

RIGHT-OF-WAY USE
AND FRANCHISE AGREEMENT

THIS RIGHT-OF-WAY USE AND FRANCHISE AGREEMENT (“Use Agreement”) is dated of _____, _____, (the “Effective Date”), and entered into by and between the CITY OF GAITHERSBURG, a municipal corporation of the State of Maryland (the “City”) and _____, a _____ (“Company”).

WHEREAS, the City has made significant investment of time and resources in the acquisition and maintenance of the Public Way (as defined below) and such investment has enhanced the utility and value of these assets; and

WHEREAS, the right to access and/or occupy portions of the Public Way for the business of providing communication services is a valuable economic privilege and beneficial competition between providers of communications services can be furthered by the City’s provision of grants of location and rights to use the Public Ways on non-discriminatory and competitively neutral terms and conditions; and

WHEREAS, Company owns, constructs, operates, maintains, and controls, in accordance with regulations promulgated by the Federal Communications Commission (“FCC”), including Radio Frequency (“RF”) rules and regulations, and Maryland Public Service Commission (“PSC”) a fiber-based telecommunications Network or Networks (as defined below) serving Company’s wireless carrier customers and utilizing microcellular optical repeater Equipment certified by the FCC; and

WHEREAS, for purpose of operating the Network, Company wishes to locate, place, attach, install, operate, control, and maintain, upgrade and enhance Equipment (as defined below) in the Public Way ; and

WHEREAS, the City is willing to permit Company’s non-exclusive use at approved locations in its Public Ways, to the extent it may lawfully do so and in accordance with the terms and conditions of this Use Agreement and pursuant to permits issued by the City, the installation of Company’s Equipment in the Public Way; and

WHEREAS, Company is willing to compensate the City in exchange for the grant and right to use and physically occupy portions of Public Way.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions.

1. DEFINITIONS. The following definitions shall apply generally to the provisions of this Use Agreement.

- 1.1 Affiliate: When used in relation to Company, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Company.
- 1.2 Applicable Standards: Means all applicable engineering and safety standards governing the installation, maintenance, operation of facilities and the performance of all work in or around Poles and other Municipal Facilities 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 the City’s Right-of-Way regulations, building and zoning codes, each of which is incorporated by reference in this Agreement; and other reasonable safety and engineering requirements of the City or other federal, State authority with jurisdiction over Poles of City Facilities.
- 1.3 Attaching Entity: Means any public or private entity, including Company that, pursuant to a license agreement with the City, places an Attachment on a Pole.
- 1.4 Attachment(s): Means Communications Facilities that are placed directly on Poles, including radios, antenna, and associated cables and hardware, as approved in writing by the Director of Public Works and filed with the Department of Public Works prior to their placement on Poles.
- 1.5 Authorizations: Means the applicable permissions Company must obtain to deploy or operate the Network and/or provide Services, which may include Use Agreements; licenses, permits, zoning approvals; variances, exemptions, grants of authority to use private rights of way and/or easements or facilities, agreements to make attachments to poles, ducts, conduits, manholes, and the like; and any other applicable approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any applicable requirement by a governmental authority for the engagement in a business or enterprise.
- 1.6 Base Station: Means mobile telecommunications equipment for reception and/or transmission, such as microcell antennas and associated equipment (amplifiers, connective cabling, batteries), to support the facility.
- 1.7 Capacity: Means the ability of a Pole to accommodate an Attachment based on the Applicable Standards, including space and loading considerations.
- 1.8 City: Means the City of Gaithersburg, Maryland, and may also be referred to in conjunction with Company as the Party, Other Party, or Parties collectively.
- 1.9 Communications Facilities: Means all property of Company, including fiber optic cable, enabling the provision of Communications Service utilizing the Company’s Distributed Antenna System in the City.

- 1.10 Communication Services: Means wireless and wireline access, transmission, and transport of commercial mobile radio services and private mobile services, as those terms are defined in 47 U.S.C. §332, as amended from time to time, that are provided by Company or its Affiliates using the Network pursuant to, and authorized by, federal or state law.
- 1.11 Conduit: Means enclosed underground raceways capable of protecting fiber optic and other communications and electrical cables, including associated individual ducts, inner ducts, manholes, handholes, vaults, pull-boxes, and trenches.
- 1.12 Construction Drawings: Means a complete set of plans and diagrams accurately depicting conditions of the installation of Attachment on Poles. Construction Drawings must be stamped by a Maryland registered professional engineer and demonstrate adherence to all Applicable Standards. Construction Drawings must include, at a minimum:
- 1.12.1 One drawing of the Pole prior to installation of any Attachments;
 - 1.12.2 One drawing of the Pole subsequent to installation of all Attachments;
 - 1.12.3 Details of the Pole base, concrete footing, anchor bolts, and connecting Conduit containing electric and fiber optic cables.
 - 1.12.4 Details of all Attachments, including their dimensions, color and weights; and
 - 1.12.5 Structural analyses and load calculations of the Pole with all installed Attachments for dead, live, wind, and ice loading, sufficiently demonstrating that the Communications Facilities shall not adversely affect the structural integrity of the Pole of other City Facilities.
- 1.13 Decorative Streetlight Pole: Means any Streetlight Pole that incorporates artistic design elements not typically found in standard-design or conventional steel, concrete, or aluminum Streetlight poles.
- 1.14 Distributed Antenna System or DAS: Means a Network of multiple, spatially separated antenna Nodes connected to a common source via a high capacity transport medium (such as fiber optic cable), for the purpose of providing wireless Communications Service within a geographic area.
- 1.15 Emergency: Means a situation that, in the reasonable discretion of the City or Company, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.

- 1.16 Equipment: Means the optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, microcells, remote radioheads, antennas, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment, whether referred to singly or collectively, to be installed or operated by Company hereunder.
- 1.17 Equipment Housing: Means mobile telecommunications equipment such as amplifiers, batteries, etc. It excludes the electrical meter and any associated antenna.
- 1.18 Fee: Means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the City lawfully imposed by a governmental body (but excluding any utility users' tax, Use Agreement fees, communications tax, or similar tax or fee).
- 1.19 Gross Revenue: Means all revenue, as determined in accordance with generally accepted accounting principles, which is derived by Company or any of its Affiliates from the operation of the Network in the City to provide Communication Services. Gross Revenue shall include by way of example and without limitation: monthly or annual per-site payments made to Company by its customers for the provision of Communication Services enabled by its Communications Facilities located in the City's Public Way; any revenue generated by Company through any means that has the effect of avoiding the payment of compensation that would otherwise be paid to the City for the rights granted to Company in this Use Agreement; late fees and administrative fees; revenue derived from forfeited deposits; revenue derived from commissions; any actual bad debt that is written off but subsequently collected (such bad debt shall be included as Gross Revenue for the period in which it is collected); and other revenues that may be posted in the general ledger as an offset to an expense account. Gross Revenue shall not include: any revenues received by Company for the construction of Network facilities in the City; any compensation awarded to Company based on the City's condemnation of property of Company; and to the extent consistent with generally accepted accounting principles, consistently applied, actual bad debt write-offs taken in the ordinary course of business.
- 1.20 ILEC: Means the Incumbent Local Exchange Carrier that provides basic telephone services, among other telecommunications services, to the residents of the City.
- 1.21 Installation Date: Means the date that the first Equipment is installed by Company pursuant to this Use Agreement.
- 1.22 Interconnecting Wire Cabling: Means wire or cabling connecting the Equipment Housing and Antenna and any underground power or other supporting wire interconnections to third party providers of connectivity.

- 1.23 Laws: Means any and all applicable and lawful statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City, State, United States, Federal Communications Commission, or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.
- 1.24 Company: Means _____, a _____ and its lawful successors, assigns, and transferees, and may also be referred to in conjunction with the City as the Party, Other Party, or Parties collectively.
- 1.25 Mid-Wire Base Stations: Means mobile telecommunications equipment for reception and/or transmission that are installed on existing above ground wires.
- 1.26 Municipal Facilities: Means any City-owned Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, or electroliers (collectively “City-owned Poles” or “City Poles”) located within the Public Way, but not including traffic lights, and may refer to such facilities in the singular or plural, as appropriate in the context in which used, except that the City reserves the right to exclude certain categories of City-owned Poles, or a specific City-owned Pole(s) from consideration for Attachments under this Use Agreement, including City-owned Poles located within a historic district.
- 1.27 Occupancy: Means the use or reservation of space for Attachments on a Pole.
- 1.28 Network: Means one or more of the neutral-host, protocol-agnostic, fiber-based optical converter DAS or Small Cells networks, or portions of those networks, owned or operated by Company and located within the City.
- 1.29 Node: Means an electronic device that is attached to the Network, and is capable of creating, receiving, or transmitting information over a communications channel.
- 1.30 Pedestals/Vaults/Enclosures: Means above or below-ground housings that are not attached to Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point.
- 1.31 Permit: Means, depending on the context, written or electronic authorization by the City for Company to make, maintain or remove Attachments to specific Poles pursuant to the requirements of this Use Agreement and the City Code and regulations or to perform work in or occupy the City’s Public Way.
- 1.32 Permit Application: Means, depending on the context, an application by Company to occupy or perform work in a City Public Way or an application to attach wireless equipment to a City-owned pole or other facility, or both.
- 1.33 Pole: Means a pole whether owned or controlled by the City, by Company, or a third party and capable of supporting Attachments for Communications Facilities.

- 1.34 Pole Make-Ready or Make-Ready Work: Means all work that is reasonably required to safely accommodate the installation of Company's Communications Facilities on Poles and/or to comply with all Applicable Standards. Make-Ready Work may be conducted by the City, by Company, or a third party utility owner of a Pole(s). Such work may include, but is not limited to repair, rearrangement, replacement and construction of Poles; inspections, engineering work and certification; permitting work; tree trimming (other than tree trimming performed for normal maintenance purposes); site preparation; and electrical power configuration. Make-Ready Work does not include Company's routine maintenance.
- 1.35 Post-Construction Inspection: Means the inspection by the City or Company, or some combination of both, to verify that the Attachments have been made, and Mark-Ready Work performed, in accordance with Applicable Standards and the Permit.
- 1.36 Pre-Construction Survey: Means all work, inspections or operations required by Applicable Standards and/or the City to determine the Make-Ready Work necessary to accommodate Company's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection and administrative processing.
- 1.37 Public Way: Means the space in, upon, above, along, across, and over the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lands, and places, including all public utility easements and public service easements 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.
- 1.34. PSC: Means the Maryland Public Service Commission.
- 1.35. Reserved Capacity: Means capacity or space on a Municipal Facility that the City has reserved for its own future City requirements at the time of the Permit grant, including the installation of communications Attachments for governmental purposes.
- 1.36. Riser: Means metallic or plastic encasement materials placed vertically on or within a Pole to guide and protect wires and cables.
- 1.37. Services: Means "Communications Services".
- 1.38. "Small Cell": Means a wireless communications technology installation similar to a DAS network, as the term is generally known in the industry.

- 1.39 Streetlight Pole: Means any standard-design or conventional concrete, fiberglass, metal, or wooden pole used for street lighting or decorative purposes.
- 1.40. Tag: Means to place distinct markers on Communications Facilities, coded by color or other means, specified by the City or, if not specified by the City, consistent with local industry standards, that will readily identify the type of Attachment (e.g., cable TV, telephone, high-speed broadband data, public safety) and its owner.
- 1.41. Unauthorized Attachment: Means any Communications Facilities that do not the definition of the term "Attachment" provided in this Use Agreement and which are placed on Pole(s) without the approval required by this Use Agreement. The term includes any structure on a City Public Way not authorized by this Use Agreement and the City Code.

2. TERM.

2.1 Term. This Use Agreement and the franchise granted hereunder shall become effective upon the approval of the City Council and submission to the City by the Company of a certificate of liability insurance, bonds, and Public Service Commission authority to operate in the Right-of-Way as a public utility, as provided herein, and, if not terminated in accordance with other provisions of this Use Agreement, shall continue in effect for a term of ten (10) years and, unless terminated by either party, shall automatically be renewed for three (3) additional five (5) year terms. Either party may terminate this Use Agreement at the end of the initial term or a successor term by giving written notice of intent to terminate the Use Agreement at the end of the then-current term. Such a notice must be given least thirty (30) calendar days prior to the end of the then-current term.

2.2 Exercise of Police Power. All rights and privileges granted hereby are subject to the police power of the City to adopt and enforce local laws, rules and regulations necessary to protect the health, safety and general welfare of the public consistent with any other requirements under the laws of the State of Maryland. Expressly reserved to the City is the right to adopt, now and in the future, in addition to the provisions of the Franchise and existing laws, ordinances and regulations, such additional laws and regulations as it may find necessary in the exercise of its police power and Company shall comply with all laws, ordinances and regulations, now existing and hereafter adopted whether local, State or Federal.

3. FRANCHISE AGREEMENT.

3.1 Nature of Franchise. The City hereby grants the Company for the period of the Term, subject to the terms and conditions of this Use Agreement, a nonexclusive franchise providing the right and consent to install, operate, repair, maintain, remove and replace cable, wire, fiber (or other transmission medium that may be used in lieu of cable, wire or fiber) and related Equipment and facilities on, over and under the City owned Public Way, for the provision of Company's telecommunications services, provided; however, that such grant is expressly limited to the locations, facilities and services for which the Company receive a permit from the City. Before offering or providing any Services using the facilities, the Company shall obtain

any and all regulatory approvals, permits, authorizations and licenses for the offering or provision or such Services from appropriate federal, state, and local authorities, as required, and shall submit to the City evidence of all such approvals, permits, authorizations or licenses.

3.2 Conditions and Limitations on Franchise

3.2.1 Nothing in this Use Agreement shall affect the right of the City to grant to any Person a franchise, consent or right to occupy and use the Public Way, or any part thereof, for the construction, operation and/or maintenance of a system to provide any services (including without limitation mobile telecommunications services), except that the City agrees not to subsequently grant franchises in a manner that would unfairly and adversely affect the Company's pole allocation priority as set forth in Appendix A, attached hereto.

3.2.2 Nothing in this Use Agreement shall abrogate the right of the City (itself or through its contractors) to construct, operate, maintain, repair or remove any public works or public improvement of any description.

3.3 No Waiver. Nothing in this Use Agreement shall be constructed as a waiver of any codes, ordinances or regulations of the City or of the City's right to require the Company or Persons utilizing the facilities to secure the appropriate permits or authorizations for such use.

3.4 No Release. Except as expressly set forth in this Use Agreement, nothing in this Use Agreement shall be construed as a waiver or release of the rights of the City in and to the Public Way. In the event that any of the Public Way is eliminated, discontinued, closed or abandoned, all rights and privileges granted pursuant to this Use Agreement with respect to said Public Way, or any part thereof to eliminated, discontinued, closed or abandoned, shall cease upon the effective date of such elimination, discontinuance, closing or abandonment. The City shall use reasonable efforts to provide reasonable prior notice to the Company of any such elimination, discontinuance, closing or abandonment.

4. SCOPE OF USE AGREEMENT.

Any and all rights expressly granted to Company under this Use Agreement, which shall be exercised at Company's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Way exclusively or concurrently with any other person or entity, and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in Company an interest in any structure, real estate or land, including any fee, leasehold interest, or easement, and neither this Use Agreement nor any permit issued pursuant hereto or to any provision of applicable Law shall constitute an assignment of any of the City's rights in or to any Municipal Facility. Any work performed pursuant to the rights granted under this Use Agreement shall be subject to the reasonable prior review and approval of the City and shall after approval be subject to regulation by the City, in compliance with local, state and Federal law.

4.1 Attachment to Municipal Facilities. Subject to the terms and conditions herein and the requirements of applicable Law, the City hereby authorizes and permits Company to enter upon the Public Way and apply for permits as provided in this Use Agreement to enter into a lease agreement allowing Company to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on Municipal Facilities for the purposes of operating the Network and providing Services. Unless otherwise agreed, to the extent Company requires electric service for its Communications Facilities, it shall obtain such power pursuant to standard application to the electric utility company at its sole cost and expense. Unless specifically agreed, Company shall not tap into or otherwise utilize the City's electric service at a Pole. The City agrees that it will cooperate with Company in its efforts to obtain utilities from a location provided by City or the servicing utilities.

4.2. Attachment to Third-Party Property. Subject to applicable Law and to Company obtaining the written permission of the owner(s) of the affected property and showing (1) a need for the attachment to provide uninterrupted wireless services and (ii) that no less intrusive alternative is available, the City hereby authorizes and permits Company to enter upon the Public Way and, subject to the permission of the appropriate owner and the City pursuant to the provision of Section 6 and any applicable design, installation or maintenance requirements the City may impose or pursuant to the City Code and regulations to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Small Cell or DAS Equipment in or on poles located within the Public Way. Only where third-party poles or other property is not available for attachment of Equipment, Company may install its own poles in the Public Way, consistent with the requirements that the City imposes on similar installations made by other utilities that use and occupy the Public Way, including, but not limited to the requirement to underground Equipment if other utilities are requirement to do so.

4.3. Preference for Municipal Facilities. In any situation where Company has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the Public Way, Company agrees to attach to the Municipal Facilities, provided that such Municipal Facilities are at least equally suitable functionally for the current and future operation of the Network.

4.4. No Interference. Company, in the performance and exercise of its rights and obligations under this Use Agreement, shall not interfere in any manner with the existence and operation of the Public Way or any and all private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, City property or the original intent of the use of the Public Way, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement.

4.5. Use of City Conduit. For the deployment of new fiber optic cable in the Public Way to connect Communications Facilities, and for which Conduit is required, Company may, but is not required, to use existing City-owned Conduit subject to separate agreement by the parties. In the event the parties do not reach such agreement, or there is no available, existing

City-owned Conduit or Company-owned conduit to access the Poles, Company may in coordination with the City, construct additional Conduit in the Public Way. All such construction shall be consistent with City requirements and specifications. This Use Agreement does not contemplate or authorize the installation or operation of cables within City owned Conduit, and such use will only be allowed pursuant to a separately negotiated conduit use agreement or rider hereto.

4.6. Permit Issuance Conditions. The City will issue one or more Permit(s) to Company only when the City determines, in its sole judgment, exercised reasonably, that, in the case of the use of Municipal Facilities, there is sufficient Capacity to accommodate the requested Attachment(s), and that in all cases (i) Company meets all requirements set forth in this Use Agreement, and (ii) such Permit(s) comply with all Applicable Standards and with applicable Law, including, without limitations, all regulations adopted pursuant to the City Code.

4.7. Reserved Capacity. Access to space on Municipal Facilities will be made available to Company with the understanding that said Municipal Facilities will be subject to Reserved Capacity for future City use. On giving Company at least sixty (60) calendar day's prior notice, City may claim such Reserved Capacity at any time following the installation of Company's Attachment if required for the City's future public service requirements. Where possible, City shall give Company the option to remove its Attachment(s) from the affected Municipal Facility or Municipal Facilities or to pay for the cost of any Make-Ready Work needed to accommodate the City's needs while maintaining Company's Attachment on the affected City-owned Pole(s). Company shall be responsible for the costs of removing its Communications Facilities or rearranging the City-owned Pole to accommodate the City's Attachments. Notwithstanding the above, any City-owned Pole that has been enlarged, replaced, or otherwise improved by Company at its expense, shall not be subject to Reserved Capacity to the extent of such enlargement, replacement, or improvement.

4.8. City's Rights Over City-owned Poles. The parties agree that this Use Agreement does not in any way limit the City's right to locate, operate, maintain, or remove City-owned Poles in the manner that will best enable it to fulfill its service, safety, and vehicular and pedestrian transportation requirements or to comply with any federal, state, or local legal requirement.

4.9. Other Agreements. Except as expressly provided in this Use Agreement, nothing in this Use Agreement shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding City-owned Poles into which the City has previously entered, or may enter in the future, with others not party to this Use Agreement.

4.10. Permitted Uses. This Use Agreement is limited to the uses specifically stated in the recitals set forth above, and no other use of the Public way or Municipal Facilities shall be allowed without the City's express written consent to such use. Nothing in this Use Agreement shall be construed to require the City to allow Company to use City-owned Poles or City-owned Conduit after the termination of this Use Agreement.

4.11. Enclosures. Company shall not place Base Stations, Pedestals or Vaults without the City's prior written permission. If permission is granted, all such installations shall be subject to, and in compliance with, the Applicable Standards and applicable Law. Such permission shall not be unreasonably withheld. Further, Company agrees to move any such above-ground Pedestals or Vaults in order to provide sufficient space for the City to set a replacement City-owned Pole.

4.12. Closing of Public Ways. Nothing in this Use Agreement shall be construed as a waiver or release of the rights of the City in and to the Public Ways. In the event that all or part of the Public Ways within an area of the City are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services comparable to Services; or (2) vacated or if ownership of the land under the affected Public Ways is otherwise transferred to another Person, all rights and privileges granted pursuant to this Use Agreement with respect to such Public Ways, or any part of such Public Ways so closed, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and Company shall remove its Network and Equipment from such Public Ways. If such closing, vacation, or transfer of any Public Way is undertaken for the benefit of any private person, the City shall, as appropriate, condition its consent to such closing, vacation, or transfer of such Public Way on the agreement of such private person to: (i) grant Company the right to continue to occupy and use such Public Way; or (ii) reimburse the Company for its reasonable costs to relocate the affected part of the Network. The City shall provide reasonable prior notice to Company of any such closing, vacation, or transfer to allow Company to remove its Network where the right to continue to occupy and use such Public Way is not reserved for Company.

4.13. Compliance with Laws. Company shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement. Company shall apply for, at its sole cost and expense, and obtain all applicable federal, state, county, and City permits and/or Authorizations required in order to install, construct, operate, maintain, or otherwise implement and use its Network and Equipment in the Public Way, including, but not limited to, a right-of-way construction permit, building permits, and any applicable variance, conditional use permit, ministerial permit, or special exception required under the City Code or the City's zoning regulations. Company shall pay, as they become due and payable, all fees, charges, taxes and expenses, associated with such permits and/or other Authorizations. If Company is unable to obtain any necessary permits or Authorizations as required in this Section, Company shall have the right, without obligation, to terminate this Use Agreement immediately.

5. COMPENSATION; UTILITY CHARGES. Company shall be solely responsible for the payment of all lawful Fees in connection with Company's performance under this Use Agreement, including those set forth below.

5.1. Annual Attachment Fee. In order to compensate the City for Company's entry upon, deployment within the Public Way, attachment to, and use of, Municipal Facilities, Company shall pay to the City an annual fee (the "Annual Fee") in the amount of Five Hundred Dollars (\$500.00) for each individual use of each Municipal Facility thereafter, if any, upon which Equipment has been installed pursuant to this Use Agreement. For the purpose of calculating the Annual Fee remittance, all Equipment attached by Company to one Municipal

Facility shall constitute one installation and therefore a single use of a Municipal Facility. The City represents and covenants that the City owns all Municipal Facilities for the use of which it is collecting from Company the Annual Fee pursuant to this § 4.1. The Annual Fee shall be payable in advance, invoiced on a fiscal year basis, and prorated based upon the date of issuance of a Permit for an Attachment.

5.1.1. CPI Adjustment. Annually on each anniversary of this Use Agreement during the term, the Annual Fee shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Urban Consumers, 1982-1984= 100) for the Washington, D.C. - Baltimore Metropolitan Statistical Area.

5.2. Right of Way Use Fee. In order to compensate the City for Company's entry upon and deployment of Equipment within the Public Way, Company shall pay to the City, on an annual basis, an amount equal to five percent (5%) of Gross Revenues (the "Right-of-Way Fee"). The Right-of-Way Fee shall be payable for the period commencing with the Effective Date and ending on the date of termination of this Use Agreement. Company shall make any payment of the Right-of-Way Fee that may be due and owing within thirty (30) days after the first anniversary of the Effective Date and within the same period after each subsequent anniversary of the Effective Date. Within thirty (30) days after the termination of this Use Agreement, the Right-of-Way Fee shall be paid for the period elapsing since the end of the last calendar year for which the Right-of-Way Fee has been paid. Company shall furnish to the City with each payment of the Right-of-Way Fee a statement, executed by an authorized officer of Company or his or her designee, showing the amount of Adjusted Gross Revenues for the period covered by the payment. If Company or the City discovers any error in the amount of compensation due, the City shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the City of any payment of the Right-of-Way Fee shall not be deemed to be a waiver by the City of any breach of this Use Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City. On an annual basis, Company shall provide to the City a financial statement describing services provided within the City and Gross Revenues received from such services.

5.3. Accounting Matters. Company shall keep accurate books of account at its principal office, or such other location of its choosing for the purpose of determining the amounts due to the City under §§ 5.1 and 5.2 above. Company shall at their cost provide such books of account to the City at a location of the City's choosing for review by the City or a City representative. The City may inspect Company's books of account relative to the City at any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the Company's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under §§ 5.1 and 5.2 above. The City agrees to hold in confidence any non-public information it learns from Company to the fullest extent permitted by Law.

5.4. Most-Favored Municipality. Should Company, after the parties' execution and delivery of this Use Agreement, enter into a pole attachment or right-of-way use agreement with another municipality of the same size or smaller than the City in the state of Maryland, which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's opinion substantially superior to those in this Use Agreement, the City shall have the right to require that Company modify this Use Agreement to incorporate the same or substantially similar superior benefits and such other terms and burdens by substitution, mutatis mutandis, of such other agreement or otherwise.

5.5. Application Fee. To address City's costs incurred relating to inspection and application processing, Company shall be charged a non-refundable Application Fee of five hundred dollars (\$500.00) for each Pole for which it seeks to install a new Pole or make an Attachment. The City reserves the right to adjust the Application Fee from time to time to cover actual and documented costs incurred in processing Applications. Failure to include Application Fees will cause the Application(s) to be deemed incomplete, and the City will not process such Application(s) until the Application Fees are paid. The City will make timely and reasonable efforts to contact Company should its Application Fee not be received.

5.6. Refunds. No Fees or other charges specified herein shall be refunded on account of any surrender of an Attachment Permit granted under this Use Agreement, except in the case of the City's default.

5.7. Late Charge. If the City does not receive payment for any Fee or other amount owed within thirty (30) calendar days after it becomes due, Company shall pay interest to City at the rate of one and one-half percent (1.5%) per month.

5.8. Charges and Expenses. Company shall reimburse the City and any other Attaching Entity for those actual and documented costs, including without limitation the cost of Make-Ready-Work, for which Company is otherwise responsible under this Use Agreement.

5.9. Advance Payment. The City in its sole discretion will determine the extent to which Company will be required to pay in advance estimated costs, including, but not limited to, administrative, construction, inspections, and Make-Ready Work costs, in connection with the initial installation or rearrangement of Company's Attachments pursuant to the procedures set forth in Articles 10 and 15 below.

5.10. True-Up. Whenever the City, in its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Company and the actual cost of the activity exceeds the advance payment of estimated expenses, Company agrees to pay City for the difference in cost, provided that City documents such costs with sufficient detail to enable Company to verify the charges. To the extent that City's actual cost of the activity is less than the estimated cost, City shall refund to Company the difference in cost.

5.11. Determination of Charges. Wherever this Use Agreement requires Company to pay for work done or contracted by the City, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable overhead costs. The City

shall bill its services based upon actual and documented costs, and such costs will be determined in accordance with the City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used.

5.12. Work Performed by City. Wherever this Use Agreement requires the City to perform any work, City, in its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.

5.13. Charges for Cancelled Applications. If an Agreement Application is submitted by Company and then steps are taken by the City with regard to the Agreement Application by performing necessary administrative and engineering work, and the Agreement Application is subsequently canceled prior to the issuance of a Permit, Company shall reimburse the City for all of the actual and documented costs incurred by the City through the date of cancellation, including engineering, clerical and administrative costs.

5.14. Other Compensation. As additional compensation for the attachment rights granted herein, in the event that Company installs fiber to serve any Company facility within the City's Public Way, Company shall grant the City an indefeasible right to use two (2) strands of fiber optic cable to be utilized for municipal uses only, for each Attachment for which a Permit is issued under the terms of this Use Agreement for the deployment of fiber optic cable if any, as provided in Section 4.5 of this Use Agreement.

5.15. Fee Payments. Unless otherwise directed, all Fee payments to the City should be mailed to the following address and to the attention of:

Director of Finance
City of Gaithersburg
31 S Summit Avenue
Gaithersburg, MD 20877

5.16. Electricity Charges. Company shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Equipment's usage of electricity and applicable tariffs. For Municipal Facilities, Company is required to obtain a separate utility meter for measurement of usage.

5.17. Taxes. Company shall be solely responsible for the payment of any fees or taxes, in the event such fees or taxes are imposed by the City, Montgomery County, the State of Maryland or the Federal government in connection with Company's performance and installation of equipment under this Use Agreement.

6. CONSTRUCTION.

Company shall comply with all applicable and lawful federal, State, and City codes, regulations specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of Company's Equipment installed in the Public Way and on Municipal

Facilities in the City. If Company does not repair the site as required herein, the City shall have the option, upon thirty (30) days' prior written notice to Company, to perform or cause to be performed such reasonable and necessary work on behalf of Company and to charge Company for the costs incurred by the City at the City's standard rates, as well as a reasonable administrative fee to coordinate inspections, reviews and issuance of permits or denials. Upon the receipt of a demand for payment by the City, Company shall promptly reimburse the City for such costs. Company shall not attach, install, maintain, or operate any Equipment in or on the Public Way and/or on Municipal Facilities without the prior approval of the City for each location.

6.1. Obtaining Required Permits for Work in Public Way. If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Way shall require any permits, for each permit Company shall, if required under applicable City ordinances or regulations, apply for the appropriate permits and pay any standard and customary permit fees. Approval of such a permit shall be based upon whether the Equipment meets the requirements of the City's Right-of-Way Regulations.

6.1.1 Specific Application Requirements. An application or permit shall specify whether the municipal facility is currently in use as a wireless communication base and whether an individual utility meter can be provided if electricity is needed.

6.1.3 Location List. Upon the completion of initial installations, Company shall furnish to the City a list indicating the location(s) of the Equipment in the Public Way, and shall update that list annually.

6.2. Relocation and Displacement of Equipment. Company understands and acknowledges that the City may require Company to relocate one or more of its Equipment installations on a City-owned Pole at Company's expense. Company shall at the City's direction relocate such Equipment, whenever the City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Equipment is reasonably considered to be interfering with or adversely affecting proper operation of City-owned Poles, traffic signals, or other Municipal Facilities; or (c) to protect or preserve the public health or safety. If Company shall fail to relocate any Equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, the City shall be entitled to remove or relocate the Equipment, without further notice to Company and to charge the Company the cost thereof. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform Company in writing of the displacement or removal of any pole on which any Equipment is located.

6.3. Relocations at Company's Request. In the event Company desires to relocate any Equipment from one Municipal Facility to another, Company shall so advise the City, and may do so upon City approval of a new application, at its own expense. The City will use its best efforts to accommodate Company by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Use Agreement.

6.4. Damage to Municipal Facilities and Public Way. Whenever the removal or relocation of Equipment is required or permitted under this Use Agreement, and such removal or relocation shall cause the Public Way to be damaged or harmed in any way, including cosmetic damage, Company, at its sole cost and expense, shall promptly repair and return the Public Way in which the Equipment is located to a safe and satisfactory condition in accordance with applicable Laws. If Company does not repair the site as just described, then the City shall have the option, upon thirty (30) days' prior written notice to Company, to perform or cause to be performed such reasonable and necessary work on behalf of Company and to charge Company for the proposed costs to be incurred or the actual costs incurred by the City at the City's standard rates, except that for repairs needed to protect public health or safety, the City can proceed with the repair on an emergency basis after providing Company with prior notice. Upon the receipt of a demand for payment by the City, Company shall promptly reimburse the City for such costs.

7. SPECIFICATIONS.

7.1. Installation. When a Permit is issued pursuant to this Use Agreement, Company's Equipment shall be installed and maintained in accordance with the regulations, requirements and specifications of the City and must comply with all Applicable Standards. Company shall be responsible for the installation and maintenance of its Equipment. All Company's activities shall be undertaken without the attachment of any liens to the Company's Equipment.

7.2. Installation Plan. The installation of Facilities shall be made in accordance with plans and specifications approved by the City, and after obtaining all necessary and applicable permits for all work in the Public Way. Company shall submit to the City's Department of Public Works an initial installation plan, and any subsequent work plans concerning installations not addressed in the initial work plan, which shall include fully dimensioned site plans and specifications that are drawn to scale and show (1) the specific Equipment, (2) the specific proposed location of such Equipment (including specific identification of each Attachment to a City-owned, Company-installed, third-party structure located in the Public Way); (3) the route of fiber optic cable utilized by the Network; (4) the proposed type of construction materials for all structures, and (4) any other details that the City may reasonably request which are also applicable to other entities installing facilities in the Public Way.

7.3. Approval by City. Company shall not attach, install, maintain, or operate any Facilities in or on the Public Way until plans for such work have been approved by the City (which shall not be unreasonably withheld, delayed, conditioned or denied), and all necessary permits have been properly issued. Substantial modification to an installation plan (including, for example, a change of Node location) made in the course of construction shall require the written consent of the City, upon which the City shall act promptly, and may require modification of an existing or issuance of a new permit. Approval of plans and specifications and the issuance of any permits by the City shall not release Company from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. Company shall be responsible for notifying the City and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected City-approved permits, as may be necessary. The City shall use its best efforts to

promptly respond to a request for plan approval or modification within 60 days, and will cooperate with Company to facilitate the prompt processing and issuance of any required permits.

7.4. Maintenance of Facilities. Company shall, at its own expense, make and maintain its Attachment(s) and Equipment in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Use Agreement to the contrary, Company shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards. Company shall use its commercially reasonable efforts to coordinate construction and maintenance of its Communications Facilities with the appropriate City agencies to minimize unnecessary disruption. Prior to commencing construction, installation or maintenance activities, Company shall acquire all required City permits.

7.5. Tagging. Company shall Tag all of its Attachments to Poles as specified by the City and/or applicable federal and state regulations, which will allow for ready identification of the type of Attachment and its owner. The City shall be responsible for periodically inspecting its Attachments to ensure they are tagged with approved permanent identification markers.

7.6. Interference. Company shall not allow its Communications Facilities to impair the ability of the City or the City's agent to use Poles or other Municipal Facilities, nor shall Company's Communications Facilities cause any radio frequency interference to the operation or function of any City radio communications facilities on or in the vicinity of Poles or other Municipal Facilities.

7.7. Company is solely responsible for the radio frequency ("RF") emissions emitted by its Communications Facilities and associated equipment. Company is jointly responsible for ensuring RF exposure from its emissions, in combination with the emissions of all other contributing sources of RF emissions, is within the limits permitted under all applicable rules of the FCC. To the extent required by FCC rules, Company shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions.

7.8. Protective Equipment. Company and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

7.9. Cut-Off Switch. Company shall install an equipment power cut-off switch as directed by the City and consistent with Applicable Standards and the City specifications for every City Pole or to which Company has attached Communications Facilities. 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 Company's designated point of contact to inform Company of the need for a temporary power shut-down. Upon receipt of the call, Company will power down its antenna remotely, which shall occur during normal business hours and with twenty-four (24) hours advance notice. 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 Company and shall notify

the Company 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.

7.10. Maximum Permissible Exposure Report. Within ninety (90) days following the Effective Date of this Use Agreement, Company shall furnish the City a Report on Maximum Permissible Exposure (MPE) Evaluation regarding radio frequency emissions and maximum exposure for humans, as it relates to Company's Attachment(s). A copy of any MPE reports submitted to the FCC shall be given to the City within thirty (30) days of the FCC submission. Failure to provide the report or failure to comply, in a timely manner, with FCC standards for limiting human exposure to radio frequency emissions shall be an event of default.

7.12. Emergency Contact Information. Company shall provide emergency after-hours contact information to the City to ensure proper notification in case of an Emergency. Information will include 24/7 telephone and cell phone information, and a list of duty managers by district and escalation procedures.

7.12. Violation of Specifications. If Company's Attachments, or any part of them, are installed, used, or maintained in violation of this Use Agreement, and Company has not corrected the violation(s) within thirty (30) days from receipt of written notice of the violation(s) from the City, the provisions of Section 28 shall apply. When the City believes, however, that such violation(s) pose an Emergency, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Company. As soon as practicable afterward, the City will advise Company of the work performed or the action taken. Company shall be responsible for all actual and documented costs incurred by the City in taking action pursuant to this Section. Company shall indemnify the City for any such work.

7.13. Restoration of City Service. The City's service restoration requirements shall take precedence over any and all work operations of Company on City-owned Poles.

8. PRIVATE AND REGULATORY COMPLIANCE.

8.1. Necessary Authorizations. Before Company occupies any poles or other property of another person, Company shall obtain from the appropriate public or private authority, or from any property owner or other appropriate person, any applicable, required authorization to construct, operate, or maintain its Communications Facilities on public or private property. The City retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Company. Company's obligations under this Section 8.1 include, but are not limited to, its obligation to obtain and pay for all necessary approvals to occupy public/private rights-of-way and easements and all necessary licenses and authorizations to provide the Services that it provides over its Communications Facilities. Company shall defend, indemnify, and reimburse the City for all losses, costs, and expenses, including reasonable attorneys' fees, which the City may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Company does not have sufficient rights or authority to attach Company's Communications Facilities on poles or other property or to provide particular services.

8.2. Lawful Purpose and Use. Company's Communications Facilities must at all times serve a lawful purpose, and the use of such Communications Facilities must comply with all applicable federal, state and local law.

8.3. Forfeiture of City's Rights. No Permit granted under this Use Agreement shall extend, or be deemed to extend, to any City-owned Poles or other Municipal Facilities, to the extent that Company's Attachment would result in a forfeiture of the City's rights. Any Permit that would result in forfeiture of the City's rights shall be deemed invalid as of the date that the City granted it and require the immediate removal of the Attachment. If Company does not remove its Communications Facilities in question within thirty (30) days of receiving written notice from the City, the City may at its option perform such removal at Company's expense. Notwithstanding the forgoing, Company shall have the right to contest any such forfeiture before any of its rights are terminated, provided that Company shall indemnify the City for liability, costs, and expenses, including reasonable attorneys' fees that may accrue during Company's challenge.

8.4. Effect of Consent to Construction/Maintenance. Consent by the City to the construction or maintenance of any Attachments by Company shall not be deemed consent, authorization, or acknowledgment that Company has obtained all required Authorizations with respect to such Attachment.

9. PERMIT APPLICATION PROCEDURES.

9.1. Submission and Review of Permit Application. Before making any Attachment to a Pole or modifications to any existing Attachment, Company shall submit a properly executed Permit Application, which shall include a Pre-Construction Survey and detailed plans for the proposed Attachment or modification, including a description of any necessary Make-Ready Work to accommodate the Attachment or modification and a proposed schedule for completion, certified by a licensed professional engineer, and along with any required fees and/or bonds. Before performing any work in any Public Way, Company shall submit a properly executed Permit Application for that purpose, along with any required fees and/or bonds. The City's acceptance of the submitted design documents or the issuance of the Permit does not relieve Company of full responsibility for any errors and/or omissions in the engineering analysis. The City shall review and respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable, with a goal of providing a response during normal circumstances within sixty (60) days of receipt.

9.2. Modifications. Notwithstanding the requirements of 9.1, and except for Right-of-Way Permits, modifications shall not be subject to the additional permitting to the extent that: (i) such modification to the Attachment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the Attachment, as approved by the City; or (ii) such modification involves replacement of the attachment with an Attachment that is the same, or smaller in weight and dimensions of the previously approved Attachment. As part of the Permit Application for a modification, Company shall furnish the City a Report on Maximum Permissible Exposure (MPE) Evaluation regarding radio frequency

emissions and maximum exposure for humans, as it relates to the Attachments proposed for modification.

9.3. Professional Certification. Prior to installing any new Attachment, or modifying any existing Attachment in a manner resulting in additional weight or volume being placed on a Pole, and unless otherwise waived in writing by the City, as part of the Permit Application process and at Company's sole expense, a qualified and experienced professional engineer must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection, and certify that Company's Communications Facilities can be and were installed on the identified Poles in compliance with the Applicable Standards and in accordance with the Permit. The City may require Company's professional engineer to conduct a post- construction inspection that the City will verify by means that it deems to be reasonable.

9.4. Permit as Authorization to Attach. Upon completion and inspection of any necessary Make-Ready Work, City will issue the Permit, which shall serve as authorization for Company to make its Attachment(s).

9.5. Notification to City. Within thirty (30) days of completing the installation of an Attachment, Company shall provide written notice to the City.

9.6. Appearance. Company shall cooperate with the City on all issues of aesthetics and appearance and shall obtain design and location approval from the Planning Department for all attachments that are subject to this Use Agreement. Company shall follow all legally binding City regulations, policies and state and local ordinances with respect to aesthetics and appearance for the duration of the Use Agreement.

10. MAKE-READY WORK AND INSTALLATION.

10.1. Who May Perform Make-Ready Work. For Attachments to City-owned Poles, the City may give Company the option of either having Company perform any necessary Make-Ready Work through the use of qualified contractors authorized by the City, or having the City perform any necessary Make-Ready Work at Company's cost.

10.2. Payment for Make-Ready Work. Upon completion of the Make-Ready Work performed by the City at the request of Company pursuant to Section 10.1 above, the City may invoice Company for the City's actual and documented cost of such Make-Ready Work.

10.3. Company's Installation/Removal/Maintenance Work. All of Company's installation, removal, and maintenance work, by either Company's employees or authorized contractors, shall be performed at Company's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Poles or other Attaching Entity's facilities or equipment. All of Company's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all Applicable Standards, which shall include obtaining the necessary Permits prior to engaging in work to remove Communication Facilities. Company shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards.

11. POST CONSTRUCTION INSPECTIONS BY CITY AND MAINTENANCE.

11.1. At any time, the City or its contractors may perform a post-installation inspection of each Attachment made to the Poles. Periodic inspections with regard to ongoing conditions shall be addressed as set forth under Article 17.

11.2. If the City elects to not perform any post-installation inspection, such non-inspection shall not be grounds for any liability being imposed on the City or a waiver of any liability of Company.

11.3. If the post-installation inspection reveals that Company's facilities have been installed in violation of Applicable Standards or the approved design described in the Application, the City will notify Company in writing, and Company shall have thirty (30) days from the date of receipt of such notice to correct such violation(s), or such other period as the parties may agree upon in writing, unless such violation creates an Emergency in which case Company shall make all reasonable efforts to correct such violation immediately. The City may perform subsequent post-installation inspections within thirty (30) days of receiving notice that the correction has been made as necessary to ensure Company's Attachments have been brought into compliance.

11.4. If Company's Attachments remain out of compliance with Applicable Standards or approved design after any subsequent inspection, consistent with Article 17, the City will provide notice of the continuing violation and Company will have thirty (30) days from receipt of such notice to correct the violation; otherwise the provisions of Article 18 shall apply.

11.5. Company shall keep its Equipment free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the City gives Company written notice of a failure by Company to maintain its Equipment, Company shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

11.6. Company will be given reasonable access to each of its Equipment in the Public Way for the purpose of routine maintenance, repair, or removal of its Equipment. If any such maintenance activities have the potential to result in an interruption of any City services at the affected Municipal Facility, Company shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services.

11.7. Company shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, Municipal Facilities, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by Company's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of its Equipment in the Public Way. Company shall promptly repair such damage and return the Public Way and any affected Municipal Facilities and adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street and Municipal Facilities

restoration standards or to the property owner if not the City. Company's obligations under this Section 11.7 shall survive for one (1) year past the completion of such reparation and restoration work.

11.8. Company shall at all times keep and maintain its Equipment free of all graffiti located thereon. The City shall notify Company in writing if graffiti is located on any Equipment. Thirty (30) days after notice in writing is received by Company, the City shall have the right to abate any graffiti present on any Equipment, and Company shall reimburse the City all costs directly attributable to graffiti abatement of Facilities which are incurred by City within thirty (30) days of the City's presenting Company with a statement of such costs.

12. NEW POLES; POLE REPLACEMENT.

12.1. New Poles. Company shall not erect poles, conduits, or other Equipment in a Public Way without all necessary permits and authorizations and the express permission of the City. In the event the construction of one or more New Poles is necessary to execute Company's planned installation of Communications Facilities, Company may request City approval to construct, at Company's sole expense, New Poles that will comply with Right-of-Way regulations and Applicable Standards. Any New Poles constructed by Company shall comport with the character, height and dimensions of existing poles in the area. The City shall consider any request to construct a New Pole in a nondiscriminatory manner and shall accommodate Company's request to the same or substantially similar extent as the City accommodates such requests from other providers of communications services within the City. Upon completion of construction, inspection and acceptance of New Poles, the New Poles shall be conveyed to City ownership. Upon any such conveyance to the City, Company shall not be subject to the Annual Fee under Section 3.1.

12.2. City Use of New Poles. The City may use any New Poles for City purposes, including but not limited to streetlights and other lighting so long as such use does not interfere with Company's present or future use of its Network or Equipment. The City shall be responsible for maintenance of any New Poles; however, the City shall charge to Company any and all maintenance costs and expenses related to Company's Facilities and Equipment on said Poles.

13. EFFECT OF FAILURE TO EXERCISE ACCESS RIGHTS.

If Company does not exercise any access right granted pursuant to an applicable Permit(s) for a City-owned Pole within one hundred twenty (120) calendar days of the Effective Date of such right (unless such time period is extended), the City may, but shall have no obligation to, use the space scheduled for Company's Attachment(s) for its own needs or make the space available to other Attaching Entities in accordance with the pole allocation priority set forth in Appendix A. For purposes of this Section, Company's access rights shall not be deemed effective until a Permit to attach has been issued.

14. REARRANGEMENTS AND TRANSFERS.

14.1. Required Transfers of Company's Communications Facilities. If the City reasonably determines that a rearrangement or transfer of Company's Attachments on a City-

owned Pole is necessary, the City will require Company to perform such rearrangement or transfer within thirty (30) days after receiving notice from the City. If Company fails to rearrange or transfer its Attachment within thirty (30) days after receiving such notice from City, the provisions of Article 18 shall apply, including the City's right to rearrange or transfer Company's Attachments sixty (60) days after Company's receipt of original notification of the need to rearrange or transfer its facilities. City shall not be liable for damage to Company's facilities except to the extent provided in Article 18. In an Emergency, the City may rearrange or transfer Company's Attachments on City-owned Poles as it determines to be necessary in its reasonable judgment. In an Emergency, the City shall provide such advance notice as is practical, given the urgency of the particular situation. The City shall then provide written notice of any such actions taken within ten (10) days following the occurrence.

14.2. Allocation of Costs. The costs for any rearrangement or transfer of Company's Communications Facilities or the replacement of a Pole in accordance with this Section, shall be allocated to the City and/or Company on the following basis:

14.2.1. If the City intends to modify or replace a City-owned Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Company costs related to rearrangement or transfer of Company's Communications Facilities as a result of modification or replacement of a City-owned Pole by the City shall be the responsibility of Company.

14.2.2. If the modification or replacement of a City-owned Pole is necessitated by the requirements of Company, Company shall be responsible for all costs caused by the modification or replacement of the Pole.

14.2.3. If the modification or the replacement of a City-owned Pole is the result of an Attaching Entity other than City or Company, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement, as well as the costs for rearranging or transferring Company's Communications Facilities. Company shall cooperate with such third-party Attaching Entity to determine the costs of moving Company's facilities.

14.2.4. If the City-owned Pole must be modified or replaced for reasons unrelated to the use of the Pole by either City, or Company or another Attaching Entity (e.g., storm, accident, deterioration), the City shall pay the costs of such modification or replacement, and Company shall pay the costs of rearranging or transferring its Communications Facilities.

14.3. City Not Required to Replace. Nothing in this Use Agreement shall be construed to require the City to replace any Pole for the benefit of Company.

15. POLE REPLACEMENTS.

15.1. Where Company is unable to place an Attachment on a City-owned Pole because such Pole is no longer serviceable due to decay, damage, deterioration, or in any other way not suitable for Attachment (a "Defective Pole"), as determined solely by the City in its discretion, Company may, at its option, arrange for the repair or replacement of such Defective Pole, at Company's sole cost and upon City's prior written approval. If Company opts not to repair or replace a Defective Pole, the City shall repair or replace the Defective Pole at its cost consistent with its routine maintenance schedule, and no Attachment shall be permitted until the Defective Pole is no longer defective. If a Defective Pole poses an imminent Emergency in the absence of any Attachment to it, City shall repair or replace said Pole at its sole cost, consistent with its normal procedures for Emergency repair and replacement.

15.2 In all instances, a Defective Pole replaced by Company as set forth in Section 15.1 will remain the property of the City.

16. ABANDONMENT OR REMOVAL OF POLES

If the City desires at any time to abandon or remove any City-owned Poles to which Company's Communications Facilities are attached, it shall give Company notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such Poles. Notice may be limited to thirty (30) calendar days if the City is required to remove or abandon a Pole as the result of the action of a third party or public necessity, and the lengthier notice period is not practical. If, following the expiration of the 30-day period, Company has not yet removed and/or transferred all of its Communications Facilities, the City shall have the right, but not the obligation, to remove or transfer Company's Communications Facilities at Company's expense and Company shall be subject to the provisions of Article 18. The City shall give Company prior written notice of any such removal or transfer of Company's Facilities.

17. INSPECTION.

17.1. General Inspections. The City reserves the right to make periodic inspections, as conditions may warrant, of Company's Attachments and Equipment. Such inspections, or the failure to make such inspections, shall not operate to relieve Company of any responsibility or obligation or liability assumed under this Use Agreement. Post Construction inspections concerning the compliance of Company's installation shall be addressed as set forth in Article 11.

17.2. Periodic Safety Inspections by the City. The City may at its option perform a safety inspection in all or in part of the territory covered by this Use Agreement with all Attaching Entities to identify any safety violations of all Attachments and facilities on Poles or other Municipal Facilities ("Safety Inspection"). Such notice shall describe the scope of the inspection and provide Company and all Attaching Entities an opportunity to participate. Company shall promptly assist and reasonably cooperate with City in the conduct of any Safety Inspection.

17.3. Periodic Inspection by Company. No less than every five (5) years during the term of this Use Agreement, Company shall conduct a safety and structural integrity survey of the Attachment(s), Equipment and Poles upon which they are located, which shall be certified by

a professional engineer. Company shall provide a written copy of the results of the survey to the City promptly thereafter, highlighting, as appropriate to bring to the City's attention, any Poles, Attachments or Equipment presenting a potential structural or public safety issue.

17.4. Corrections. In the event any of Company's Communications Facilities are found to be in violation of the Applicable Standards and such violation poses a potential Emergency, Company shall use all reasonable efforts to correct such violation immediately. Should Company fail or be unable to correct such Emergency immediately, the City may correct the Emergency and bill Company for one hundred twenty-five percent (125%) of the actual and documented costs incurred. If any of Company's Equipment is found to be in violation of the Applicable Standards and such violations do not pose a potential Emergency, the City shall, consistent with Article 18, give Company notice, whereupon Company shall have thirty (30) days from receipt of notice to correct any such violation, or within a longer, mutually agreed-to time frame if correction of the violation is not possible within thirty (30) days, such extended time to be not more than an additional sixty (60) days.

17.4.1. If any Municipal Facilities are found to be in violation of the Applicable Standards and specifications and the City has caused the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, but the City shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the Pole.

18. FAILURE TO REARRANGE, TRANSFER OR CORRECT.

18.1. Unless otherwise agreed, as part of written notice by the City of a need for Company to rearrange, transfer, remove or correct violations, the City will indicate whether or not the City is willing to perform the required work.

18.2. If the City indicates in the notice that it is willing to perform the work, Company shall have fifteen (15) days to notify the City in writing of its election to either have City perform the work or that the Company will perform the work itself.

18.2.1 If Company requests that the City perform the work, Company shall reimburse the City for the actual and documented cost of such work.

18.2.2 If Company either fails to respond or indicates that it will perform the work itself, then until such work is complete and the City receives written notice of the completion of such work, Company shall be subject to such penalties as are specified in Gaithersburg City Code.

18.2.3 Notwithstanding Company's election under Section 18.2.2 to perform the required work itself, commencing on the thirtieth (30)

day after expiration of the time period for completion of the work specified in the Use Agreement and original notification, the City may perform the required work at Company's expense, or may delegate such authority to another Attaching Entity utilizing a qualified contractor.

18.2.4 If Company was required to perform work under this Article 18 and fails to perform such work within the specified timeframe, and the City performs such work, the City may charge Company an additional twenty-five percent (25%) of its actual and documented costs for completing such work

18.3. If the City indicates in the notice that it is unwilling or unable to perform the work, then until such work is completed and City receives written notice of the completion of such work, Company shall be subject to a penalty as specified in the Gaithersburg City Code.

18.4. Company shall provide written notification to the City upon completion of any of the required work and fines will continue to accrue until the City's receipt of such notice of completion.

19. ACTUAL INVENTORY.

19.1. At Company's sole cost, the City may at intervals of not more often than once every five (5) years perform an actual inventory of the Attachments of City Poles in all or in part of the territory covered by this Use Agreement, for the purpose of checking and verifying the number of City Poles on which Company has Attachments. Such field check shall be made jointly by both parties and shall be at the cost of Company, such costs to be actual and documented, unless City is also performing an inventory of any other Attaching Entity with Attachments, and then the actual and documented cost shall be shared proportionately among all such Attaching Entities based upon the number of Attachments.

19.2. Attachment Records. Notwithstanding the above inventory provisions of Section 19.1, (a) Company shall furnish to City annually an up-to-date electronic map depicting the locations of its Attachments, in a format specified by the City; and (b) the City may perform, at its cost, its own inventory of Attachments at any time.

20. UNAUTHORIZED ATTACHMENTS.

20.1. If during the term of this Use Agreement, the City discovers Unauthorized Attachments placed on Poles within the Public Way, the following fees may be assessed, and procedures will be followed:

20.2. The City shall provide specific written notice of each violation, and Company shall be given five (5) days from receipt of notice to contest an allegation that an Attachment is unauthorized (or that Company failed to timely provide notice).

20.3. Company shall pay the City retroactively, Fees for all Unauthorized Attachments. Company shall furnish to the City notarized documentation as evidence of date of install for determining retroactive Fees. In the event Company is unable to provide documentation, Company shall pay retroactive Fees for all Unauthorized Attachments for a period of five (5) years, or for the period commencing from the Effective Date of this Use Agreement, or from the date of the last inventory of Company's Attachments (whichever period is shortest), at the Fees in effect during such periods.

20.4. In addition to the retroactive Fees, Company shall be subject to the Unauthorized Attachment Penalty of \$500.00 per day for each Unauthorized Attachment from the date of discovery until removal of the Attachment or appropriate permission for the Attachment is filed by Crown with the City in accordance with 20.5.

20.5. Unless an Unauthorized Attachment is removed by Company, Company shall submit a Permit Application in accordance with Articles 5 and 6 of this Use Agreement within five (5) days of receipt of notice from the City of any Unauthorized Attachment, or such longer time as mutually agreed to by the parties after an inventory.

20.6. The City Right to Remove. If Company fails to submit a Permit Application within five (5) days of receipt of notice from the City of any Unauthorized Attachment, or such longer time as mutually agreed to by the parties after an inventory, City shall have the absolute right to immediately remove any Unauthorized Attachments, and Company agrees to pay any and all actual documented costs incurred by the City with regard to such removal. Removed Company Equipment shall be held by the City for ninety (90) days, or as required under Applicable Law, during which time Company may claim Equipment. Following the claim period, City shall obtain outright ownership of Equipment and may use or dispose of it in any manner whatsoever, and Company relinquishes any legal or possessory claim to the Equipment.

20.7. No Ratification of Unauthorized Use. No act or failure to act by the City with regard to any Unauthorized Attachments shall be deemed as ratification of the unauthorized use. Unless the parties agree otherwise, a Permit for a previously Unauthorized Attachment shall not operate retroactively or constitute a waiver by the City of any of its rights or privileges under this Use Agreement or otherwise, and Company shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

21. INDEMNIFICATION AND WAIVER.

21.1. Liability. The City reserves to itself the right to maintain and operate its Poles in the manner that will best enable it to fulfill its public service, health and safety obligations. Company agrees that its use of the City's Poles is at Company's sole risk. Notwithstanding the foregoing, the City shall exercise reasonable precaution to avoid damaging Company's Communications Facilities and shall report to Company the occurrence of any such damage caused by the City's employees, agents or contractors.

21.2. Indemnification by Company. Company shall indemnify, defend and hold harmless the City, its elected/appointed officials, departments, employees, agents and representatives from any and all claims, demands, suits and actions, including attorneys' fees and court costs connected therewith, brought against the City, its elected/appointed officials, departments, employees, agents or representatives and arising as a result of any act or omission of Company, its agents, officers or employees, except for any and all claims, demands, suits and actions, including attorneys' fees and court costs connected therewith, brought against the City or the City's elected/appointed officials, departments, employees, agents and representatives, arising as a result of the sole and willful or grossly negligent act or omission of the City, its elected/appointed officials, departments, employees, agents or representatives.

22.3 Waiver of Claims. Company shall use any Municipal Facilities or the Public Way at its own risk and the City shall not be responsible for any damages thereof due to any cause. Neither the City nor any other user of Municipal Facilities or Public Way shall be liable to Company for any interruption of Company's services, including but not limited to the failure of Company's equipment to perform as intended, arising in any manner. Company waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services.

22.4 Waiver of Punitive and Consequential Damages. Both parties hereby waive the right to recover punitive and consequential damages from the other party; however, this provision does not apply to indemnify.

22. ENVIRONMENTAL.

22.1. Except in strict accordance with all applicable Laws and regulations, Company shall not at any time within the Public Way or on or near Municipal Facilities 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.

22.2. "Environmental Conditions" as used in this Use Agreement shall mean discovered or undiscovered contaminants, pollutants, or toxic substances affecting health or the environment, in any way arising from or related to the subject matter of this Use Agreement that could, or do, result in any damage, loss, cost or expense to, or liability, by the City to any person including a government agency or other entity. In addition to all other indemnifications contained herein, Company specifically agrees to indemnify, reimburse, defend and hold harmless the City, its elected/appointed officials, employees, agents and representatives ("Indemnified Parties") from and against any and all losses, costs, liabilities, including but not limited to liabilities, demands, obligations, claims, suits, actions and expenses, attorneys' fees, consultant fees and court costs connected therewith, brought against the Indemnified Parties, or incurred by any of them, by reason of injury to persons, including death, and damage to property arising out of Environmental Conditions or resulting from any acts or omissions of Company, its

contractors, agents, or employees arising from Environmental Conditions, unless solely caused by the negligent act of the City. Notwithstanding anything to the contrary herein, Company agrees to defend, indemnify and hold harmless the Indemnified Parties from and against all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses judgments and reasonable attorney fees that the Indemnified Parties may suffer or incur due to the existence of any Hazardous Substances in the Public Ways or on or near Municipal Facilities, or migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment, that arise from the activities of Company and/or its representatives on the Public Ways or on or near Municipal Facilities, or related to Company's Network or Communications Facilities. The indemnifications in this Section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup remedial, removal or restoration work required by any governmental authority. This provision shall be in addition to, and separate from, any remedies available to the City for breach by Company of its obligations under any of the provisions of this Use Agreement and shall in no way limit any recourse that the City may have at the time against Company pursuant to any federal, state or local laws. The provisions of this Paragraph shall survive the termination or expiration of this Use Agreement.

22.3. Notwithstanding any other provision of this Use Agreement, neither party shall be liable to the other for any consequential, incidental, indirect, liquidated, or special damages or lost revenue or lost profits to any person arising out of this Use Agreement or the performance or nonperformance of any provision of this Use Agreement, even if such party has been informed of the possibility of such damages.

22.4. No provision of this Use Agreement is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable state limits on municipal liability or governmental immunity. No indemnification provision contained in this Use Agreement under which Company indemnifies the City shall be construed in any way to limit any other indemnification provision contained in this Use Agreement.

22.5. The duties described in this Section shall survive termination of this Use Agreement.

22.6. Duty to Inspect. Company acknowledges and agrees that the City does not warrant the condition or safety of the City's Public Ways, Poles or other Municipal Facilities, or the premises surrounding those facilities, and Company further acknowledges and agrees that it has an obligation to inspect Municipal Facilities or premises surrounding Municipal Facilities, prior to commencing any work on Municipal Facilities or entering the premises surrounding such Municipal Facilities.

22.7. Knowledge of Work Conditions. By executing this Use Agreement, Company warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Company will undertake under this Use Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

22.8. Disclaimer. The City makes no express or implied warranties with regard to Poles or other Municipal Facilities, all of which are hereby disclaimed, and City makes no other express or implied warranties, except to the extent expressly and unambiguously set forth in this Use Agreement. The City expressly disclaims any implied warranties of merchantability or fitness for a particular purpose.

22.9. Damage to Municipal Facilities. If Company damages or interferes with the operation of any Municipal Facilities or equipment, Company shall, at its own expense, immediately do all things reasonable to avoid further injury or damages, direct and incidental, resulting therefrom and shall notify the City immediately.

23. INSURANCE.

23.1. Company shall obtain and maintain at all times during the term of this Use Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Company in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and with respect to the Commercial General Liability policy in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products- completed operations. The Commercial General Liability insurance policy shall name the City, its elected officials, officers, and employees as additional insureds as respects any covered liability arising out of Company's performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. Company shall be responsible for notifying the City of such change or cancellation.

23.2. Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Use Agreement, Company shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following:

23.2.1. the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; that the City shall receive thirty (30) days' prior notice of cancellation except for nonpayment of premium;

23.2.2. that Company's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

24.2.3. that Company's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

24.3. The certificate(s) of insurance with notices shall be mailed to the City at the address specified in Section 24.

24.4. Workers' Compensation Insurance. Company shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage.

24.5. Insurer Criteria. Any insurance provider of Company shall be admitted and authorized to do business in the Commonwealth of Maryland and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

24.6. Severability of Interest. Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the City. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

24. NOTICES.

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

If to the City:
City Manager
City of Gaithersburg
31 S Summit Avenue
Gaithersburg, MD 20877

With a copy which shall not constitute legal notice to:
City Attorney
City of Gaithersburg
31 S Summit Avenue
Gaithersburg, MD 20877

With a copy which shall not constitute legal notice to:

25.2. Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

25.3 The above notwithstanding, the parties may agree to utilize electronic communications such as email for notifications related to the Permits application and approval and construction process.

26. TERMINATION.

This Use Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice rather than forty-five (45) days. In addition to the remedies set forth in Article 28, the City shall have the right to terminate this Use Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Municipal Facilities or Company's Communications Facilities from the Public Way; (ii) if any of Company's Authorizations to operate the Network and/or provide Service is terminated, revoked, expired, or otherwise abandoned; or (iii) for the City's convenience. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

27. ASSIGNMENT.

27.1. Limitations on Assignment. Company shall not assign its rights or obligations under this Use Agreement, nor any part of such rights or obligations, without the prior written consent of the City, which consent shall not be unreasonably withheld.

27.2. Notwithstanding the provisions of section 27 .1 above, Company may, during the term of this Use Agreement, assign or transfer this Use Agreement to (i) any Affiliate of Company or to a partnership of which at least fifty percent (50%) of the units are owned directly or indirectly by Company or its parent company; or (ii) any successor to Company's business, or

a substantial part thereof, whether through merger, amalgamation, consolidation or sale of assets (each, an "Assignee"), without the prior consent of the City; provided, however, any such assignment or transfer shall be subject to the following conditions:

27.2.1. In the case of a sale of assets, (i) the Company has assigned its state issued certificate of authority and/or other authorization issued by local franchising authorities to such Assignee, and such assignment has been approved (if applicable law requires approval), or the Assignee otherwise holds an applicable and effective Use Agreement; and (ii) the Assignee has received and accepted an assignment or transfer of the assets comprising the Company's business, or a substantial part thereof.

27.2.2. Notice of the assignment or transfer has been provided to the City, in writing, within sixty (60) days of the date an application for transfer or assignment of the certificate of authority and any applicable Use Agreement has been made, if such application for transfer or assignment is required by applicable law under the circumstances, or in the case of a sale of assets, within seven (7) business days after the assignment or transfer.

27.3. Obligations of Assignee/Transferee and Company. No assignment or transfer under this Article shall be allowed or enforceable with respect to the City until the Assignee or other transferee becomes a signatory to this Use Agreement and assumes all obligations of Company arising under this Use Agreement, whether arising before or after the date of the transfer or assignment. Company shall furnish the City with prior written notice of the transfer or assignment, together with the name and address of the transferee or Assignee. Notwithstanding any assignment or transfer, Company shall remain fully liable under this Use Agreement and shall not be released from performing any of the terms, covenants, or conditions of this Use Agreement without the express written consent to the release of Company by the City.

27.4. Sub-licensing. Without the City's prior written consent, Company shall not sub-license or lease its rights under this Use Agreement to any third party, including but not limited to, allowing third parties to place Attachments on Poles. Any such action shall constitute a material breach of this Use Agreement. The use of Company's Communications Facilities by third parties that involves no additional Attachment is not subject to this Article.

28. DEFAULT.

28.1. An Event of Default (each of the following being an "Event of Default") shall be deemed to have occurred hereunder by Company if:

28.1.1. Company shall breach any material term or condition of this Use Agreement; or

28.1.2. Company shall fail to perform, observe or meet any material covenant or condition made in this Us Agreement; or

28.1.3. At any time, any representation, warranty or statement made by Company herein shall be incorrect or misleading in any material respect.

28.2. Upon the occurrence of any one or more of the Events of Default set forth in Section 29.1 hereof, City, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity, including drawing down upon the bond for any fees, costs, expenses or penalties that Company has not paid, and in addition, at its option, the City may terminate this Use Agreement upon providing notice to Company, provided, however, the City may take such action or actions only after first giving Company written notice of the Event of Default and a reasonable time within which Company may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than thirty (30) calendar days, except that the period of time shall not be less than ten (10) calendar days for any monetary amounts past due and owing by Company to the City, or for failure to maintain adequate insurance or bonds, as provided for herein.

28.3. Without limiting the rights granted to the City pursuant to the foregoing Section 28.2, the parties hereto agree to conduct themselves reasonably and in good faith and to use a good faith effort to meet and to resolve outstanding issues.

28.4. In the event that the City fails to perform, observe or meet any material covenant or condition made in this Use Agreement or shall breach any material term of condition of this Use Agreement, or at any time any representation, warranty or statement made by City shall be incorrect or misleading in any material respect, then City shall be in default of this Use Agreement. Upon being provided notice from Company of said default, the City shall have thirty (30) days to cure same and if such default is not cured, then Company shall have any and all remedies at law or in equity available to it, including termination of this Use Agreement without any liability therefor.

28.5. Upon Termination for Default, Company shall remove its Attachments from all Poles and other Municipal Facilities within six (6) months of receiving notice, or at a rate of ten percent (10%) of its Attachments per month, whichever period results in the greatest length of time for completing removal. Company shall restore the Poles and other Municipal Facilities and surrounding areas affected by its Communications Facilities to their prior condition at the commencement of this Use Agreement, reasonable wear and tear and agreed upon modifications to Poles, such as installation of Riser or internal conduits excepted. If not so removed within that time period, the City shall have the right to remove Company's Attachments and Communications Facilities, and Company agrees to pay the actual and documented cost thereof, within forty-five (45) days after it has received an invoice from the City.

29. RECEIVERSHIP, FORECLOSURE OR ACT OF BANKRUPTCY.

The Right of Way Use Agreement use granted hereunder to Company shall, at the option of the City, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business

of Company, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Use Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all Events of Default under this Use Agreement.

29.1. In the case of foreclosure or other judicial sale of the plant, property and equipment of Company, or any part thereof, including or excluding this Use Agreement, the City may serve notice of termination upon Company and the successful bidder at such sale, in which event this Use Agreement herein granted and all rights and privileges of this Use Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

29.1.1. The City shall have approved the transfer of this Use Agreement to the successful bidder, as and in the manner in this Use Agreement provided; and

29.1.2. Such successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions to this Use Agreement.

30. REMOVAL OF ATTACHMENTS.

30.1. Company may at any time remove its Attachments from any Municipal Facility, but shall promptly give City written notice of such removals and obtain all necessary Permits. No refund of any rental fee will be due on account of such removal. Company shall restore the Poles, Municipal Facilities, and surrounding areas affected by its Communications Facilities to their prior condition at the commencement of this Use Agreement, reasonable wear and tear and agreed upon modifications to Poles and Municipal Facilities, such as installation of Riser or internal conduits excepted.

30.2. Removal Due to Termination or Abandonment. Following the termination of this Use Agreement for any reason, or in the event Company ceases to operate and abandons the Network, Company shall, within one hundred twenty (120) days, at its sole cost and expense, remove all Communications Facilities from the Public Way and restore the area affected by its communications Facilities to its condition at the commencement of this Use Agreement, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Company to the Public Way or the adjacent property, or as otherwise required by the City. Within 90 days of a written request from the City, Company will post a payment bond in the amount of \$500,000.00 to address the City's cost of removing any Communications Facilities not removed by Company within one hundred twenty (120) days of termination, and as compensation for any damage to the Public Way relating to the Communications Facilities, reasonable wear and tear excepted. Alternatively, the City may allow Company, in the City's sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

31. REQUIRED REPORTS.

31.1. Annual Construction Report. Not later than the fifteenth (15th) day after the close of each calendar year in which any work was performed in the Public Way by Company, Company shall provide the City with the following:

31.1.1 An updated "as-built" map clearly indicating each Node, pad-mounted Facility, control box, and associated fiber network route in the Public Way, which shall specifically identify Attachments to City-owned structures or structures owned by a third party located in the Public Way, specifying owner of underlying facility (i.e., City, Pepco);

31.1.2. A construction plan specifically describing, through maps, illustrations, diagrams, construction drawings and written description, construction or other significant work planned (substantially in the form of an installation plan described Section 6.2) relating to Communications Facilities for the current calendar year and the following calendar year; and

31.1.3. A cumulative written list of the Permits that the Company has received from the City through the last day of the preceding calendar year. The report shall list the type of Permit, the location(s) of the work being performed under the Permit, the date the work started or is projected to start, and the date the work stopped or is projected to stop. Company shall omit a Permit from this list after such permit has expired and has not been renewed for three (3) consecutive months.

32. PERFORMANCE BOND.

Company shall furnish a performance bond executed by a surety company reasonably acceptable to the City which is duly authorized to do business in the state of Maryland in the amount of fifty thousand dollars (\$50,000.00) for the duration of this Use Agreement as security for the faithful performance of this Use Agreement and for the payment of all persons performing labor and furnishing materials in connection with this Use Agreement.

33. MISCELLANEOUS PROVISIONS.

The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

33.1. Nonexclusive Use. Company understands that this Use Agreement does not provide Company with exclusive use of the Public Way or any Municipal Facility and that the City shall have the right to permit other providers of communications services to install equipment or devices in the Public Way and/or on Municipal Facilities.

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

33.3. Contacting Company. Company shall be available to the staff employees of any City department having jurisdiction over Company's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The City may contact _____ at telephone number _____ regarding such problems or complaints.

33.4. Governing Law; Jurisdiction. This Use Agreement shall be governed and construed by and in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such action shall be vested in the state courts of Maryland, in the County in which the City is located. However, in the event of a suit with claims arising under either: the federal Communications Act of 1934, as amended, or Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (the Spectrum Act), or any federal law, present or future, that governs wireless telecommunications, the parties agree that trial of such action may be brought in either state or federal court of competent jurisdiction and venue in Maryland.

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

32.6. Representations and Warranties. Each of the parties to this Use Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform that Party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 4.2 above.

33.7 Amendment of Use Agreement. This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

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

ATTEST:

COMPANY

ATTEST:

MAYOR & CITY COUNCIL OF
GAITHERSBURG

Approved as to form and legal sufficiency
this _____ day of _____, 2017.

Lynn Board, City Attorney