure*: A vertical structure, including a pole, tower or building capable of supporting a Base Station.
- 39. *Tower*: Any supporting structure built for the sole or primary purpose of supporting any FCC-licensed or authorized Antennas (and related Facilities), including supporting structures that are constructed for FCC-licensed or authorized wireless communications 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. This definition does not include Poles.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- 40. *Transformer.* An electrical device that transfers electrical energy between two or more circuits through electromagnetic induction. A varying current in one coil of the transformer produces a varying magnetic field, which in turn induces a voltage in a second coil. Transformers are used to increase or decrease the alternating voltages in electric power applications.

- 41. *TSP:* Traffic signal poles owned by the City located on a City right of way, which are considered one but not the only location for Wireless Facilities.

- 42. *Utility Cabinets:* Boxes containing equipment to support utility services, which may include equipment, utility facilities, a power supply, or other related mechanical support for the utility.

- 43. *Wireless Facility:* Facilities at a fixed location used in the provision of personal wireless services, consisting of the Base Station, the supporting structure to which the Base Station is attached (if any) and appurtenant Facilities at or near the Base Station and necessary to its operation, including but not limited to electric meters and disconnects.

- 44. *Wireless Permit:* A City permit which may be issued under these Regulations by City Staff for attachments to or replacement of City-owned SLPs or TSPs for a Wireless Facility which will address an identified service issue that cannot be addressed by modifying existing Wireless Facilities, for Applicants with a valid franchise, consent or licensing agreement.

4. Minimum Requirements and Findings Required Ffor Approval of All Applications

- A. An application must be submitted by all persons ~~that~~ who will own or operate any part of the Facility that is the subject of the application;

- B. The application must show that the Facilities and work proposed in the application will comply with all requirements in the Regulations and any Applicable Standards;

- C. Applications must be accurate, and must include detailed descriptions of what the work that is the subject of the application involves. An application shall include pre-construction work, construction work and restoration work required, along with a description of the Facilities and property that are the subject of or affected by the applications, and a pre- and post-construction description of the same;

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- D. Where an application involves new Facilities, including replacement or relocation of an existing Facility with a Facility at a different location, the location selected in the application for any Facility must not be in an area where the City finds there is an over-concentration of poles or other facilities in or over the streets, sidewalks, or other rights-of-way, such that the new Facility would create an excessive number of such poles or other facilities which interfere with public safety or the ability to use streets, sidewalks, or other rights-of-way, or would not be consistent with the general character of the neighborhood;
- E. The location selected and the scale and appearance of the Facility, including but not limited to wireless facilities, and any support structures to be installed, must be consistent with the general character of the neighborhood;
- F. Applicant must have agreed to and provided adequate insurance, bonding and indemnification as required by any Agreement with the City and these Regulations;
- G. Applicant must have entered into a Franchise/Right-of-Way Use Agreement, Master License Agreement and Attachment/Replacement Pole Agreement (as applicable);
- H. Facilities proposed by an Applicant, including but not limited to wireless facilities, must not generate noise above 55 dB, ~~whether the Facility is located within the City or would be audible from any location in the City.~~ Sound level is calculated based on nearest residential property line, and where there are multiple noise sources proposed or already installed by an Applicant, the sound level limit is cumulative at the point of measurement; and
- I. If the Permittee is not the person who will own the Facilities to be installed, or is not the person on whose behalf the work will be performed, those entities must submit an agreement in appropriate form acceptable to the City attorney, accepting responsibility for all acts and omissions by Permittee as if the same had been done by them, and agreeing to ensure that the all work of the Permittee is performed correctly, and all requirements with respect to the work satisfied.

5. Requirements for All Installations in City Rights of Way

It is the purpose and intent of any applicable City ordinance and these Regulations to ensure that, for installation of any Facility in City rights of way, each of the following requirements are satisfied:

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- A. All necessary agreements must be entered, and licenses and permits must be obtained, before any work is performed in the rights of way, and the Permittee must comply with all Applicable Standards. Permittees and Right of Way Occupants must comply with any permit conditions with respect to the Facilities, or work performed in connection with the Facilities. Issued City permits are not transferable without City authorization. It is responsibility of all Permittees to call Miss Utility, 800-257-7777 or 811, prior to any excavation.
- B. All Permittees and Right of Way Occupants shall be subject to all Applicable Standards now or hereafter adopted or promulgated by the City in the exercise of its police power or by other governmental entities now or hereafter having jurisdiction.
- C. The requirements of these Regulations are minimum standards and the requirements established or referenced herein may be in addition to or stricter than such minimum standards. Where there is no standard governing particular work, the work will be performed in a manner that minimizes risk to persons and property, and that is consistent with sound practices for work of the type being performed.
- D. Any use of the right of way by any Permittee or Right of Way Occupant shall in all matters be subordinate to the City's use and use by the public, except as provided by Maryland law. Without limitation of its rights, the City expressly reserves the right to exercise its powers now and hereafter vested in or granted to the City as to the use, management and control of City rights of way.
- E. Right of Way Occupants shall cooperate promptly and fully with the City and provide accurate and complete onsite information regarding the nature and horizontal and vertical location of its facilities located within the right of way, both underground and overhead, at the sole cost and expense of the Right of Way Occupant.
- F. Where installation of Facilities requires protection, removal, relocation or alteration of any City owned or operated structure, equipment or facility, and the City consents in writing to those, Right of Way Occupant and Permittee shall be responsible at their cost to protect, alter, relocate or remove City Facilities as the City directs. If Right of Way Occupant or Permittee fails to do so, City may order all work to stop, and may take such steps as are necessary to prevent any harms to City Facilities, and charge Right of Way Occupant or Permittee the costs therefore.
- G. All Facilities shall be located and laid so as not to disrupt or interfere with any other pipes, drains, sewers, irrigation systems, telecommunication systems or other structures or public

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improvements already installed without the permission of the City, and without notifying and obtaining any consent required from affected Right of Way Occupants., The lawful use of right of way or other public areas of the City shall not be disrupted or interfered with without the City's permission.

- H. Minimum Conditions. Facilities must continue to satisfy the minimum conditions for approval after installation. Where Right of Way Occupant fails to satisfy the minimum conditions; or where it fails to maintain Facilities in a safe condition; or where it performs work that causes damages to property, or creates risks to persons or property, City ~~may~~, in addition to revoking a permit, may take any action ~~it may take~~ with respect to a Permittee under Section O.
- I. Permittees and Right of Way Occupants shall use commercially reasonable efforts to coordinate construction and maintenance of the Facilities with the appropriate City agencies and other Right of Way Occupants to minimize unnecessary disruption of the rights of way.
- J. Without limitation, a Permittee and Right of Way Occupant will comply with all requirements and cooperate with the City on aesthetics and appearance of all Facilities including, where required, by obtaining design and location approval from the appropriate City Department, currently the City Department of Public Works. Right of Way Occupant will comply with Applicable Standards with respect to aesthetics and appearance for the duration of the Facility's existence.
- K. Except in strict accordance with all Applicable Standards, Permittees and Right of Way Occupants shall not at any time on or near any Municipal Facilities or any right of way store, treat, transport or dispose of any hazardous substance, hazardous waste or oil ("Hazardous Substance") as defined by the Resource, Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 et seq., Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., Maryland Environment Article Code Ann., Title 4, Sec. 4-401, et seq., and Maryland Environment Article Code Ann., Title 7, subtitle 2.
- L. Without limitation, relocation of any installed Facility, whether temporary or permanent, in times of emergency, for major City events or for construction of City, County, State or federal improvements will be at the expense of the Right of Way Occupant except as state law otherwise requires.
- M. No Waiver. If City determines that a permit was issued improperly, the permit may be revoked

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- N. No Property Rights. In the event that any right of way is eliminated, discontinued, closed or de-mapped, any rights obtained pursuant to any permits issued with respect to such right of way shall cease upon the effective date of such elimination, discontinuance, closing or de-mapping. Except as may be required by state law, an Right of Way Occupant may be required, at its expense, to remove all its Facilities from the right of way. If it fails to do so, the City may cause the removal, and charge the Right of Way Occupant for the cost of the same.

- O. Subject to Subsection 6.B.9, Permittee shall be responsible for any damages or injuries which may occur as a result of construction related to any permit. The Permittee must maintain any work site and Facilities thereon in a proper and safe condition. Upon completion of work at a site, all excess materials and Facilities, including, without limitation, utility poles that are no longer in use, must be removed from the site.

- P. All earth, materials, sidewalks, paving, crossings, utilities, poles, structures, other public improvements or improvements of any kind damaged or removed by a Permittee and any rights of way damaged or disturbed by Permittee shall be fully repaired, replaced or restored promptly by the Permittee, as part of the completion of any work under any permit, at Permittee's sole cost and expense and to the satisfaction of the City, and in accordance with the City's standards for repair, replacement or restoration. Except as specifically otherwise required, property damaged or removed, must be restored or replaced to its prior condition and location, and rights of way must be restored to their prior conditions.

- Q. If a Permittee fails to maintain a site in safe condition or fails to promptly remove, replace, repair or restore as required by Subsections O and P, the City may, after providing fifteen (15) days' notice, and unless Permittee takes steps satisfactory to the City to correct the deficiency, make such removal, repair, restoration or replacement at the Permittee's cost. Provided that, upon determination by the City that Permittee acts or omissions create an immediate risk to persons or property, or in the event of an emergency, the City may make such repair or replacement at the Permittee's cost without notice.

- R. The City may inspect work being performed in the right of way at any time, including work to repair or restore the right of way, and may inspect Facilities in the rights of way.

- S. At the time of any inspection, the City may order the immediate cessation of any work, which poses a serious threat to the life, health,

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safety, or well-being of the public, or direct a Permittee or Right of Way Occupant to take action to correct any condition that is in violation of these Regulations or Applicable Standards. The City may revoke the permit and take any other legal or equitable action at law, and may also issue a municipal infraction under City Code §1-9 to the Permittee or Right of Way Occupant for any work and any Facility which does not conform, to the Applicable Standards, or these Regulations.

- T. The permit, plans and the specifications of construction and materials shall be available at all times on site for inspection by the City.
- U. Any person performing work in the rights of way must display their names and telephone numbers on vehicles working in the public right of way.
- V. Vehicular and pedestrian traffic must be maintained through all phases of construction except as specifically permitted by the City.
- W. No parking of vehicles will be allowed on sidewalks or areas outside of the street pavement except when specifically shown on an approved Traffic Control Plan or with prior approval from the City.
- X. No materials or equipment shall be stored in the City right of way, without prior written approval by the City, including the parking of vehicles, storing of equipment or materials under any roadside tree, and in no event may any debris be left in the rights of way.
- Y. Failure to comply with the specifications and the requirements in these Regulations may result in the immediate revocation of any permit, and may be treated as a breach of any license, lease, franchise or consent. The City may also direct Permittee or Right of Way Occupant to remove its Facilities, and repair, replace or restore property affected by the removal. Any work performed following revocations, and before reinstatement, shall be deemed a violation of the City Code and the City may take any applicable legal or equitable action to correct the violation; in addition, the Right of Way Occupant or Permittee will be subject to the penalties as indicated in §1-9 of the City Code.

6. Excavations and Right of Way Repair and Restoration

- A. *Applicability.* These requirements apply to any excavation, repair and restoration in a right of way, whether on a paved street or sidewalk, green space, or any area, as applicable to the specific excavation and restoration which is required. Excavation includes any activity that disturbs the surface or subsurface of a right of way, including but not limited to installation of a foundation for a support structure. These requirements are in addition to the general requirements that apply to all work in the rights of way.

- B. *Excavations.* No Person may make any cut, excavation or grading of any right of way other than excavations necessary for emergency repairs without first, in advance, securing a right of way permit specifying that such excavation is specifically permitted. For emergency repairs, a Person must apply for a permit as soon as possible after the repair commences, and in the course of performing work, comply with Applicable Standards and these regulations as far as possible in light of the emergency.
 - 1. The Permittee shall not at any one time open or encumber more of the right of way than shall be reasonably necessary to enable completion of the project, as permitted, in the most expeditious manner.
 - 2. The Permittee shall, in the performance of any work required for the installation, repair, maintenance, relocation and/or removal of any of its Facilities, limit all excavations to those excavations that are necessary for efficient operation.
 - 3. The Permittee shall not allow such an excavation to remain open longer than thirty (30) days, and any excavation must be covered at the end of each day. As part of any permit application, the work to be performed will be fully described, and the time for completion specified. City may shorten the time permitted, and the permit shall specify the time for work completion
 - 4. An Applicant for a permit shall notify the City no less than five (5) working days in advance of any construction, reconstruction, repair, location or relocation of Facilities which would require any street closure or which reduces traffic flow.
 - 5. Except in the event of an emergency as reasonably determined by the Permittee, no such closure shall take place without notice and prior authorization from the City and pursuant to a City-approved plan for traffic control.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- 6. Nonemergency work on streets may not be performed before 9:00 a.m. or after 3:00 p.m. in order to minimize disruption of traffic flow.
- 7. Prior to any excavation, Permittee shall provide notice to the City in advance with respect to any municipal traffic signal and street light systems, as appropriate.
- 8. The Permittee shall be liable for any damages to underground facilities due to excavation work prior to obtaining location of such facilities, or for any damage to underground facilities that have been properly identified prior to excavation. The Permittee shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed underground facilities without the approval of the owner of the facilities.
- 9. The Permittee shall be responsible for providing adequate traffic control to the surrounding area as approved by the City. The Permittee shall perform work on the right of way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood.

C. *Right of Way Repair and Restoration.* The work to be done under an excavation permit and the repair and restoration of the right of way as required herein must be completed within the dates as specified in the permit. However, in the event of circumstances beyond the control of the Permittee or when work was prohibited by unseasonable or unreasonable conditions, the City may extend the date for completion of the project upon receipt of a supplementary application for a permit extension which satisfies the restoration and repair requirements of these Regulations.

- 1. In addition to repairing its own street cuts, the Permittee must restore any area within ten (10) feet of the new street cut that has previously been excavated, including the paving and its aggregate foundations, and such restoration must be accomplished curb to curb rather than as a patch in the street. The failure to restore this area shall be treated as a failure to restore under Subsection 5(P) – 5(Q).
- 2. Any Application that proposes excavation work requiring backfilling shall include a plan for covering the unfilled excavation, and shall specify the time by which the excavation will be backfilled.
- 3. If an excavation cannot be backfilled immediately and is left

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unattended, the Permittee shall notify the City and properly secure the site with properly ramped and pinned steel plates, in the manner specified in Section II.4. The Permittee has sole responsibility for maintaining proper barricades, safety fencing, traffic control, roadway plates and/or lights as required by the City and under Applicable Standards, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

- 4. In restoring the right of way, the Permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During the twenty-four (24) months the Permittee shall, upon notification from the City, correct all restoration work to the extent necessary, using any method as required by the City. Said work shall be completed within a reasonable time, not to exceed thirty (30) days of the receipt of notice from the City, not including days during which work cannot be done because of circumstances constituting Force Majeure or days when work is prohibited as unseasonable or unreasonable. In the event the Permittee is required to perform new restoration pursuant to the foregoing guarantee, the guarantee period for such new restoration shall be an additional sixty (60) months. If a Permittee fails to restore within the time specified, the City may, after providing fifteen (15) days' notice, make such restoration at the Permittee's cost. Provided that, upon determination by the City that the failure of the Permittee's work creates an immediate risk to persons or property, or in the event of an emergency, the City may restore the right of way at the Permittee's cost, without providing Permittee notice.
- 5. The sixty (60) month guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.
- 6. Payment of an excavation fee shall not relieve a Permittee of the obligation to complete the necessary right of way restoration.

7. Permit Inspections for Excavations and Other Right of Way Work

- A. The Right of Way Occupant or Permittee shall employ a testing laboratory as approved by the City, which shall certify the proper backfilling on any street cut. This provision shall be waived when flowable fill is used as backfill or with the permission of the City.
- B. Whether or not specifically required by a permit, a Permittee will notify the City to schedule an inspection at the start of backfilling.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

Upon completion of all right of way restoration activities, the Permittee will schedule a closeout inspection.

- C. When any corrective actions required have been completed and inspected to the City’s satisfaction, the sixty (60) month maintenance period will begin.

8. Relocation and Removal of Facility or Disconnection of Facility Utilities

A. *Applicability.* These requirements apply to the relocation and removal or disconnection of utilities for of all Facilities except to the extent Maryland law specifically requires different treatment of particular Facilities.

B. *Duty to Move for Public Improvements and Projects.* Except as state law otherwise requires, installations of any kind in or on the right of way will not interfere with construction, operation, maintenance, repair or removal or relocation of City improvements, City utilities or City transportation systems, or other public projects, including but not limited to sidewalk widening. Upon notice Right of Way Occupant shall be responsible, at its cost, to protect, alter, remove or relocate its Facilities as necessary to eliminate any interference the same within a reasonable time, which time may be specified by the City.

C. *Relocation of the Facilities for Changes in Grade.* If the grades or lines of any City right of way change at any time in a manner affecting the Facilities, then upon notice Right of Way Occupant shall be responsible, at its cost, to protect, alter, remove or relocate the Facilities within a reasonable time, which time may be specified by the City, so as to conform with such new grades or lines.

D. *Relocation for Undergrounding.* The City may direct any Right of Way Occupant to place Facilities underground in accordance with state law, and subject to such compensation arrangements as may be required by state law; and an Right of Way Occupant shall be responsible for timely undergrounding the Facilities in accordance with the City’s direction.

E. *Limit of Authority.* The provisions of this Section 8 shall not be construed to authorize the Right of Way Occupant to relocate any Facilities, including without limitation Base Stations, to any other location on, over or under the City rights of way except to the extent otherwise permitted herein.

F. Disconnection of Utilities. In the event that the City needs to repair or maintain a City owned structure, the City may disconnect a utility

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connection to a specific facility when located adjacent to or mounted on a City owned structure.

G. City Authority to Move Facilities.

1. In the event that, after such notice, the Right of Way Occupant unreasonably refuses or neglects to so protect, alter remove or relocate the Facilities, the City shall have the right to protect, alter, remove or relocate the Facilities without any liability to the Right of Way Occupant, and the Right of Way Occupant shall pay to the City the costs incurred in connection with the same.

2. The City may, at any time, in case of fire, disaster or other emergency, protect, alter, remove or relocated Facilities and shall not be liable therefor to the Right of Way Occupant. The City shall, if practicable, notify the Right of Way Occupant prior to undertaking such action, or, if prior notice is impracticable, then the City shall notify the Right of Way Occupant as soon as practicable after such action has been taken.

3. The City may protect, alter, remove or relocate Facilities without notice (a) if the Right of Way Occupant does not have a valid franchise, license or consent, or (b) if Right of Way Occupant has not provided the City with information that would permit the City to identify that Right of Way Occupant owns a particular Facility, or up-to-date information as to the Persons who are to be notified if there is need to protect, alter, remove or relocate the Facilities.

H. Duty to Move for Others.

1. The Right of Way Occupant shall, upon prior written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move Facilities to permit the moving of said structure. The Right of Way Occupant may require payment of the actual reasonable costs to move its Facilities from any Person other than a governmental entity for any such movement of its Facilities, which the Right of Way Occupant may require be payable in full prior to any such movement.

2. Right of Way Occupant may be required to move its Facilities to accommodate use of the rights of way by other persons authorized to occupy the rights of way by City. Upon the appropriate request of any person having satisfied City procedure and ordinances, the Right of Way Occupant shall promptly relocate its Facilities to permit such use. The cost of

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the same shall be borne in accordance with applicable laws, tariffs and contracts that may govern the shared use of the rights of way; provided that, except as required by law, an Right of Way Occupant may not charge a third party for work required to bring its Facilities into compliance with Applicable Standards, or for work where the Right of Way Occupant's Facilities are not authorized to be in place. This provision is not intended to provide any entity a right to attach to a structure owned by someone else without that entity's permission.

- 3. City may revoke permits, or refuse to issue permits to any Right of Way Occupant who unreasonably fails to move its Facilities in accordance with this section.
 - I. *Removal from Support Structures and Removal of Support Structures.* Any Right of Way Occupant shall upon notice, promptly relocate its Facilities from support structures to permit those support structures to be moved, replaced or relocated. If an Right of Way Occupant continues to occupy a support structure in a manner that prevents it from being removed or relocated; no additional permits or other authorizations will be issued to that Right of Way Occupant until the Facilities are relocated; and the City may revoke authorizations to occupy the rights of way, or exercise any other remedy available to it under the City Code. If a support structure is no longer being used for its intended and approved purposes it must be immediately removed, and if the pole is not removed, City may cause the removal thereof, and may charge the pole owner all costs therefore.
 - J. *Removal of the Facilities.* Upon expiration of any permit, or lack of use of Facilities such that the City finds they become inactive for six (6) or more months, or any violation of these Regulations, the City may in addition to seeking all other available legal remedies, direct the Right of Way Occupant to remove, at the Right of Way Occupant's sole cost and expense, the Facilities, or any portion of the Facilities designated by the City, provided that:
 - 1. If Right of Way Occupant fails to remove the Facilities within a reasonable period of time as provided in subsection 8.I(6), City may do so and charge the former Right of Way Occupant for all costs associated with removal, or at its option may declare the property abandoned, and require Right of Way Occupant to execute and deliver such documents as the City shall reasonably request, in form and substance acceptable to the City Attorney, to evidence free and clear ownership by the City of such Facilities, and other information clearly identifying

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the location of the Facilities;

2. The Right of Way Occupant may abandon the Facilities in place where it is not practicable to remove them without excessive disruption of the City right of way, land in the vicinity or other Facilities and equipment located on, over or under such right of way, but Right of Way Occupant must provide the City free and clear title to the Facilities in a form acceptable to the City Attorney if it does so, along with maps and other information clearly identifying the location of the Facilities. Right of Way Occupant may only abandon Facilities with prior written City authorization;
3. Right of Way Occupant shall be subject to such penalties as are specified in Gaithersburg City Code, §1-9, for a municipal infraction, and the City may take any other legal or equitable action necessary to address the failure to remove or to provide title;
4. In removing the Facilities, or part thereof, the Right of Way Occupant shall comply with Applicable Standards and these Regulations;
5. The fee, liability insurance and indemnity provisions of these Regulations shall remain in full force and effect during the entire period of removal and associated repair of all rights of way and other property and equipment of the City, and for not less than one hundred twenty (120) days after the restoration period and any guarantee and maintenance period associated with restoration of the rights of way; and
6. Removal shall be commenced within thirty (30) days of the date the City directs Right of Way Occupant to remove its Facilities and shall be substantially completed within sixty (60) days thereafter including all reasonably associated repair of the right of way and other property and equipment of the City. The City may extend the time to complete removal where justified by the amount of work required or where conditions prevent performance of the work.

9. Liability and Insurance

- A. *Indemnity.* Before commencing any work, and as a condition of occupancy, each Permittee and each Right of Way Occupant (Indemnitors) shall execute an indemnity in a form acceptable to the City Attorney which shall provide that Indemnitor shall be liable for, and the Indemnitors shall indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants, and independent contractors (the "Indemnitees") harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of any work associated with the Facilities (including but not limited to installation, operation, relocation, replacement or removal) or permits issued to Indemnitor for work in the rights of way performed by them, or on their behalf, or to cure an act or omission of the Indemnitors or persons acting on their behalf. Provided, however, that the foregoing liability and indemnity obligation of the Indemnitors shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses to the extent such liabilities, etc. arise out of any willful misconduct or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants, or independent contractors.

- B. *Defense of Claim.* If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made herein; then upon demand by the City, the Indemnitor shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, the Indemnitor's insurance carrier (if such claim, action or proceeding is covered by insurance) or by the Indemnitor's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation (because, for example, a conflict of interest exists which makes joint representation of the Indemnitee by Indemnitor's counsel inadvisable), such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and the Indemnitor shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- C. *Insurance. Specifications.* Right of Way Occupant shall have, at its own cost and expense, Commercial General Liability insurance and Business Automobile Liability (owned, non-owned and hired auto) insurance, taking effect within sixty (60) days of the adoption of these Regulations or, if later, the first date any work commences in the rights of way to install Right of Way Occupant's Facilities in the rights of way, and naming as additional insureds the City, its officers, agents, employees, and independent contractors, protecting the Application in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence (combined single limit), for bodily injury, death and property damage, including contractual liability, personal injury and products-completed operations. The policy or policies providing such insurance shall be issued by a company or companies duly permitted to do business in the State of Maryland and carrying a rating by Best's of not less than A-M. The foregoing minimum coverage shall not prohibit the Right of Way Occupant from obtaining a liability insurance policy or policies with coverage in excess of such minimum. The Right of Way Occupant shall provide to the City a certificate or certificates of insurance evidencing all coverages required under these Regulations prior to undertaking, or causing anyone else to undertake any work on its behalf. The Right of Way Occupant shall supply to the City a copy of the applicable insurance policy or policies upon the City's request. If the Permittee and Right of Way Occupant (collectively the "Insured") are not identical, each must have insurance in the amounts specified above, and meeting the requirements of this Section 9, or Right of Way Occupant must show, to the City's satisfaction, that its insurance covers all acts and omissions of Permittee in connection with work under a Permit, without exception.

- D. *Maintenance of Insurance Coverage.* The Permittee, if not identical to the Right of Way Occupant, shall maintain insurance in force until completion of the work for which a permit was issued (and any guarantee or maintenance period). Right of Way Occupant shall continuously maintain in force an insurance policy meeting the requirements hereof until completion of removal of the Facilities from over, under or on the City's right of way to the extent such removal is required under these Regulations, and until restoration (and any guarantee and maintenance period) are completed. Each such insurance policy shall contain an endorsement that the City shall receive at least ~~policy may not be canceled or not renewed until thirty (30) business days~~ written advance notice before any cancellation after receipt by the City of a written notice of such intent to cancel or not to renew ~~except in the event of nonpayment, in which case the City shall receive notice ten (10) days in advance of cancellation.~~ Within fifteen (15) ten (10) days after receipt by the

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City of any said notice, the Insured shall obtain and furnish to the City a certificate of insurance evidencing a replacement insurance policy consistent with the terms of this Regulation, together with evidence demonstrating that the premiums for such insurance have been paid.

- E. *Umbrella Coverage.* The Insured may maintain the insurance coverage required herein by blanket and/or umbrella policies issued to the Insured so long as such policies have the effect of providing the same coverage required under these Regulations.
- F. *Worker’s Compensation.* In addition to all other insurance required to be maintained under these Regulations, the Insured shall also maintain worker’s compensation insurance for employees in an unlimited amount as required by Maryland and employer’s liability coverage in the amount of no less than One Million (\$1,000,000.00).
- G. *Liability Not Limited.* The liability of the Insured to the City or any other person shall not be limited by said insurance policy or policies nor by the recovery of any amounts thereunder.
- H. *Adjustments in Insurance Coverage.* If after Installation a form of insurance coverage required to be maintained under these Regulations is no longer commonly carried by insurers, then such requirement shall be deemed to refer to the closest equivalent form of coverage (comparable to the coverage no longer commonly available) commonly carried by insurers.

10. Ongoing Maintenance and Post-Installation Inspections

- A. City may inspect any Right of Way Occupant’s Facilities to ensure compliance with these Regulations and Applicable Standards. Each Right of Way Occupant shall cooperate in any inspection.
- B. City may set an inspection fee to cover the costs of the inspection program. The fee will be limited to the reasonable costs of the program, and may not be used for other purposes. The fee may recover costs of any professional engineers reasonably required to conduct the program.
- C. Applicant must keep and maintain its Facilities and associated Equipment free of all graffiti located thereon. The City shall notify Applicant in writing if graffiti is located on any Facility or Equipment. At any time, the City shall have the right to immediately abate any graffiti present on any Equipment at Applicant’s cost, where the presence of the graffiti may present a risk to public health or safety.
- D. Applicants and/or Right of Way Occupants must inspect Facilities at least

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annually every three (3) years and provide a ~~full written report~~ certification of such inspection to the City.

II. ADDITIONAL REGULATIONS APPLICABLE TO WORK IN THE RIGHTS OF WAY

1. Permit Application and Appeal Processes

A. Pre-Approval for large projects.

- 1. Applicant will be required to have a pre-submission meeting with City staff to ensure the application for any large project permit will be complete. The City will not charge Applicants a fee for this portion of the Application process. The goal of the pre-submission meeting is to provide the City with an understanding of the work that will be proposed; and so that the City may identify what authorizations, permits, contracts and other documents may be required before the work may move forward; and to provide the Applicant an understanding of the information that may it may be required to submit, and so that the parties may discuss the staging of applications.
- 2. Provided that, where state or federal law requires action by a certain date on an application, or failure to act on an application by a certain date is a violation or presumptive violation of law, a pre-submission meeting is not required, but may be conducted voluntarily, with agreement that the meeting does not count toward any applicable deadlines.
- 3. If there is a deadline that applies to action on any permit request, then on the first event that triggers the running of the deadline, complete applications must be submitted for all permits subject to the deadline; and the pre-submission documents will not be sufficient.

B. Pre-Submission documents for large projects will include:

- 1. Identification of the Applicant, and identification of any person that will own the Facilities proposed; and the purposes for which the Facilities are being installed;
- 2. A technical description of the proposed Facilities, with detailed diagrams accurately depicting all proposed Facilities and support structures and the timing and plan for installation of the Facilities;
- 3. Identification by Applicant of any Facilities that may trigger environmental reviews, or reviews to assess the impact on

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

historically or culturally significant areas or structures;

- 4. A statement demonstrating that Permittees and Right of Way Occupants understand that they will be required to comply with these Regulations and Applicable Standards for proposed activities in the City's rights of way;
- 5. A copy of executed Franchise/Right of Way Agreement with City approving use of the right of way in question; and
- 6. A copy of the Maryland Public Services Commission certification and tariffs showing that Applicant has been granted the authority to operate in the right of way as a public service company with respect to the proposed Facilities, if Applicant has that authority.

C. *Application.* Upon submission of the formal application, City staff will review it, determine whether it is complete, and determine if additional information is needed. Staff will issue any required notices of incompleteness within applicable time frames. The application must include plans showing proposed construction activities for all work, including, if not already submitted, all pre-submittal documents noted in subsection (b) above, as well as the following. In addition, upon request, an Applicant must submit additional material as the staff may request in order to permit it to evaluate the Application:

- 1. Existing topographic and physical details, including
 - a. Paving – Edge of pavement, curb and gutter, driveways, and sidewalks and handicapped ramps;
 - b. Storm drain systems - inlets, manholes, pipes, outfalls and drainage swales or ditches;
 - c. Stormwater management facilities – structural and vegetative;
 - d. Other utility company facilities - poles, fire hydrants, conduits, pipes, vaults, transformers, valves, cleanouts, and associated equipment;
 - e. Any traffic signal interconnect and fiber optics conduits and associated equipment;
 - f. Trees and shrubs; and
 - g. Traffic signals and street lights.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

2. Existing rights of way and easements.
 - a. Clearly depict all public right of way lines; and
 - b. Clearly depict all Public Utility Easements (PUE), Public Improvements Easements (PIE), and all other public and private easements and right of ways with the copy of record plat.
3. Specify all proposed construction (installation, removal and relocation) and show the proposed construction satisfies these requirements:
 - a. Manholes, poles, hand holes, junction boxes, pedestals, street lights, vaults, conduit and pipe;
 - b. New installation and/or relocation of poles shall be outside of sidewalks and ramps and preferably on the right of way property line;
 - c. Above ground meter panels/boxes and underground meter vault for private use shall be installed on private property; and
 - d. The proposed work has been coordinated with that program. The coordination of the utility construction schedule with the City's Department of Public works is essential to prevent conflict with the pavement management program.
4. Show that the Facility that is the subject of the permit has been designed to minimize its intrusiveness upon the neighborhood, through design and concealment elements including size limits, coloration and shielding. As such, the Facility is not subject to alteration in a manner that would be inconsistent with the permit, Applicable Standards, or these regulations except with the discretionary consent of City.
5. Method of construction and work type must be indicated:
 - a. Excavation methods: trenching and directional boring, splicing cable through existing underground conduit and visual inspection, etc.;
 - b. Aerial work such as removing/installing of overhead cable and attaching/detaching equipment on existing pole; and

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- c. Manhole inspection for the future repairs, as-builts and video inspections.
6. Any proposed roadway lane interruptions and sidewalk closures must be specified and must comply with the MUTCD. If subject to a deadline for approval of the application, the application must include a MUTCD compliant traffic plan; if not, the Applicant may develop the traffic plan in coordination with the City Department of Public Works after submission of the application.
7. If plans are not prepared by utility company engineers, the plans shall have the certificate of review or approval from the utility company's representatives.
8. In order to minimize the Facilities placed in the rights of way, as part of its application, the Applicant must show that the Facilities proposed, and utilities that will service the Facilities proposed will to the extent possible, be placed within Public Utility Easements (PUE) This includes but is not limited to appropriate underground utilities and associated above ground facilities such as pedestals, transformers, hand hole boxes, etc., Mainline transmission and distribution facilities, i.e., manholes and conduit, may be exempt due to the limited space available within the PUE, where there are compelling reasons to grant such an exception, but the City will not consider such exemptions within subdivisions where the PUE is not properly graded. If it is claimed that the Facility may not legally be placed within the PUE, the application must explain the basis for that claim, and whether any Right of Way Occupant of a Facility would be eligible to use the PUE, and seek an exception from this requirement.
9. The terms and provisions of PUEs are detailed in a Declaration filed February 19, 1969 among the Land Records of Montgomery County at Liber 3834 at Folio 457.
10. A description of the effects of the proposed plan on plants in or overhanging the rights of way, describing specifically any tree trimming or removal that will be required, and plans for protecting, restoring or replacing the same. No trees are to be trimmed, removed or impacted without specific City approval.
11. A description of the proposed work that will be performed to restore any property that will be affected if the application is granted, and proof that Applicant has obtained, or will obtain, the permits that may be required to perform the work; and that the work will be performed in accordance with Applicable Standards.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

12. Permits other than Master Permits shall expire eighteen (18) months from the date of permit issuance unless the City specifies a shorter or longer term when issuing the permit or later approves an extension. The implementation date and continuance of projects under this permit may be altered at the City's discretion in the event of conflict(s) with previously approved permits or emergency activities. Once a permit expires, Permittee shall be responsible for initiating renewal of the permit. Except as a permit may specifically provide, when the final inspection is approved, no further work is permitted pursuant to that permit, and any additional work may require new permits.

13. A confirmation that the Permittee will notify the City's inspector to schedule inspection of the work, or such portions of the work as may be specified in a permit.

- D. *Decision.* City staff will as City Manager designee make findings and issue orders based on the criteria within these Regulations as approved by the Mayor and City Council and other applicable law.
- E. *Additional Conditions to Protect Health and Safety.* Before issuing any permit, the City may impose reasonable conditions upon the issuance of said right of way permit and the performance of the Permittee in order to protect the public health, safety and welfare, to ensure the structural integrity of the right of way, to protect the property and safety of other users of the right of way, and to minimize the disruption and inconvenience to the traveling public.
- F. *Joint Applications.* Where City receives conflicting Applications for permits, or where work, if conducted by Permittees on the schedule proposed would create health or safety hazards or collectively result in undue disruption, City may reject the Applications as submitted and require Applicants to apply jointly for permits but the City will charge all applicable fees per Application or permit, and joint Applicants must arrange for their own proportional payment of any fees imposed by the City.
- G. *Supplementary Applications.* A right of way permit shall only be valid for the purposes and as to the area of the right of way specified within the permit. No Right of Way Occupant or Permittee may cause any work to be done beyond that specified in the permit or outside the area specified in the permit, except as provided herein. Any Right of Way Occupant or Permittee who determines the existing permit is insufficient to cover the work or area needed must make application to the City for a revised permit and permit extension and pay any

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additional fees required thereby, and obtain a revised permit before proceeding with work.

- H. *Permit Extensions.* A right of way permit shall be valid only for the dates specified in the permit. No Permittee may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a Right of Way Occupant or Permittee does not complete the work by the permit end date, the Permittee must apply for and receive a new right of way permit or a permit extension for additional time. This supplementary application must be submitted to the City prior to the permit end date.

- I. *Appeals.* Appeals of the City staff findings and orders by any adversely affected entity may be filed to the Mayor and City Council no later than five (5) calendar days after the decision subject to an extension of no more than fifteen (15) additional days if such an extension can be granted consistent with Applicable Standards. Such appeals shall be filed with the Municipal Clerk and will be reviewed by the Mayor and City Council. Mayor and City Council may confine their review to the information submitted to staff, or may seek additional information from Applicant, the public, or cause additional studies and analyses to be performed.

- J. *Unauthorized Facilities or Attachments.* The City may without notice remove any Facilities installed in a right of way without all required permits or other authorizations, or may provide notice giving the Right of Way Occupant a specific deadline to remove said Facility with specified fees to be paid to allow such Facility to remain in place. Any unauthorized installation shall be deemed a violation of the City Code and the City may take any applicable legal or equitable action to correct the violation; in addition, the Right of Way Occupant will be subject to the penalties as indicated in §1-9 of the City Code.

- K. *Unauthorized Work without a Permit.* Any Person or utility that is found to be working in the public right of way without a City permit to do so where a permit is required will be directed to stop work until a permit is acquired and properly posted at the work site. Any unauthorized installation shall be deemed a violation of the City Code and the City may take any applicable legal or equitable action to correct the violation; in addition, the Person performing the work and the Right of Way Occupant on whose behalf the work is performed will be subject to the penalties as indicated in §1-9 of the City Code.

- L. *Work without Safety and Traffic Control.* Any person found to be working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented to the satisfaction of the City to ensure proper traffic passage and

control.

M. Revocation of Permit.

- 1. Persons with a permit hold right of way permits as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any right of way permits, without refund of the permit or any other applicable fee, in the event of a breach of the terms and conditions of these Regulations, Applicable Standards or the right of way permit itself. The City reserves the right to refuse to issue permits to any Person that repeatedly violates the provisions of its permits, Applicable Standards, or these regulations, without adequate assurance that existing deficiencies will be cured, and that future work will conform to the requirements of permits, Applicable Standards and these Regulations.
- 2. If a breach has occurred, the City may also take further legal action, including issuance of a municipal infraction under City Code §1-9 or other legal or equitable action. The City may also in its discretion not revoke the permit but impose additional or revised conditions on the right of way permit, specifically related to the manner in which the breach may be cured by the Permittee.
- 3. If a right of way permit is revoked, the Permittee or Right of Way Occupant shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

2. Overall Construction, Reconstruction, Repair and Maintenance Requirements.

- A. These regulations are applicable to any applications for placement, attachment, application construction, reconstruction, repairs or maintenance of any Facility. As such, they specifically cover but are not limited to Facilities serving or providing telephone, communications, cable, electric, natural gas, water and sewer, or any other utility or utility service provider, subject to the applicable limitations noted in Section I (2) of these regulations, entitled "Applicability." In these Regulations, the term "Applicable Standards" and references to particular standards refers to the version of the standards in force at the time work is performed, including all revisions thereto. Where standards have been renumbered, the references in these regulations will be read to refer to the applicable

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standards, as renumbered. The City may require any Right of Way Occupant to bring its Facilities into compliance with a current version of Applicable Standards (including all revisions thereto) if any additional work is performed on the Facilities (whether voluntarily, or as necessary to accommodate work by others); or where required under the standards; or where the existing Facilities present a risk to the safety of persons or property. To the extent that a conflict appears among any provisions of these Regulations or between the Regulations and the Applicable Standards, the City Manager shall determine which standard applies under the circumstances.

- B. Sidewalks shall be maintained open and utility poles shall maintain a three (3) foot clearance from sidewalks and roadways or be located behind the sidewalk adjacent to the right of way line.
- C. Any exterior attachments to Poles (other than cabling), including but not limited to electric meters, shall be a minimum of eight (8) feet above grade except as otherwise required by law or the utility provider and shall not be located above sidewalks unless such electrical meters can be installed in such a way as not to present a hazard to persons or property and to maintain ADA compliance or contained in a base approved by the City. No new utility poles will be allowed within a distance of twenty (20) feet from the intersection or truncation of subdivision entrances.
- D. Utility poles must maintain a minimum five (5) foot clearance from the outside edge of driveway aprons and handicapped ramps.
- E. Directional boring under pavement shall be at least twenty-four inches (24") beneath base thickness of Bituminous or Portland-Cement pavements to the top of the bore. Washington Gas requires the minimum depth of thirty-six inches (36") beneath the pavement base. Pneumatic punching is acceptable; however, this may be rescinded at any time by the City inspector if there is evidence of pavement damage as a result of this operation. Directional boring is not allowed without City approval in advance if test pits and initial/final holes on the pavement are required.
- F. Non-scaled plans may be accepted for single WSSC water and/or sewer house connection, Washington Gas service connection, residential house drop service connection, pavement cut and routine utility maintenance operation including aerial works. However, dimensions must be provided as references to (1) right of way/property line (2) edge of pavement or back of curb and gutter, and (3) storm drain structures, including the pipe line.
- G. Emergency repair, defined as that necessary to prevent loss of life or property and to restore a pre-existing service when a service interruption occurs, may be exempt from the above submittal requirements but a permit will be required. If it is impractical for the Applicant to obtain the permit in advance, the utility must notify the City of such emergency repair as soon

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

as possible and shall obtain the appropriate permit as soon as possible during the next City working day.

- H. It shall be the responsibility of the applicant who is entitled to use a Public Utility Easement (PUE) to utilize the PUE if one exists. The policing of these easements including the installation/removal of any obstructions within these easements is the shared responsibility of the public utility companies. All appropriate underground utilities and associated above ground facilities such as pedestals, transformers, hand hole boxes, etc., must be placed within the PUE if present. Mainline transmission and distribution facilities, i.e., manholes and conduit, may be exempt due to the limited space available within the PUE but (a) a poorly graded PUE will not be grounds for an exception being granted and (b) no use will be allowed within a PUE except to the entities or utilities granted that Easement or with their lawful permission. Additionally, the City will not consider such exemptions within subdivisions where the PUE is not properly graded at a 4:1 minimum slope.

3. Minimum Overall Site Construction Standards

- A. All disturbed and graded areas adjacent to occupied residences shall be sodded in accordance with Sections 704, 705 and 708 of the Maryland State Highway Administration (MSHA) Standards and Specifications for Construction and Materials. All other areas may be seeded and straw mulched in accordance with MSHA Specifications with City approval. Temporary seeding and straw mulching may be applied to those areas which require sod during periods outside the growing season in accordance with the following three conditions:
 - 1. Seeded and straw mulched areas with insufficient germination or vegetative growth must be promptly re-seeded and re-mulched as directed by the City Inspector; and
 - 2. Sod shall be placed during the next growing season in those areas where the City Inspector determines that insufficient germination or vegetative growth exists; and
 - 3. Soil stabilization matting meeting the requirements of Section 709 of the current MSHA may be used in lieu of sod in ditch inverts with City approval. Ditch inverts shall be lined and pinned with sod or matting for a minimum one (1) foot above flow depth.
 - 4. The Right of Way Occupant or Permittee has the option of fine grading and seeding and straw mulching any disturbed areas having a width of less than 12 inches.
- B. Any Facility installed must be installed in a manner that maintains required

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clearances from other Right of Way Occupants of the rights of way, and from the ground level, or surface of the roadway. Without limiting the foregoing, with respect to underground utilities:

- 1. The minimum depth of cover over buried cable TV conduit, telecommunication cables, and electrical cables is 18 inches within the right of way. The Washington Suburban Sanitation Commission (WSSC) requires minimum cover over pipeline 36 inches to 42 inches.
 - 2. In accordance with Federal Regulations (49 CFR §192.327) a minimum of 36 inches of cover is required over all gas mains.
 - 3. A minimum vertical clearance of twelve inches (12”) and a minimum horizontal clearance of five feet (5’), wall to wall shall be provided between storm drain pipes/structures and other utilities.
- C. When speed humps or other traffic calming devices are affected by any pavement cuts, the entire hump shall be removed and replaced in accordance with the current City guidelines unless directed otherwise by the City Inspector.

4. Specific Installation Requirements Applicable to Work in the Right of Way

- A. Steel Plates. When steel plates are used to cover an excavation on pavement, the steel plates must be inlaid or recessed into the pavement adjacent to the trench. When steel plates are inlaid or recessed, the surface of the steel plate shall be flush with the adjacent pavement surface. All steel plates shall be a nominal one inch (1”) thickness. Steel plates must be large enough to allow a minimum of one foot (1’) of bearing on all sides of the trench.
- 1. The City may allow alternative bearing requirements for steel plates when bearing on all sides of the trench is impractical. Any alternative desired must include a standard drawing depicting desired alternative and methodology noted to be utilized. Steel plates abutted edge to edge can be welded together and anchored with pins on the four (4) outermost corners. Additional pins shall be spaced as necessary to assure the steel plates are secured. No corner of any steel plate shall overhang the excavated trench. Cold mix asphalt must be tapered from the height of the steel plate to the existing road surface for a minimum distance of one foot (1’) ramping at 18:1 slope.
 - 2. Advance "STEEL PLATE AHEAD" warning signs Maryland State

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

Highway Administration (MSHA) Design W21-9 shall be properly posted and maintained per the approved plan and Terms of Conditions of the permit as applicable. An orange or red post, with a minimum height of 48 inches above grade, must be installed at the edge of pavement beside any steel plate between November 1 and April 15 to serve as an identification marker for snow removal operations. During this time frame, the City must be notified forty-eight (48) hours in advance of the placement of steel plates and again when the steel plates are removed.

- 3. Steel plates shall not remain in the roadway for over seven (7) calendar days without prior permission by the City.
 - 4. The Permittee shall be responsible for any damages and injuries which may occur as a result of the placement of steel plate on the roadway.
- B. Excavations in unpaved sections of the public space shall be either backfilled to grade or completely covered with lumber of a nominal thickness or two inches (2”) and completely surrounded with approved construction fencing such as blazing orange warning fence at the end of the work day. Other protection methods must be approved by the City. Only at the discretion of the inspector may an excavation be left open after work hours and must be protected with traffic drums in accordance with any traffic control provisions of the permit.
- C. The Permittee must have a designated on-site Manager who is in charge of the work under the Permit. The name of an emergency contact number for the Manager must be provided to the City before construction begins and shall be promptly updated throughout the duration of the project. This Assigned Manager must have authorization to call in repair crews if needed any time. At the preconstruction meeting, the Manager’s name and emergency contact number(s) shall be provided to the City and the information shall be promptly updated throughout the duration of the project.
- D. Driveway Damage. Property owners shall be notified prior to crossing existing entrances to their properties. Accessibility of driveways must be maintained at all times. The City shall be notified of any damaged driveways and driveway aprons. The following procedure as specified in City Code §19-15 shall apply for repair:
- 1. Standards and specifications. Unless otherwise specified, all paving materials and road design criteria shall conform to the MCDOT Standards. With prior approval of the city, federal or state, road design criteria and standards may be utilized. In state highway administration rights-of-way, all paving materials and road design

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criteria shall conform to the most recent roads MSHA Standards. A waiver of paving materials and road design criteria can be issued by resolution of the eCity eCouncil in order to meet the requirements or intent of City Code, Chapter 8 "Erosion and Sediment Control and Stormwater Management," or Chapter 22, "Trees and Forest Conservation," or Chapter 24, "Zoning."

2. Grading. The ~~rights-of-way~~ rights of way shall be full-width graded and slope shaped in accordance with plans and profiles submitted to and approved by the eCity engineer, utilizing MCDOT Standards.
3. Storm drainage. All storm drainage shall be designed in accordance with the criteria of MCDOT and MSHA Standards. Plans, including drainage study and computations, shall be reviewed and approved by the City engineer in advance of permit issuance and construction.
4. Curb and gutter. Curb and gutter shall be built in accordance with MCDOT and MSHA Standards.
5. Sidewalks. Sidewalks shall be built in accordance with MCDOT and MSHA Standards.
6. Driveway aprons. Driveway aprons shall be built in accordance with §19-15(f) of the City Code.
7. Paving. Paving shall be constructed to the required widths indicated on the respective paving sections of the road classification table. Plans shall be prepared in accordance with the MCDOT Standards. The City will require a minimum of an additional six-inch layer of graded aggregate base (GAB) or, with prior approval by the City engineer a minimum, of an additional 12-inch layer of soil cement base course on all streets to stabilize the soil subgrade, which is to be shown as part of the paving section on the plans. GAB or soil cement shall be placed on approved subgrade on all public or private streets prior to paving. Plans shall be reviewed and approved by the eCity engineer in advance of permit issuance and construction. Soil cement is to be constructed in accordance with the MSHA Standards.
8. Utility installations. No Person shall cut any road for the purpose of installing or connecting underground gas, sewer and water, electric power, telephone lines or other Facility without first obtaining a permit from the City. All backfilling and repaving shall be under the supervision of the City Manager or designee, and shall be done according to requirements established by the City of Gaithersburg, MCDOT and MSHA Standards.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- 9. Damaged asphalt driveways shall be saw cut a minimum of one (1) foot beyond the damaged area and replaced with six inches (6”) of hot mix asphalt upon properly compacted subgrade. Driveway restoration shall include removal and restoration of the surface asphalt pavement from the edge of trench cut to the edge of pavement.
 - 10. Damaged concrete driveways shall be removed to the closest existing joint and replaced with seven inches (7”) of MSHA Mix #3 concrete or the MCDOT detail upon properly compacted subgrade.
 - 11. Damage to existing Curb and Gutter shall be repaired with MSHA Mix #3, air entrained concrete with minimum 3,500 psi. All work, construction methods and materials shall be in accordance with the latest version of the MSHA Standards including all current revisions and supplements and the MCDOT Standards. Prior to commencing any work, the Right of Way Occupant or Permittee shall possess a Maintenance of Traffic plan approved by the City.
 - 12. The City shall be notified prior to commencement of construction and upon completion of driveway restoration and any right of way repairs.
- E. If a permanent patch is scheduled within one (1) week, cold patch may be used; otherwise, proper temporary patching of conventional excavations, using Hot Mix Asphalt (HMA), a minimum of six (6) inches thick, shall be made immediately upon the completing of backfilling. Permanent patches shall be completed within sixty (60) days of the completion of the repair or new installation. Should suppliers be unavailable due to wintertime shut down, upon City approval the allotted time period may be extended to include the shutdown period as well. Documentation and a request for waiver must be submitted 30 days in advance to the City for those site specific instances where an extension of time can be justified. Restoration also shall be completed at this time. Wherever the edge of a patch encroaches within three feet (3’) of the edge of the flexible pavement or the centerline of roadway, the patch shall be extended to the edge of pavement and the centerline of roadway. The minimum width of a patch is three feet (3’) wide.
- F. Trench excavation shall be as confined as practical. Fill and backfill material must be at optimum moisture content; $\pm 2\%$. Compaction shall be minimum 95% of the maximum dry density based upon AASHTO T-99, Method ‘C’ except for the top one foot (1’) of roadway which shall be 100% of the maximum dry density based upon AASHTO T-99 Method ‘C’. All frozen material and/or organic material must be removed. When repairing trench cuts, all work will be in conformance with MCDOT Standard No.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

MC-801.01, MC-801.02 and MC-801.03.

G. Manholes, inlets, valves and temporary water lines in a roadway that extend more than one fourth (1/4) inch above bituminous concrete base shall be tapered with minimum slope of 18:1 using bituminous as concrete material. The Right of Way Occupant or Permittee must protect existing roadways from scratching and scarring of pavement. Should scratching, gouging and/or scarring of the pavement occur, milling and overlay or other approved repair method shall be performed by the Right of Way Occupant or Permittee to the damaged area as directed by the City.

H. Patch in Rigid Pavement for Conventional Road and Trench Cuts

1. For any rigid pavements, which may include concrete bus pads in the roadway, the patch shall conform to the existing material removed other than soil, including joint pattern for pavement, sidewalk, curb and gutter, reinforcing and thickness of concrete and bituminous concrete overlay where applicable. Forming, finishing and all other construction methods shall comply with the MSHA Standards.
2. The patch shall be extended nine inches (9") on each side beyond the limit of disturbed soil where the excavation is located. The existing concrete shall be sawed full depth prior to any excavation to provide a uniform line and shall conform to the following requirements. Emergency repairs will not require saw cutting prior to excavation. If the following requirements cannot be met, the pavement shall be removed to the nearest joint.
 - a. Where a cut is made entirely within the limits of the slab, there shall be a minimum of two feet (2') to the nearest joint or edge of pavement. (See MCDOT Standard MC-801.01, Case I) Number 10 load transfer tie bars shall be spaced on four foot (4') centers longitudinally and one foot (1') centers transversely along all sides of the patch including adjacent curb and gutter. Dowels shall be 20 inches long and located at the center depth of the roadway slab.
 - b. Where a transverse cut is made across the slab, the slab shall be removed from the cut to the nearest transverse edge in one direction only. All existing tie devices shall be utilized or replaced. (See MCDOT Standard MC-801.01, Case II). Number 10 load transfer tie bars shall be spaced on one foot (1') centers along all four (4) sides of the patch. Dowels shall be 20 inches long and located at the center depth of the roadway slab.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- c. Where a longitudinal trench is cut the length of the slab, there shall be a minimum distance of four feet (4') to the nearest longitudinal joint or edge of pavement. All existing tie devices shall be utilized or replaced. (See MCDOT Standard MC-801.01, Case III). Number 10 load transfer tie bars shall be spaced on four foot (4') centers longitudinally and one foot (1') centers transversely along all sides of the patch including the adjacent curb and gutter. Dowels shall be 20 inches long and located at the center depth of the roadway slab.
 - d. Where the existing concrete is broken, the City Inspector may require the removal of the concrete to the nearest joint.
 - e. Only when no alternative is available will cuts be permitted on both sides of a longitudinal joint. In this case a detailed plan must be submitted showing the method of patching the area disturbed by the trench.
3. When a concrete pavement has been overlaid with bituminous concrete, the finished grade of the concrete patch shall match the finished grade of the existing concrete roadway and the thickness of the bituminous concrete patch shall match the thickness of the existing bituminous concrete overlay.
- I. Patch in Flexible Pavement for Conventional Road and Trench Cuts
- 1. The patch shall be made in accordance with MCDOT Standard No. 801.02, Patch in Flexible Pavement and any applicable MSHA Specifications for filling asphalt cracks.
 - 2. Flowable Fill for trench cut repairs and backfill may be used on a case by case basis. Flowable Fill shall meet the MSHA Specifications for Construction and Materials, Section 314 - Flowable Backfill for Utility Cuts. The City Inspector shall make the final decision regarding the use of Flowable Fill.
- J. “Keyhole” Excavation and Restoration
- 1. Twelve inches (12”) to eighteen inches (18”) keyhole pavement coring shall be performed with equipment designed for this purpose and a vacuum truck. No backhoe or other excavation machine is allowed.
 - 2. A metal template shall be placed over the cored hole to minimize damage to the pavement edge of the cored hole.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- 3. Backfill material shall be Select Borrow, meeting requirement 18 of these MCDOT specifications. Compaction of the backfill material shall be in accordance with requirement 18 as applicable of these specifications.
 - 4. Pneumatic compaction equipment (pneumatic rammers or equivalent) shall be used for compaction of the backfill material. The size of the compactor shall not exceed half the diameter of the cored keyhole.
 - 5. Once backfill and compaction of the excavation has been completed, the intact cored pavement section (plug) shall be reset and grouted in the keyhole from which it came and the surface of the reset pavement section shall be restored to the grade of the adjacent road surface. The keyhole section may be marked before coring in order to restore the core to its original position.
 - a. Grout used to secure the pavement core shall comply with the definition for grout as listed in definitions on page 26 of these specifications.
 - b. Excess grout shall be removed and the street surface cleaned after grouting in accordance with requirement 15 on page 12 of these specifications.
 - c. The grout shall be allowed to set per manufacturer’s instructions prior to opening the street to traffic.
 - 6. If multiple keyholes are applied within the area of approximately 25 square feet (5’X 5’) on the pavement, mill and overlay is required to restore the above area.
 - 7. Emergency repair work by keyhole technology is permitted by the City. Service connection to a new dwelling or a business can be accommodated by keyhole method. This work requires a full width and length mill and overlay on the pavement.
- K. All trench and “keyhole” cuts must include a permanent marker embedded in the surface course of the trench patch. This marker shall bear the identifications of the utility company performing said pavement cut and be secured in the pavement. Temporary patches shall be marked with a paint stencil using letters four inches (4") high and identified with the appropriate Miss Utility color.
- L. Mill and Overlay:

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

A two inch (2") mill and overlay shall be required should the patch not meet the specifications as set forth by the MSHA Standards and Specifications for Construction and Materials. Mill and overlay shall be in accordance with Section 505 – Hot Mix Asphalt (HMA) Patching within the MSHA Standards.

1. A Full Width mill and overlay shall also be required in the following circumstances:
 - a. Whenever two transverse patches are located within two hundred feet (200') of one another.
 - b. Once a section of roadway has been milled and overlaid and a third pavement cut (within 200 feet of either of the previous patches) is made, this area will not be required to be milled and overlaid until a fourth cut within 200 feet of the third cut is made.
 - c. If pavement cuts are necessary on newly constructed, reconstructed and resurfaced roadways and no alternative is available, such cuts will be permitted and will require a full width mill and overlay.

2. A Full Lane Width or One Side Direction Width mill and overlay shall be required in the following circumstances:
 - a. Pavement cuts on opposing traffic lanes are considered separate and will not require mill and overlay until a second cut is made within two hundred feet (200') on the same lane.
 - b. Pavement cuts are longitudinal or diagonal on roadways.
 - c. Keyholes that have a longitudinal spacing one thousand feet (1,000') or less will require a minimum two inch (2") nominal depth pavement surface full width mill and overlay.

3. Whenever a patch's geometry is non-standard, full width mill and overlay requirements will be determined on an individual basis by the City.

4. All mill and overlay operations shall comply with the following conditions:
 - a. The mill and overlay will commence a minimum of two feet (2') beyond the outer limits of each utility patch in the pavement.
 - b. The width of mill and overlay will be a minimum of one lane

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width or paving machine joint (12'). If the patch extends into a second lane, the mill and overlay must be extended to cover the second lane entirely.

c. Perimeter milling of a minimum width of twenty-four inches (24") is required on all pavement overlays.

5. Each Right of Way Occupant must have a medallion that identifies work performed by it or on its behalf. Each Right of Way Occupant or Permittee installing a patch must install the Right of Way Occupant's medallion within the patch. The Right of Way Occupant responsible for the pavement cut necessitating the mill and overlay may seek remuneration from Right of way Occupants who made prior pavement cuts where the cuts were made within 12 months of the date of the cuts necessitating the mill and overlay, for their pro rata share of those construction costs. The City will not participate in the money collection efforts, but the duty to share in those costs is a condition of each Permit.

M. Major Repair

- 1. Representatives from a Right of Way Occupant and Permittee and the City will meet at the site to delineate and agree upon the limits of any major repair(s), defined as repairs necessary to allow the Facility to continue operating. The Right of way Occupant and Permittee must notify the City at least forty-eight (48) hours in advance of the repair to insure a City Inspector is available to observe the excavation/cut and or make adjustments to the agreed upon limits if necessary.
- 2. All pavement must be replaced in kind or in accordance with the pavement cross-section for the classification of the affected roadway. For the appropriate pavement cross-section for the applicable roadway classification, per City Code §19-15(f), a minimum of an additional six-inch layer of graded aggregate stone base (GAB) or, with prior approval, a minimum of an additional 12-inch layer of soil cement base course on all streets to stabilize the soil subgrade. Graded aggregate stone base (GAB) or soil cement, is required to be placed on approved subgrade on all public or private streets prior to paving. Soil cement is to be constructed in accordance with MSHA Standards.
- 3. The edges of the pavement shall be uniform and true to grade.

N. Adjustment to Utility Appurtenances

- 1. Where vertical adjustments to a Right of Way Occupant's appurtenances are made, the excavation shall be as confined as

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practical as determined by the City Inspector.

- 2. The pavement shall be removed twelve inches (12”) beyond the limits of disturbed soil on all sides of the resultant excavation.
- 3. Select borrow or Graded Aggregate Stabilized Base (GAB) must be used to backfill the excavation around the appurtenance to the limit of subgrade.
- 4. The patch shall conform to the existing material removed other than soil, including joint pattern for pavement, sidewalk, curb and gutter, reinforcing and thickness of concrete and bituminous concrete overlay where applicable. Forming, finishing and all other construction methods shall comply with MCDOT and MSHA Standards.
- 5. Any patches which require utility box adjustment shall be patched according to MCDOT Standard 801.03.

III. ADDITIONAL REGULATIONS APPLICABLE TO WIRELESS FACILITIES

1. Permit Application and Appeal Processes for Fixed Wireless Facilities Which Provide Personal Wireless Services

- A. *Permit Required.* A Wireless Facilities permit is required before any Wireless Facility (other than a Facility exempt from permitting under these regulations) may be installed. Without limitation, a permit is required for a modification that constitutes an “eligible facilities request” within the meaning of 47 U.S.C. Section 1455 and applicable FCC regulations. An Application for a Wireless Facility Permit will be considered in accordance with Section II, and this Section, except as otherwise expressly provided.
- B. *Additional Application Materials.* In addition to the materials required by Sections II.B-C, except for an eligible facilities request, each Application shall contain the following:
 - 1. A study showing that there is a need for the proposed facilities at the location proposed; the type of study required will depend on the nature, proposed installation and extent of the proposed Facility as more fully specified in Subsection 8;
 - 2. A certified analysis showing that the proposed Facility satisfies the Federal Communication Commission (“FCC”)’s Radio-Frequency (RF) exposure guidelines applicable on an individual basis, and on a cumulative basis (considering all frequencies, and all emitting

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sources as may be required by FCC regulations);

3. A detailed deployment plan describing construction planned for the 12-month period following issuance of a permit, and a description of the completed deployment;
 4. A statement describing the Applicant’s intent with respect to any collocation;
 5. Proof that the Facility will be utilized in the provision of personal wireless services;
 6. In the case of a proposed attachment to an existing investor owned utility pole located in the City rights-of-way, an executed Attachment/Replacement Agreement with the utility pole provider;
 7. In the case of a proposed attachment to a City-owned facility located in the City right-of-way, an executed Master License Agreement with the City; and
 8. In the case of an Applicant requesting the installation of a new pole a statement of how the Applicant intends to meet the requirements of Md. Public Services and Utilities Code Ann., §8-103, as amended from time to time, which limits new pole construction to only those necessary for the purpose of supporting telephone lines to provide telephone service.
- C. *Eligible Facilities Request.* An eligible facilities request must contain the information required by Section II.B, II.C 3, 5-7, 10-11,13, and III.B.2, 6-7 and in addition, the following:
1. A clear statement that the request is being submitted as an eligible facilities request;
 2. Completed applications for all permits that will be required in conjunction with the work required for the eligible facilities request;
 3. In order to ensure that the City can ensure that the proposal is for an eligible facilities request and can be installed safely, a statement from the entity which owns the support structure certifying that the design submitted will be permitted on the support structure without requiring replacement, excavation, or ground cabinets where none exist, and will comply with Applicable Standards;
 4. A description of the modification proposed to a Base Station, or

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the Base Station’s Supporting Structure;

- 5. A description of the proposed Wireless Facility after completion of work, specifically identifying the size and location of all antennas, equipment boxes, cabling and other equipment;
- 6. A copy of the permit or other authorization for the Base Station, Tower and Supporting Structures that are to be modified, and any permit or other authorization that authorized modification of the same; and
- 7. Information as to the existing (and if different) the approved dimensions of all the elements of the Wireless Facility that is to be modified. It is not sufficient to provide information as to the dimensions of the Wireless Facility as of the date of the Application. It is Applicant’s burden to show the dimensions of the Wireless Facility that were approved.

D. Standards That Must Be Satisfied for Staff Approval of a Wireless Permit Notwithstanding any other provision of these Regulations:

- 1. Staff may issue a Wireless Permit for Attachment to or replacement of a City-owned or controlled Street Light Pole or Traffic Signal Pole where:
 - a. The Applicant holds a valid franchise, license agreement, Master License Agreement, consent, or license from the City to occupy the rights of way;
 - b. The Applicant has a valid contract therefor, entered into after the date these regulations were first adopted; and where the design for the attachment or replacement was approved by City for the location proposed;
 - c. The proposed attachment or replacement will not create a hazard to persons or property, and the work and proposed Wireless Facility otherwise comply with Applicable Standards and these Regulations (including requirements with respect to RF emissions);
 - d. All required permitting and franchise fees have been paid; and
 - e. The Facility cannot be modified without the contractual and voluntary consent of City.

- 2. Staff may issue a Wireless Permit for Attachment to or within a

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City-owned or controlled SLP or TSP or replacement where:

- a. Applicant shows that the proposed Wireless Facility is not speculative, but will be used to address an identifiable service issues that cannot be addressed by additions to, modifications of, or coordination of existing Wireless Facilities;
 - b. Applicant shows it has a valid Master License Agreement and contract to place the Facility on the Supporting Structure that will be used, and has a valid franchise, license or consent from City to occupy the rights of way;
 - c. The proposed attachment or replacement will not create a hazard to persons or property, and the work and proposed Wireless Facility otherwise comply with Applicable Standards and these Regulations (including requirements with respect to RF emissions);
 - d. All required permitting and franchising fees have been paid; and
 - e. Applicant shows that the proposed Facility will comply with all applicable requirements of these Regulations and is designed with stealth or concealment elements, such that the Wireless Facility may not be modified without the discretionary consent of the City. If the Wireless Facility can be modified pursuant to an eligible facilities request, it does not satisfy this requirement.
3. Staff may issue a decision recommending issuance of a permit for other Wireless Facilities in the rights of way, considering the factors listed in subsection 2 and the impact of any variance from the required standards, including the impact on the character of affected neighborhoods, historic or environmentally sensitive areas, property values, the use of the rights of way and public health and safety, and considering whether Applicant has shown that it would be effectively prohibited from providing service if the Application were denied. But if an exception to these Regulations or other Applicable Standards is requested, its approval shall immediately be referred to the City Council for final determination as to whether such an exception should be granted.
- E. Upon request of an Applicant, and where the standards in these regulations permit different configurations of Facilities, Staff may make generic determinations with respect to what types of Facilities will qualify for allowance of such different configurations at identified

locations₇₂

F. *Bulk Permits*. If an Applicant submits several applications, the City in recovering costs reserves the right to charge Applicant an additional fee representing the costs to obtain a contractor to provide additional assistance in order to effectively review the applications.

2. Installation, Construction and Maintenance of Wireless Facilities on Investor Owned Existing Utility Poles (“IOP”)

A. These Regulations specify a “safe harbor” for placement of Base Stations on existing or replacement investor-owned utility poles (IOPs) in the City right of way. Because City is the purchaser of service with respect to any investor owned street light pole, and it may require the pole to be replaced or removed as a matter of right, use or replacement of any investor-owned street light pole will require the consent of the City, and will be subject to conditions that may apply to structures owned or controlled by City. For purposes of this section, a “replacement” IOP is a Pole that will replace an existing utility pole in the rights of way, which existing Pole will then be promptly removed by its owner. An Application will be treated as an Application for a new supporting structure in the rights of way, and will not fit within the safe harbor unless there is a clear plan and timetable for removal.

B. Absent an exception granted by the Mayor and City Council based on a finding that granting the exception is in the City’s best interests, after considering the factors in Section III.1.D, or that an application must be granted as an eligible facilities request a Wireless Facility may only be installed on an existing or replacement IOP if it satisfies the requirements of this subsection, and may properly be approved considering the factors specified in subsection III.1.C.

C. Where the proposed Wireless Facility will be located within the right of way in or adjacent to an historical district or structure, or require work within an historical district or that will disturb an historical structure or its immediate surrounding, even if other provisions of these regulations are satisfied, a Wireless Facility permit may not be approved unless (1) the design of a proposed Wireless Facility and work associated with the installation of that Facility has been reviewed and approved by the Historic District Commission; or (2) the application is an eligible facilities request or Applicant shows denial of the request would result in an effective prohibition under circumstances such that the City is required by law to issue the permit.

D. Where the proposed Wireless Facility will be located within the right

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of way in or adjacent to an environmentally sensitive area, or require work within an environmentally sensitive area, even if other provisions of these regulations are satisfied, a Wireless Facility permit may not be approved unless (1) the design of a proposed Wireless Facility and work associated with the installation of that Facility has been reviewed and approved by the appropriate authority; or (2) the application is an eligible facilities request or applicant shows denial of the request would result in an effective prohibition under the circumstances such that the City is required to issue the permit.

- E. All installations shall be passively air-cooled but may be actively air-cooled as long as the Facility, including Equipment Housings, continue to comply with these Regulations and all size limits therein. Any replaced Poles must be the same height as the original Pole unless the City approves an exception. An exception may be granted if the IOP owner demonstrates to the City's satisfaction that the Pole size must be increased to permit provision of services by public service companies, or demonstrates that the replacement pole, plus the antenna and any extension, are no higher than a permitted Wireless Facility attached to an existing pole. The replacement pole, including all required guying, may not intrude on any sidewalk or passageway more than the existing utility pole, and may in no case be more than 10% larger in circumference than the existing utility pole, considering the actual dimensions of the pole. Guy wiring must be comparable to that of the pole being replaced.

- F. Only one Base Station may be installed unless the size of the Base Stations, considered cumulatively as if the Facilities were a single Base Station, meet the size requirements under these Regulations or requirements allowing co-located installations.

G. *Design of Base Station Equipment.*

- 1. Permitted Components and Size of Base Station Facilities to be installed on IOPs may be comprised of one, two or all three of the following elements, which shall be consistent with the following design parameters. For any location, or IOP, the design of the equipment shall be aesthetically consistent with the IOP, and the area in which the IOP is located:
 - a. First element: Antennas.
 - i. Stick or Stick-Type Antennas – Up to 2 stick or stick-type antennas may be installed for each Base Station or such other antennas as may be enclosed in a vertical shroud that is of the same circumference as

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the IOP at the point of attachment and designed to appear like a continuous vertical extension of IOP, so that it is not apparent that it is an antenna. Each stick or stick-type antenna shall be no more than 2 inches in diameter. Antennas shall not extend more than 36 inches in length, extending vertically from the base, either at the top of the pole or on the related equipment housing, except that up to ~~six (6)~~ twelve (12) inches in additional height may be permitted for connectors.

No antenna will be permitted or installed in the “bishop’s crook” or on a horizontal member unless it is installed as a stealth facility.

- ii. Omni/Dome Antenna – Alternatively, a single omni/dome antenna may be installed in place of two stick-type antennas, if the omni/dome antenna is no greater than four (4) feet in height, excluding up to twelve (12) inches in additional height for connectors and not wider than the smallest circumference of the IOP to which it is attached fifteen (15) inches in diameter and is installed ~~on the side or~~ on top of the IOP.

b. Second Element: Equipment Housings.

- i. Equipment Housing must be positioned to comply with the requirements of these Regulations, and must not project over the roadway. In addition, it must not project over a pedestrian/bicycle path or sidewalk, and be placed on a single side of the IOP unless installed in such a way as not to present a hazard to persons or property, maintain ADA compliance, and meet all utility requirements. Equipment Housing may have either of the following two size parameters, except that equipment housings shall be sub-sized housings as in subsection (2) below unless the City receives a written request for a standard housing, delineated in subsection (1) below, specifying why a subsized housing is not viable. Any determination of satisfaction by the City pursuant to the preceding sentence may be in the form of an approval of a specific application or on request may be made in more generic form covering all or a category of IOPs. As provided in these regulations, the sizes are intended to be cumulative, reflecting the sizes of the Equipment Housings for all Wireless Facilities

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installed on a particular IOP.

1. Equipment Housing with a volume no greater than ~~2.8~~ 12 cubic feet (~~i.e., 4,840 cubic inches~~). Equipment housings that are of a volume no greater than ~~2.8~~ 12 cubic feet, but that are not “sub-sized housings” under subsection (2) below are considered “standard housings” which shall have a maximum ~~width~~ height (i.e., a maximum ~~horizontal~~ vertical dimension, ~~perpendicular to the pole and parallel to the ground~~) of ~~twelve (12)~~ of fifty-four (54) inches in ~~and a width no greater than one-half its height~~ and nine (9) inches in depth unless a substantial operational need for a larger height or width dimension is demonstrated to the satisfaction of the City as long as the 12 cubic feet is not exceeded. Any determination of satisfaction by the City pursuant to the preceding sentence may be in the form of an approval of an application or may be made in more generic form covering all or a category of IOPs, as the City may determine; or

2. Equipment Housing with maximum height of thirty-six (36) inches, width of twelve (12) inches and depth of nine (9) inches with a volume no greater than 2.25 cubic feet. Equipment Housings complying with this subsection (2) shall be referred to “sub-sized housings”. The City may approve variations in height and width as long as the 2.25 cubic feet is not exceeded.

3. Co-located facilities may include ground-mounted equipment and may include an Equipment Housing with a maximum dimensions of 50 inches by 32 inches by 12 inches ~~16 cubic feet and a height no greater than forty-four (44) inches~~, subject to the other requirements of these regulations, including those governing interference with other uses of the rights of way, but no facilities may be approved which have both ground mounted and equipment installed on the structure.

c. Third Element: Interconnecting Wiring/Cabling.

Wire or cable interconnecting the above elements with

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each other and with power and/or other systems to which the Facility must be connected to operate. Wiring connecting to power or other systems in an area must be underground unless the wire lines for the power on other systems in that area are aboveground.

- i. Wire/cable shall be located inside the pole, unless applicant proves to the City’s satisfaction that this is not practical, in which case the wire/cable must be installed in conduit attached flush to the pole and painted with non-reflective paint of the same color as the pole on which it is installed and otherwise concealed to the extent possible;
- ii. Notwithstanding other provisions of these Regulations, the electric meter must be installed inside the IOP where that is possible given the other size limitations of these regulations. ~~If not possible, any required meter shall be installed in the PUE, and underground unless prohibited by other applicable regulations.~~ Otherwise, the meter with the smallest form factor may be installed to the exterior of the IOP, on the same side as the Equipment Housing;
- iii. Whenever possible, the Permittee shall as a preference utilize existing ducts, conduits, or other facilities for the installation of connecting fiber.

2. Permitted Visual Appearance and Weight of Base Station Equipment and Equipment Housing:

- a. The Wireless Facility must be installed and maintained in a manner consistent with these Regulations, the Wireless Permit and Applicable Standards. t;
- b. Pre-painting cleaning specifications require that as a minimum all surfaces shall be prepared as recommended by the manufacturer. In the absence of detailed manufacturer’s recommendations, the minimum surface preparation shall be by solvent cleaning. Any rust, mill scale, paint or other foreign material that is not adherent shall be removed by hand tool cleaning or a more stringent method. The methods that must be used, as applicable, include (i) near white blast, after degreasing; (ii) commercial blast after solvent cleaning; (iii) brush-off blast cleaning; (iv) hand tool cleaning; or (v) solvent cleaning.

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- c. Each Equipment Housing must be painted with non-reflective paint of the same color as the pole on which it is sited so that the installation closely matches the existing paint. The Applicant shall work with the pole manufacturer regarding the specifics for the color match, and work with the equipment manufacturer regarding paint specifications as well as the method for cleaning the equipment and applying the paint. Antennas and shrouds shall be painted to have the least visual impact possible in light of the location and design of the structure. Consistent with the requirements of this section; colors must be approved by the City as part of the permit.

- d. The City may in its discretion, as part of the application process, specify the exact paint to be used in relation to each Application. The Applicant shall provide specific paint specifications and color samples as part of the Application materials. The paint type used must meet the following requirements as applicable:
 - ~~i. Type 1: Alkyd primer. Alkyd based, rust inhibitive primer shall be lead and chromate free. Primer shall have a minimum of 54 percent solids, by volume. Color availability shall be red, gray, and white. Primer shall be able to be applied satisfactory at 2 to 3 mils dry film thickness in one coat.~~

 - ~~ii. Type 2: Alkyd enamel (gloss). Alkyd based enamel shall be lead free. It shall have a minimum of 49 percent solids, by volume. Alkyd enamel shall be able to be applied satisfactory at 2 to 3 mils dry film thickness in one coat. Finish shall be gloss.~~

 - ~~iii. Type 3: Alkyd enamel (semi-gloss). Alkyd based enamel shall be lead free. It shall have a minimum of 55 percent solids, by volume. Alkyd enamel shall be able to be applied satisfactory at 2 to 3 mils dry film thickness in one coat. Finish shall be semi-gloss.~~

 - ~~iv. Type 4: Epoxy polyamide primer. Epoxy polyamide primer shall be lead and chromate free. It shall have a minimum of 56 percent~~

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~~solids, by volume. Epoxy primer shall be able to be applied satisfactory at 4 to 6 mils dry film thickness in one coat. Color availability shall be red, gray, and white. Epoxy primer shall conform to AWWA Standard C 210 and AWWA Standard D 102.~~

~~v. Type 5: Epoxy polyamide (intermediate or finish). Epoxy polyamide shall be lead free. It shall have a minimum of 56 percent solids, by volume. Epoxy polyamide shall be able to be applied satisfactory at 4 to 6 mils dry film thickness in one coat. Finish shall be semi-gloss. Epoxy finish shall conform to AWWA C 210 and AWWA D 102.~~

~~vi. Type 6: Acrylic polyurethane (gloss). Acrylic polyurethane shall be lead free. It shall have a minimum of 74 percent solids, by volume. Polyurethane shall be able to be applied satisfactory at 3 to 5 mils dry film thickness in one coat. Finish shall be gloss.~~

~~vii. Type 7: Acrylic polyurethane (semi-gloss). Acrylic polyurethane shall be lead free. It shall have a minimum of 58 percent solids, by volume. Polyurethane shall be able to be applied satisfactory at 3 to 5 mils dry film thickness in one coat. Finish shall be semi-gloss.~~

~~viii. All paint shall also:~~

- ~~a) Display exceptional resistance to ultra violet light, road salt compounds, and industrial chemical fumes.~~
- ~~b) Display high impact resistance forward and reverse to withstand 160 psi directly without cracking, chipping or peeling.~~
- ~~c) Display a water transmission rate of less than 0.00000005 Perms.~~
- ~~d) Bend over 180 degrees and one eighth inch (1/8") mandrel without cracking and be suitable for applications in below freezing~~

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~~temperatures.~~

e) ~~c) Resist solvents for removal of graffiti off painted surfaces.~~

f) ~~Resist flame or high temperatures to 400 degrees Fahrenheit.~~

g) ~~Possess unique molecular structure suitable for brush, roll or spray application to achieve high quality, general purpose usage, exceptional spreadability and adhesion.~~

h) d) Exhibit corrosion resistance.

e. ~~All paint used must conform to the following chemical requirements:~~

i. ~~No more than twenty percent (20%) Oxal Hexel, seventeen percent (17%) Butyl Acetate, three percent (3%) Xylol.~~

ii. ~~Maximum of forty percent (40%) volatile by volume.~~

iii. ~~Minimum of 60 degrees Fahrenheit Flashpoint.~~

iv. ~~Formulated with air out additives for flowability.~~

v. ~~Two part aliphatic urethane with a three to one (3:1) mixture ratio and an absolute minimum of sixty percent (60%) solid content.~~

vi. ~~Maximum VOC of 3.45 per gallon.~~

f. e. No writing, symbol, logo or other graphic representation which is visible from the nearby street or sidewalk shall appear on any exterior surface unless required by agreement with the City, law or regulation, or as a City-approved concealment element, except that Applicant shall tag all attachments to Poles to allow for ready identification of the type of attachment and the owner, subject to ongoing City inspection to ensure appropriate tagging.

H. *Permitted Base Station Location Requirements:*

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

1. Base Stations must, except at intersections, be at least five hundred (500) feet from the nearest permitted Base Station in the rights of way (other than a Base Station on the same IOP) absent a showing accepted by the City that there is no practicable way to close a gap in service by placement of a Base Station on other IOPs, without violating other requirements of these regulations;
 2. These regulations only specify base station location requirements in City rights of way and do not include standards for Facility installations on private property or property owned by the City in fee-simple.
- I. *Provisions Regarding Installation of Fiber Connecting Base Stations to Each Other or to Supporting Telecommunications Systems (“Connecting Fiber”).* Connecting Fiber and appurtenant facilities must be installed and maintained subject to the permitting requirements that apply to other aerial and underground Facilities, as may be applicable.
- J. *RF Energy Exposure Limits.* In addition to requiring an Applicant to show that its Wireless Facilities comply with all FCC regulations governing RF exposure, City may from time to time, require Right of Way Occupants to provide a report from an independent qualified engineer on RF compliance; or may conduct such testing itself and establish fees to recover the cost of such testing. Testing shall not be required more than once annually unless City has a reasonable basis for believing an Right of Way Occupant or Right of Way Occupants may be operating in violation of FCC regulations.
- K. *Review Requirements for Design and Installation of Base Station Equipment and Antenna.*
1. In addition to the general requirements that installations are subject to City review with all applicable laws, rules and regulations of the City, the following specific approval requirements shall apply:
 - a. Installations in designated historic districts or adjacent to historic landmarks are subject to prior review by the Historic District Commission; and
 - b. Installations in environmentally sensitive/protected areas are subject to environmental review.
 2. The City will issue no permit with respect to any right-of-way where, in the judgement of the City Manager or designee,

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sufficient capacity no longer exists for additional Facilities to be placed in the proposed location without jeopardizing:

- a. The physical integrity of other Facilities already in the proposed location and/or
- b. The safe use of the street, sidewalk, path, or rights-of-way by vehicle, bicycle, or pedestrian.

IV. STANDARD CONDITIONS FOR INSTALLATION, CONSTRUCTION AND MAINTENANCE OF WIRELESS FACILITIES ON CITY-OWNED OR CONTROLLED TRAFFIC SIGNALS AND/OR STREET LIGHTS

Installation, Construction and Maintenance of Fixed Wireless Facilities Which Provide Personal Wireless Services on City-Owned Traffic Signals and/or Street Lights

- A. The City has determined that it wishes to make certain TSPs and SLPs under its ownership or control available for placement of Wireless Facilities. No person may use the structures for the placement of Wireless Facilities without entering into an agreement with the City. The City reserves the right to vary from these standard conditions as are in its best interests, and by making them available generally, is not guaranteeing that it will lease any particular facility to any entity, and is not undertaking a utility or common carrier obligation to make the facilities available for use. However, it wishes to publicly specify certain of the standard conditions and the processes it will use in leasing or licensing facilities it will own or control, but reserve the right to include additional or different conditions in any agreement regarding the use of its facilities. Even so, the specification of these standards is not an offer, and these standards, including standards with respect to the reservation system, may be changed at any time, and create no rights in any person. References to Applicant in this Section IV are used to refer to the persons who seek to enter into agreements for the use of a TSP or SLP for the purpose of providing personal wireless services, and not to a person seeking a permit.
- B. Agreements will generally take the form of Master License Agreements, with addenda identifying each TSP or SLP that a Licensee uses, and the approved design for that TSP or SLP, which shall be in the form of technical drawings and accurate photo-simulations. The design may not be altered without an amendment to the contract, consented to by City. If there is a conflict between the drawings and the photo-simulations, City may require a Licensee to conform to the design it deems in its best interest.

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- C. The City acting in its proprietary capacity as the owner or entity in control of an SLP or TSP will only approve applications to install Facilities in appropriate locations, after considering factors appropriate to that capacity, including but not limited to the impact of the installation on its use of the structures, the effect of the installation on design standards it may have adopted consistent with plans for development in particular areas. For purposes of these standard conditions SLPs do not include utility poles which may include a street light as one element of the pole.
- D. All work performed in connection with installation of a Wireless Facility must be performed in accordance with Applicable Standards and these regulations, and in accordance with the agreement for use of the SLP or TSP.
- E. There may be two types of agreements into which the City will enter (collectively referred to as Licenses except when context requires otherwise):
 - 1. A license authorizing modification or replacement of an SLP which the City does not own, but which is under its control. The contracts will require that ownership of the SLP remain with the electric utility from which City obtains street lighting, unless ownership is transferred, and the City accepts ownership of the SLP. The City may charge a fee for its consent, but rents will be paid to the owner of the SLP; or
 - 2. A license or lease authorizing modification or replacement of an SLP or TSP which the City does own. The City may charge rents for use of these Facilities.
- F. The City will initially consider requests for use of TSPs and SLPs on streets which are classified as Major Arterial, Collector or Minor Collector streets under the City Street Classification, and which are shown on the City's Functional Street Classification Map, attached hereto as Appendix One (1).
- G. The City will only consider requests for use from persons who intend to utilize the TSPs or SLPs for placement of a Base Station which they will operate, and for which they will be wholly responsible (the "Licensee"); and who also have the necessary authority from the City to occupy the rights of way, in the form of a license, franchise or consent. City may, at its option, require every person who will own any part of the Base Station to be a Licensee, and will limit the right of any Licensee to sublease the TSP or SLP, without appropriate guarantees and protections that satisfactory to the City Attorney.
- H. The City may establish fees, license or lease payments for any

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Application, installation or use of a TSP or SLP, and may require other compensation as provided herein.

1. Rent. At minimum, a monthly rent shall be applied to all persons who hold pole reservations, and all Right of Way Occupants of TSPs or SLPs. ~~The monthly rent for pole replacements shall include an additional contract coordination fee of at least 10% of the initial installation fee that would otherwise be in place for the installation.~~ Rents are intended to reflect the fair value of the TSP and SLPs leased or licensed, and may be in cash or in kind. However, the City may permit payment of an alternative amount for a temporary period while the validity of any rent is being challenged provided that the City has adequate security that the full rent to which it may be entitled is paid for the entire period the use of a TSP or SLP is reserved or used by any person.
2. Fees. The City shall require each Applicant to agree to pay all costs associated with negotiating a license, lease or consent, and conducting such inspections and design reviews as may be necessary to ensure that the TSPs and SLPs may be safely used for the installation of a Base Station, without disrupting or interfering with any City use of the TSP and SLP, including City uses that involve RF devices. The City shall establish a minimum fee that an Applicant must submit to before City will consider a request to use a TSP or SLP.
3. Consent Fees. In return for consenting to use of an SLP under its control, the City may charge a consent fee, intended to reflect the fair value of the rights granted by City. The consent fee may be in cash or in kind.
4. Cost Compensation. Every license or lease shall require Licensee to pay any additional costs that the City may incur as a result of the use of a TSP or SLP. Without limitation, that includes: additional electrical bills that City may incur if, by way of example and not limitation, use by the TSP or SLP affects the amount City must pay for power; any and all costs associated with removing and replacing an SLP or TSP to accommodate a Lessee's facilities (including costs associated with reinforcing structures and with installation, removal, and modification of foundations); and costs of restoring the SLP and TSP to their original condition upon termination of the agreement. By way of

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example and not limitation, if replacement of an SLP involves installation of a structure that costs additional amounts to remove, restore or repair, or that requires additional or different equipment to remove or repair, Licensee shall be required to bear all costs therefore.

- I. *Use Secondary.* It shall be a condition of each license or consent that a Licensee’s use shall be secondary to the use by City, and may not interfere with, or disrupt any current or future use by City. City may terminate any lease and direct removal of all portions of the Base Station, and any meters or other electrical wiring serving the Base Station if the lease does cause such interference or disruption, or if it will result in costs to the City for which the City may not be fully compensated, or if it may create additional liabilities to third parties.

- J. *Movement of Facilities.* Licensee must move, remove, and relocate its Facilities as necessary and in accordance with a timetable directed by City where City desires to repair, move or replace, or is required to repair, move or replace and SLP or TSP, and that work requires or will be advanced by movement, removal or relocation of Licensee’s Facilities. City may terminate a License, and direct removal of all portions of the Base Station, and any meters or other electrical wiring serving the Base Station if Licensee fails to move, remove or relocate in accordance with the City’s directives.

- K. *Failure to Comply ~~W~~with Applicable Standards or License Terms.* If Licensee fails to comply with Applicable Standards, regulations governing right of way use, any permit or its License, City may notify Licensee of the deficiency, and if the deficiency is not cured within 30 (thirty) days, may terminate the License and direct removal of all portions of the Base Station, and any meters or other electrical wiring serving the Base Station.

- L. As part of any removal, Licensee must restore the TSP or SLP to its prior condition in all respects (including removing and replacing the foundations), except as the City may otherwise direct. If Licensee fails to remove and restore, City may do so, and charge Licensee all costs it incurs thereby.

- M. *Quality of Work on City Property, Consistency with City Use.* All work elected to the Facilities shall be performed in a safe, thorough and reliable manner, in compliance with these Regulations and all Applicable Standards, using materials of good and durable quality, and in the case of installations on SLPs or TSPs shall be performed in a manner and using materials consistent with the City’s use of said poles. If, at any time, it is reasonably determined by the City or any other governmental agency or authority of competent jurisdiction that

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any part of the Facilities is harmful to the public health or safety, then the Applicant shall, at its own cost and expense, promptly correct any and all such harmful conditions.

- N. ~~*Eighteen-Month Time Limit on Construction Permit.*~~ Any installation of any Facility or Equipment on SLPs or TSPs shall only be permitted for eighteen (18) months, at which time Applicant must apply for reapplication, which will consider whether the Facility or Equipment size may be reduced, placement changed and appearance otherwise made more compatible based on updated technology or other relevant and applicable changes.

- O. *Structural and Safety Standards.* The placement of the Facilities must comply with all structural and safety standards.

- P. *Ongoing Maintenance.* Where an SLP or TSP is not replaced, Licensee is responsible for paying for the maintenance of its Base Station, and any additional maintenance or inspection costs City may incur as a result of Licensee's use of the SLP or TSP. Where City authorizes a replacement SLP or TSP, Licensee may be required to bear all costs associated with maintenance of the replacement structure, not including the traffic signals, luminaires, monitors and control equipment and similar equipment of the City. It is the preference of the City that any maintenance be performed by the electric utility that serves the SLP or TSP; but in any event, any maintenance must be performed by qualified contractors approved by the City or by City itself.

- Q. *Installation.* To the extent that any work is required on a City-owned TSP or SLP before it can be used by a Licensee to install a Base Station, no work may proceed without City authority.
 - 1. The City may in its discretion either give Licensee the option of performing any necessary work itself or through the use of qualified contractors authorized by the City, or performing any necessary work itself, at Licensee's cost; or of having the work performed by the utility providing service to the SLP or TSP.
 - 2. Upon completion of the work performed by the City at the request of Applicant, the City will invoice Applicant for the cost of such work, and Applicant must promptly pay the invoice.

- R. *Base Station Provisions*
 - 1. The City will not be responsible for maintenance of Licensee's equipment. The City Department of Public Works must receive a minimum of three (3) days' notice before Applicant performs any

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

work on an SLP or TSP.

2. Where an SLP or TSP falls, or there is an imminent risk of failure, Licensee must promptly disconnect, remove or relocate its Base Station as necessary to permit restoration of the SLP or TSP, and if it fails to do so, City may disconnect, remove or relocate the Base Station, at Licensee’s expense. Upon completion of any repair work at that location, it will be the responsibility of the Licensee to reinstall the Base Station equipment or notify the City of its intent not to reinstall.
3. It is the Applicant’s responsibility to maintain electric service to the Applicant’s equipment. Except as the City may otherwise agree, a meter must be installed to measure the electricity.
4. The Applicant will cooperate with the City on location and design of Base Station installations to ensure appropriate coordination with street signage and other items located on SLPs or TSPs.

S. Design of Base Station Equipment and Housing.

1. Base Station equipment on an SLP or TSP will be located within the SLP or TSP where possible, and exterior equipment must conform with these standards unless City specifically agrees otherwise. Because the designs of the SLPs and to a lesser extent, TSPs can vary, the City is willing to consider approving other designs that may not meet the requirements of the specifications below, but are compatible with the design of a particular type of pole in a particular location. City is not required to enter into a License merely because a design complies with this section. Among other things, because the City had an interest in maintaining uniformity in pole design, it may require all applications to use the same design in the location once a design is approved. Hence, an applicant should familiarize itself not only with the provisions below, but with the designs that have been approved by the City. Information on approval is publicly available.
2. Permitted Components and Size of Base Station Equipment. Facilities to be installed on SLPs or TSPs, may be comprised of one, two or all three of the following elements, which shall be consistent with the following design parameters. For any location or SLP or TSP, the design of the equipment shall be aesthetically consistent with the SLP or TSP and the area in which the SLP or TSP is located:

- a. First element: Antennas.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- i. Stick or Stick-Type Antennas – At the City’s request, up to 2 stick or stick-type antennas may be installed for each Base Station or such other antennas as may be enclosed in a vertical shroud that is of the same circumference as the SLP or TSP at the point of attachment and designed to appear like a continuous vertical extension of SLP or TSP, so that it is not apparent that it is an antenna. Each stick or stick-type antenna shall be no more than 2 inches in diameter. Antennas shall not extend more than 36 inches in length, extending vertically from the base, either at the top of the pole or on the related equipment housing, except that up to ~~six (6)~~ twelve (12) inches in additional height may be permitted for connectors. No antenna will be permitted or installed in the “bishop’s crook” or on a horizontal member unless it is installed on a stealth facility.
 - ii. Omni/Dome Antenna – A single omni/dome antenna may be installed in place of two stick-type antennas, if the omni/dome antenna is no greater than 4 feet in height, excluding up to twelve (12) inches in additional height for connectors, not wider than ~~the smallest circumference of the SLP or TLP to which it is attached,~~ fifteen (15) inches in diameter, and is installed on top of the SLP or TSP.
- b. Second Element: Equipment Housings.
- i. Equipment Housing must be positioned to comply with the requirements of these Regulations, and may only be above ground if other utilities are above ground in the immediate vicinity of the installation, and must otherwise be installed below ground.
 - ii. Equipment Housing must where feasible, be incorporated within the Facility and must not project over the roadway; In addition, it must not project over a pedestrian/bicycle path or sidewalk, unless installed in such a manner as to not present a hazard to persons or property, maintain ADA compliance, maintain ADA compliance, and meet all utility requirements. ~~and be placed on a single side of the SLP or TSP.~~ Equipment Housing may have either of the following two size parameters, except that equipment housings shall be sub-sized housings as in subsection (2) below unless



Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

the City receives a written request for a standard housing, delineated in subsection (1) below, specifying why a subsized housing is not viable. Any determination of satisfaction by the City pursuant to the preceding sentence may be in the form of a specific SLP or TSP application or may be made in more generic form covering all or a category of SLP or TSP. As provided in these regulations, the sizes are intended to be cumulative, reflecting the sizes of the Equipment Housings for all Wireless Facilities installed on a particular SLP or TSP.

1. Equipment Housing with a volume no greater than ~~2.8~~ 12 cubic feet (i.e., ~~4,840 cubic inches~~). Equipment housings that are of a volume no greater than ~~2.8~~ 12 cubic feet, but that are not “sub-sized housings” under subsection (2) below are considered “standard housings” which shall have a maximum ~~width~~ height (i.e., a maximum ~~horizontal~~ vertical dimension, ~~perpendicular to the pole and parallel to the ground~~) of ~~twelve (12)~~ of fifty-four (54) inches in ~~and a width no greater than one-half its height~~ and nine (9) inches in depth unless a substantial operational need for a larger height or width dimension is demonstrated to the satisfaction of the City as long as the 12 cubic feet is not exceeded. Any determination of satisfaction by the City pursuant to the preceding sentence may be in the form of an approval of a specific SLP or TSP application or may be made in more generic form covering all or a category of SLP or TSP , as the City may determine; or

2. Equipment Housing with maximum height of thirty-six (36) inches, width of twelve (12) inches and depth of nine (9) inches with a volume no greater than 2.25 cubic feet. Equipment Housings complying with this subsection (2) shall be referred to “sub-sized housings”. The City may approve variations in height and width as long as the 2.25 cubic feet is not exceeded.

3. Co-located facilities may include ground-mounted equipment and may include an Equipment Housing with a maximum dimensions of ~~fifty (50) inches by thirty-two (32) inches by~~

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

twelve (12) inches, volume of sixteen (16) cubic feet and a height no greater than forty-four (44) inches subject to the other requirements of these regulations, including those governing interference with other uses of the rights of way, but no application will be approved which includes ground-mounted equipment.

c. Third Element: Interconnecting Wiring/Cabling.

Wire or cable interconnecting the above elements with each other and with power and/or other systems to which the Facility must be connected to operate. Wiring connecting to power or other systems in an area must be underground unless the lines for the power or other systems are aboveground.

- i. Wire/cable shall be located inside the SLP or TSP.
- ii. Notwithstanding any other provisions of these Regulations, the electric meter must be installed inside the SLP or TSP where that is possible given the other size limitations of these regulations. ~~If not possible, any required meter shall be installed in the public utility easement (PUE), and underground unless prohibited by other applicable regulations.~~ Otherwise, the meter with the smallest form factor may be installed to the exterior of the SLP or TSP, on the same side as the Equipment Housing.
- iii. Whenever possible, the Permittee shall as a preference utilize existing ducts, conduits, or other facilities for the installation of connecting fiber.

3. Permitted Visual Appearance and Weight of Base Station Equipment and Equipment Housing:

- a. The Wireless Facility must be installed and maintained in a manner consistent with these Regulations, the Wireless Permit and Applicable Standards.
- b. Pre-painting cleaning specifications required that as a minimum all surfaces shall be prepared as recommended by the manufacturer. In the absence of detailed manufacturer's recommendations the minimum surface preparation shall be by solvent cleaning. Any rust, mill scale, paint, or other foreign material that is not adherent shall be removed by

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

hand tool cleaning or a more stringent method. The methods that must be used, as applicable, include (i) near white blast, after degreasing; (ii) commercial blast after solvent cleaning; (iii) brush-off blast cleaning; (iv) hand tool cleaning; or (v) solvent cleaning.

- c. Each Equipment Housing must be painted with non-reflective paint of the same color as the pole on which it is sited so that the installation closely matches the existing paint. The Applicant shall work with the pole manufacturer regarding the specifics for the color match, work with the equipment manufacturer regarding paint specifications as well as the method for cleaning the equipment and applying the paint. Antennas and shrouds shall be painted to have the least visual impact possible in light of the location and design of the structure. Consistent with the requirements of this section; colors must be approved by the City as part of the License.

- d. The City may in its discretion, as part of the application process, specify the exact paint to be used in relation to each Application. The Application shall provide specific paint specifications and other color samples as part of the application. The paint type used must meet the following requirements-as applicable:
 - i. ~~Type 1: Alkyd primer. Alkyd based, rust inhibitive primer shall be lead and chromate free. Primer shall have a minimum of 54 percent solids, by volume, Color availability shall be red, gray, and white. Primer shall be able to be applied satisfactory at 2 to 3 mils dry film thickness in one coat.~~

 - ii. ~~Type 2: Alkyd enamel (gloss). Alkyd based enamel shall be lead free. It shall have a minimum of 49 percent solids, by volume. Alkyd enamel shall be able to be applied satisfactory at 2 to 3 mils dry film thickness in one coat. Finish shall be gloss~~

 - iii. ~~Type 3: Alkyd enamel (semi-gloss). Alkyd based enamel shall be lead free. It shall have a minimum of 55 percent solids, by volume. Alkyd enamel shall be able to be applied satisfactory at 2 to 3 mils dry film thickness in one coat. Finish shall be semi-gloss.~~

 - iv. ~~Type 4: Epoxy polyamide primer. Epoxy polyamide primer shall be lead and chromate free. It shall have a~~

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

~~minimum of 56 percent solids, by volume. Epoxy primer shall be able to be applied satisfactory at 4 to 6 mils dry film thickness in one coat. Color availability shall be red, gray, and white. Epoxy primer shall conform to AWWA Standard C 210 and AWWA Standard D 102.~~

~~v. Type 5: Epoxy polyamide (intermediate or finish). Epoxy polyamide shall be lead free. It shall have a minimum of 56 percent solids, by volume. Epoxy polyamide shall be able to be applied satisfactory at 4 to 6 mils dry film thickness in one coat. Finish shall be semi-gloss. Epoxy finish shall conform to AWWA C 210 and AWWA D 102.~~

~~vi. Type 6: Acrylic polyurethane (gloss). Acrylic polyurethane shall be lead free. It shall have a minimum of 74 percent solids, by volume. Polyurethane shall be able to be applied satisfactory at 3 to 5 mils dry film thickness in one coat. Finish shall be gloss.~~

~~vii. Type 7: Acrylic polyurethane (semi-gloss). Acrylic polyurethane shall be lead free. It shall have a minimum of 58 percent solids, by volume. Polyurethane shall be able to be applied satisfactory at 3 to 5 mils dry film thickness in one coat. Finish shall be semi-gloss.~~

~~viii. All paint shall also:~~

~~+~~

- ~~a) Display exceptional resistance to ultra violet light, road salt compounds, and industrial chemical fumes.~~
- ~~b) Display high impact resistance forward and reverse to withstand 160 psi directly without cracking, chipping or peeling.~~
- ~~c) Display a water transmission rate of less than 0.00000005 Perms.~~
- ~~d) Bend over 180 degrees and one eighth inch (1/8") mandrel without cracking and be suitable for applications in below freezing temperatures.~~
- ~~e) c) Resist solvents for removal of graffiti off painted surfaces.~~
- ~~f) Resist flame or high temperatures to 400 degrees Fahrenheit.~~

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- ~~g) Possess unique molecular structure suitable for brush, roll or spray application to achieve high quality, general purpose usage, exceptional spreadability and adhesion.~~
- ~~h) d) Exhibit corrosion resistance.~~
- ~~d. All paint used must conform to the following chemical requirements:~~
 - ~~i. No more than twenty percent (20%) Oxal-Hexel, seventeen percent (17%) Butyl Acetate, three percent (3%) Xylol.~~
 - ~~ii. Maximum of forty percent (40%) volatile by volume.~~
 - ~~iii. Minimum of 60 degrees Fahrenheit Flashpoint.~~
 - ~~iv. Formulated with air-out additives for flowability.~~
 - ~~v. Two-part aliphatic urethane with a three to one (3:1) mixture ratio and an absolute minimum of sixty percent (60%) solid content.~~
 - ~~vi. Maximum VOC of 3.45 per gallon.~~
- e. If support wiring or the electrical meter cannot be installed inside the pole, all wiring must be installed in conduit and must be painted with non-reflective paint of the same color as the pole on which it is sited;
- f. No writing, symbol, logo or other graphic representation which is visible from the nearby street or sidewalk shall appear on any exterior surface unless required by agreement with the City, law or regulation, except that Applicant shall tag all attachments to Poles to allow for ready identification of the type of attachment and the owner, subject to ongoing City inspection to ensure appropriate tagging.

T. Permitted Location and Orientation on Pole of Base Station Equipment.

- 1. Unless otherwise specifically permitted by the City, all equipment on an SLP or TSP will be located on the vertical shaft portion of the pole. ~~That~~ That is, unless otherwise specifically permitted by the City, no equipment will be located on the horizontal portion or "arm" of the SLP or TSP and equipment

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

housings shall be oriented vertically so that the largest dimension is the height. Notwithstanding the preceding sentence sub-sized housings and equipment related thereto may be located at the top of the curved arm of an SLP with a cobra-head fixture (immediately adjacent to the luminaire itself) or at the junction of the curved arm and the vertical portion of the pole. If housings are located on a horizontal "arm", such housings shall be oriented so that their largest dimension is also horizontal.

- 2. On TSPs with signal "arms," housings shall be located in the "arm zone" (the "arm zone" is defined as the portion of the pole above the curved "arm" and below the short cross bar carrying the tension rods supporting the "arm"). Where a housing, the dimensions of which comply with the dimensional requirements of these Regulations, is longer than the "arm zone", the requirement that such housing be located within said arm zone shall be met if the housing is located such that it runs the full length of the arm zone with a minimum of any additional length stretching above or below the arm zone. On TSPs without signal "arms," and on SLPs, housings shall be located (except as expressly permitted by the City) in an area no lower than fifteen (15) feet above curb level (except that sub-sized housings may be located as described in the final sentence of the preceding subsection (1) even if such location would be inconsistent with such height requirement).

U. Permitted Base Station Location Requirements:

- 1. No more than one Base Station, in total, is permitted on any TSP or SLP such that once an SLP becomes a Reserved Pole, such SLP is not available for use by any other SLP Applicant as long as such SLP remains a Reserved Pole.
- 2. Base Stations not on private property must, except at intersections, be at least five hundred (500) feet from the nearest base station regardless of owner or provider, absent a needs showing accepted by the City.
- 3. Due to City operational needs, TSPs on which a traffic signal controller equipment box is located (usually one pole per intersection with a traffic light) are not available for use for Base Stations.
- 4. Base Station installations will only be permitted on TSPs that support a signal "arm" reaching into the roadbed, except that if at an intersection there are no TSPs with such a signal arm,

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

then up to two TSPs without signal arms may be used for Base Stations at such intersection.

- 5. Base station installations are only permitted on TSP or SLP sites within intersections, except that such base stations may be placed on SLPs located outside intersections upon demonstration, to the City's satisfaction, of sufficient operational need for such placement. A TSP/SLP shall be "within an intersection" if any part of the base of the TSP or SLP is ten (10) yards or less from two different street beds or at a comparable location at the conjunction of two (2) streets.

V. *Power Supply*: Base Station equipment must be designed so that power usage by the Base Station can be shut off remotely, without climbing up to the Antenna or Equipment Cabinet. Backup power sources shall not be permitted unless such sources comply with the requirements in these Regulations and, if consisting of battery power, include a structure to prevent toxic infiltration into the surrounding area, in which case the battery must be inspected by the Applicant on at least an annual basis, with a report provided to the City certifying the battery power remains in safe condition.

W. *Cut-Off Switch*. Licensee shall install an equipment power cut-off switch as directed by the City and consistent with Applicable Standards and the City specifications for every SLP or TSP to which Licensee has attached a Base Station. The City will specify instances where these power cut-off facilities and associated equipment need to be pad-mounted. In ordinary circumstances, the City's authorized field personnel will contact Licensee's designated point of contact to inform Licensee of the need for a temporary power shut-down and the time by which the facility must be powered down, which time shall be at least twenty-four (24) hours after notice is given. Licensee will power down its antenna remotely, at the time specified, and will not power up until Licensee received notice from the City that the facility may be powered up, which City shall do promptly after completing activities which required the power down. Provided, however, that in the event of an emergency, the power down will be with such advance notice as may be practicable and, if circumstances warrant, employees and contractors of the City may accomplish the power down by operation of the power disconnect switch without advance notice to Licensee and shall notify Licensee as soon as possible. In all such instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power down shall restore power and inform the Company as soon as possible that power has been restored.

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

X. Replacement of City SLP

- 1. The City shall only permit an Applicant to replace an SLP when the Applicant:
 - a. Demonstrates sufficient operational need for such Facility placement;
 - b. Provides evidence that the SLP lacks sufficient height or other structural elements to provide such Facility placement so that it will provide sufficient service, and/or an engineer’s report and structural analysis demonstrating that the existing SLP cannot carry the cumulative load of all applied-for equipment, once installed, except that in no case will the City approve more than five (5) extra feet of SLP height; and
 - c. Executes with the City an Attachment/Replacement Agreement specifically permitting the replacement of the pole at the proposed site.
- 2. Where the City agrees to an SLP replacement, the City may specify the luminaire that is to be installed and as part of the replacement and cost thereof will be borne by Licensee. In addition, Licensee shall pay electric for the associated street light.

Y. Allocation of Available City-Owned Pole Sites Among Multiple Potential Applicants

- 4. ~~The City recognizes that it has a limited number of SLPs and TSPs that may be useable for placement of Base Stations. In order to provide a reasonable opportunity for interested parties to obtain access to these SLPs and TSPs, as of the effective date of these Regulations the City intends to implement a reservation system to allocate poles among Applicants. In the event the City receives more than one (1) valid Application for any SLP or TSP which satisfies these Regulations, the City will determine with which competing Applicant to negotiate with, if any, subject to the requirements below.~~
- 2. ~~Application Process. SLPs and TSPs will be allocated to Applicants on a first come, first served basis, except applications received by the close of business on the same date, which will be treated as received at the same time. If there are conflicting, qualified requests for the same SLP or~~

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~~TSP on the same day, the City will enter into an agreement with the Applicant that agrees to provide the most favorable benefits, as determined by the City, for the SLP or TSP.~~

- ~~3. The City will specify the first date applications may be submitted under this process. Applications submitted before that date, other than those on which final action has been taken granting the application, will not be considered received for purposes of reserving poles.~~

- 4. a) Applications may be submitted beginning on February 1, 2019. Applications submitted before that date will receive no priority in access to the SPLs or TSPs. To be eligible to initiate submit an application ~~the application process under this reservation system~~, an Applicant and Application must satisfy these Regulations, either have or agree to enter into a non-exclusive franchise agreement with the City, and agree to enter into an appropriate Master License Agreement with the City. Applicants and the City must be willing to enter an agreement for use of the SLP or TSP applied for, as the application cannot be simply speculative.

- ~~5. b) Applications must be complete, and must be accompanied by all required fees. Any Applicant seeking to reserve a facility under this reservation system must post the monetary amount the City determines necessary to cover costs of the Application Process, including both a base fee for every Application (whether qualified or not); and a supplemental fee for the qualified Applicant to allow the application to move forward to a final set of agreements and authorizations for use of the SLP and/or TSPs.~~

- 6. c) Requirements for Applications for the reservation system include, for each pole reservation requested:
 - ~~a. i.~~ i. The design that the requestor proposes, without which the ~~reservation~~ Application request will be disqualified;

 - ~~b. ii.~~ ii. Proposed physical connection methods at the pole to utilities for power and backhaul (e.g., connection within a pole handhole, external disconnect, etc.);

 - ~~e. iii.~~ iii. Detail of how the proposed construction will meet limitations on ground-mounted cabinets or equipment and other streetscape limitations included in these Regulations;

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

- ~~d.~~ iv. Demonstration of valid FCC licensing covering the City-licensed structure location;
 - ~~e.~~ v. A statement of compliance with FCC maximum RF Exposure limits;
 - ~~f.~~ A statement of the maximum amount Applicant will pay for lease/license of the reserved pole, which may be the minimum amount specified by the City for a base term, but may also include a higher amount that the applicant is willing to pay in the event multiple applications are received for the same pole; and/or, a higher amount that the applicant is willing to pay for a longer term; or, other benefit to the City in cash or in kind.
- ~~7.~~ 3. The City reserves the right to deny or condition a license where it appears that the proposed design is not appropriate at the location proposed, it is inconsistent with designs that have been approved, the Applicant is unwilling to agree to an appropriate design, the design will create a safety hazard, interfere with the reasonable flow of pedestrian or vehicular traffic, the ~~proposed reservation~~ Application would will require unduly disruptive or unnecessary construction, interfere with other utilities or governmental activities (traffic control and public safety monitoring, including plans for the same), will require installation of ancillary facilities inconsistent with the approved design, will have a substantial adverse effect on the environment or an area that is historically preserved, or, where there is a conflicting request that in the City's sole discretion is superior.
- ~~8.~~ 4. Within sixty (60) days of notice from the City that it will consider the ~~a~~Application, the Applicant must agree to the terms of a Master License Agreement with the City, and a franchise if required. All applicable fees would be due and owing upon execution of that agreement for each pole or alternative location.
- ~~9.~~ 5. Within thirty (30) days of the completion of the agreements, (or for an ~~a~~Applicant who already has the franchise and master lease, the date of notice from the City that the City will consider the ~~a~~Application), for each structure, final designs for the proposed installation must be submitted in appropriate forms for obtaining required permits. These should include at the minimum, a statement sealed by a registered professional engineer (P.E.) certifying structural integrity of the proposed

Revised on 12-18-18 to clarify comments made at the December 17, 2018 Mayor and City Council meeting. Revisions noted with a comment.

construction for that specific location.

40.6. The Applicant must complete construction on a reserved structure location within one (1) year of construction permit application approval by the City.

41.7. Expiration of Reservation on an Approved Application. The status of an location for a SLP or TSP as a Reserved Pole, reserved to approved by the City for a particular Applicant, shall expire upon the earliest occurrence of the following:

- a. If the Applicant's franchise or right of way use agreement terminates, then the status ~~as Reserved Poles of all Reserved Poles reserved to~~ of any approved Application by the City for such Applicant shall expire upon such termination.
- b. If the Applicant does not within sixty (60) days after being notified that the City will consider the Application agree to the terms of a Master License Agreement, lease for the SLP or TSP and/or Franchise Agreement with the City.
- c. If Applicant surrenders or withdraws the reservation the approved Application by written notice to the City.
- d. If the Application does not satisfy the applicable requirements of these Regulations.
- e. If a Base Station has not been fully installed and become operational ~~on a Reserved Pole~~ within one (1) year of City's approval of such ~~reservation~~ Application, subject to extension only for Unavoidable Delays.
- f. The lease or agreement for an SLP or TSP is terminated by the City for cause.
- g. If a Base Station becomes non-operational after initially becoming operational and is not restored to operability within sixty (60) days of becoming nonoperational, or if a Base Station repeatedly becomes non-operational in a manner that, despite repeated restoration of operability within the required time period, suggests that the Base Station is not being significantly relied on for the provision of service, then the ~~Reserved Pole status of~~ approval of the Application for such SLP or TSP shall expire thirty (30) days after

notice from the City of such expiration.

h. If the Applicant fails to pay the City any applicable fees.

12. 8. When the City denies or terminates any approved Application as outlined above, or an Application is withdrawn, the City reserves the right in its discretion to determine which competing Application with which to negotiate, if any.

Z. Notification and Reporting Requirements

1. Notice: Upon securing any City permit or approval to install Equipment, the Applicant must within thirty (30) days send by regular U.S. mail, postage prepaid, written notification to all adjacent property owners, and in all cases must send such notice at least 30 days prior to submitting the format application or permit request..
2. Right to Access Records. The City shall have the right to oversee, regulate and inspect periodically the installation, construction and maintenance of the Facilities, and any part thereof, in accordance with these Regulations and applicable law. The Right of Way Occupant shall establish and maintain, at its principal executive offices or such other location of its choosing (provided that such other location does not adversely affect the City's inspection and oversight rights) such records as to enable the Right of Way Occupant to document, in reasonable detail, to the reasonable satisfaction of the City at all times throughout the Term, that the Right of Way Occupant and the installation is in compliance with its License. The Right of Way Occupant shall retain such records for not less than six (6) years following their creation and for such additional period as the City may reasonably direct.
3. Additional Information: Upon City request, the Right of Way Occupant shall respond to requests for information related to its Facilities as relevant to the enforcement of these Regulations.
4. Annual Inspection and Report. The Right of Way Occupant must inspect the Facilities at least annually and provide the written inspection report to the City.



AA. Right to Audit; Access to Records.

The City shall have the right to review a Licensee's books and records and require submission of reports as may be required to permit the City to determine whether a Licensee is complying with the terms of its License. Books and records and reports shall be promptly produced to the City at its offices unless the parties agree otherwise.

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| Boldface | Heading or defined term. |
| <u>Underlining</u> | Added to existing Regulations. |
| Single strikethrough | Deleted from existing Regulations. |
| <u><u>Double underlining</u></u> | Added by Amendment. |
| <u>Double strikethrough</u> | Deleted from existing Regulations by amendment |
| *** | Existing Regulations unaffected |