

RIGHT OF WAY USE AGREEMENT

This right-of-way Use Agreement, (the "Agreement") dated this ____ day of _____, 2021 (the "Effective Date"), by and between the Mayor and City Council of Greenbelt, Maryland ("City") and _____, a corporation with business headquarters in _____ ("Company") (collectively, the "parties").

RECITALS

WHEREAS, the City, may authorize the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the public rights of way within the City, and its consent is required as a condition of the exercise of any Agreement issued by the State of Maryland with respect to the same; and

WHEREAS, it is the policy of the Mayor and City Council City of Greenbelt, Md. ("Municipality") to permit entry into the corporate limits and such use of its rights-of-way and public places for the provision of communication services and facilities by telecommunications service providers, subject to the duty and authority of the City to manage its rights-of-way and public property, and to require fair and reasonable compensation for the use thereof in a manner consistent with applicable law; and

WHEREAS, Company desires to obtain from City as permitted by law, and City as a municipal corporation desires to grant to Company, an authorization granting the right to construct, modify and repair wireless telecommunications facilities in the City's public rights-of-way, and to install wireline facilities in the public rights of way for purposes of connecting the wireless telecommunications facilities, as described more particularly below.

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

1. Definitions.

Terms not defined in this section shall have the same meaning as in Chapter 5A of the Code of the City of Greenbelt, Maryland. References to provisions of ordinances, statutes and regulations refer to the same as they may be amended or renumbered.

1.1. "Agreement" means this Agreement, and any amendments or modifications hereto.

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

1.3. "Authorizations" means the permissions Company must have in addition to this Agreement to deploy wireless telecommunications facility and/or provide Services, which may include licenses, permits, zoning approvals; variances, exemptions; grants of authority to use private rights of way and/or easements or facilities; agreements to make attachments to poles, ducts, conduits, poles, , and

the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

1.4. “Company” mean _____, and its lawful successors or assigns.

1.5. “Facilities” means wireless telecommunications facilities controlled or owned by Company or its customers.

1.6. “Service Area” shall mean all the area within the boundaries of the City of Greenbelt.

1.7. “Video Programming Service” means a programming service comparable to that provided by a cable operator provided by Company, or by its customers via the wireless telecommunications facilities in whole or in part, without regard to delivery technology, including Internet protocol or other technology.

2. Grant of Use.

2.1. Grant. Subject to any condition as indicated in the permit by the City, the City grants to Company in the Service Area the nonexclusive right to construct, modify and repair wireless telecommunications facilities within the rights-of-way that it operates on its own behalf or on behalf of its wireless customers, and to install wireline facilities in the public rights of way for purposes of connecting the wireless telecommunications facilities, which Grant shall be exercised at Company’s sole cost and expense, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the rights-of-way. The Grant is neither divisible nor assignable, and Company may not grant any person or entity the right to use or occupy the rights-of-way. Except as this Agreement specifically provides otherwise, the only wireless telecommunications facilities that may be constructed, modified and repaired are wireless telecommunications facilities used in the provision of personal wireless services and Internet access services. The Grant specifically does not permit use and occupancy of the rights of way for the provision of video programming services via wireless telecommunications facilities, and Company or its customers may be required to obtain an additional grant or an amendment to this Agreement before using and occupying the rights-of-way to provide additional services, or installing additional equipment are structures that are used for purposes other than those specified in this paragraph. All items as indicated in this paragraph are subject any and all conditions as indicated in the City permit.

2.2. Limits on Grant.

2.2.1. Without limiting the provisions of Section 2.1, a Company who wishes to construct, modify or repair wireless telecommunications facilities for purposes which are not within the scope of the Grant must demonstrate that the City that it is the interest of the City to permit such use, and placement in the right-of-way is appropriate; or that an authorization must be issued as a matter of law.

2.2.2. The placement of wireless telecommunications facilities and the placement of wireline facilities are subject to the provision of the Code of Ordinances, City of Greenbelt, including but not limited to Chapters 5A and Chapter 18.

2.2.3. The exercise of the rights granted herein is subject to the police powers of the City.

2.2.4.A wireless telecommunications facility or wireline facilities may not be placed at any location without all necessary permits, including any wireless permits required by Chapter 5A. For wireless telecommunications facilities for which a wireless permit is required under Chapter 5A, the location and design must be approved by the City in accordance with that Chapter, and the wireless telecommunications facility must comply with the requirements and limitations of this Grant.

2.3. Company Ownership of Components. Company must own or control all components of a wireless telecommunications facility placed in the rights-of-way, other than a support structure owned by a governmental entity or an entity which itself holds a franchise and which has been authorized to place the support structure within the rights-of-way. Excluding the support structure owned by such other entity, the wireless telecommunications facility must be under the sole control and management of Company; and Company shall be liable for all acts or omissions, and all harms associated with that wireless telecommunications facility or its use of any support structure, whether the same are its acts or omissions, or the acts or omissions of its customers, or the entities otherwise responsible for the supporting structure. Company acknowledges and agrees that no rights of ownership by Company's customers shall permit any such customer to enter upon or use the rights-of-way to construct, modify or repair a wireless telecommunications facility installed pursuant to this Agreement. Company may not construct, modify or repair any part of a wireless telecommunications facility it does not own, unless the customer on whose behalf the equipment has been installed either has an appropriate authorization from the City to use and occupy the rights-of-way to install the facilities, or the customer acknowledges and agrees, in a form acceptable to the City Attorney, to the conditions set forth in Chapter 5A-3(d)(2). The acknowledgement and agreement may be provided for all wireless telecommunications facilities of a Company occupied by the customer within the City, and need not be provided separately, facility by facility.[NOTE TO READER: ATTACHMENT A SETS OUT AN ACCEPTABLE FORM]

2.4. Subject to the City's permitting requirements; Company may repair and replace facilities, so long as the appearance of the facilities or property affected by the repair or replacement does not change.

2.5. No Towers. No towers may be placed in the rights-of-way unless Company demonstrates that it must be permitted to place a tower as proposed in the right-of-way at the location proposed in detail with specific reasoning. Company may place utility poles in the rights-of-way, but only: (1) where there are existing above-ground utility poles, and the poles must be removed if other distribution system utility poles in the area are removed; (2) Company shows that existing utility poles and other existing structures cannot be used to support its Facilities, or would require a modification that would make installation of an additional utility pole less intrusive or safer; and (3) the utility pole that will be installed is similar in size and design to existing poles, and placed appropriately to minimize visual and other intrusiveness and to avoid creating undue hazard to persons or property. All poles upon which the equipment is to be installed and/or towers to be installed must have an indication of adequate pole strength and load bearing availability as well as a height that is acceptable per the City.

2.6. No Real Property Interest. Nothing herein shall be deemed to grant, convey, create or vest in Company a real property interest in land, including any fee, leasehold interest, or easement, or the right to place the Facilities at any particular location within the rights-of-way.

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

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

2.9. Conditions Precedent. The Agreement shall commence upon the Effective Date, provided that the Company shall have met each of the conditions precedent set forth below and otherwise in this Agreement (unless the City agrees in writing to waive any of the conditions precedent), at which time it shall become effective. The Company shall have secured its insurance policies as set forth in Section 13 of this Agreement and delivered the certificate of insurance to the City's Risk Manager, together with evidence that the premium for each of such policies have been paid, that the policies will be in effect on or before the Effective Date, and that the policies are in accordance with this Agreement.

2.10. Conditions Subsequent: RF Emissions. Without limiting the other provisions of this Agreement, Company shall cease its operations if it (or its customers) are not in compliance with FCC regulations governing RF emissions (including but not limited to any standards that may be adopted in the future with respect to cumulative multi-point emissions), as the same may be amended from time to time, except to the extent that the FCC or other order, ruling or regulation permits it to continue to operate. The issuance of this Agreement is not intended to insulate Company or its customers from any claim or any remedy based on RF emissions. On request, or to the extent that Company is aware of any non-conformance, Company shall submit a report identifying applicable standards, measured emissions, and any area where it has Facilities that do not comply with applicable standards. The report will not be treated as confidential. All reports prepared by Company regarding RF emissions shall be provided to the City within 30 days of the report's preparation regardless of whether that report was requested by the City, any individual, entity, Federal, State, or local government without any revisions or redacted material

2.11. Other Authorizations. As a condition of this grant, Company is required to obtain and is responsible for any Authorization that may be required for the installation, operation or maintenance of the wireless telecommunications facility.

2.12. Company's Expense. Except as specifically provided otherwise, all costs incurred by Company in connection with its compliance with, or enjoyment of, this Agreement shall be borne by Company and not by City, and all work that must be performed in order to permit the placement of Wireless telecommunications facilities at particular locations (including, without limitation, work required to comply with applicable law relating to persons with disabilities) shall be paid for by Company.

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

2.14. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity (other than the City and Company), including, without limitation, Company's customers, any right, benefit or remedy under this Agreement of any nature whatsoever.

3. Relation to Attachment Rights and Placement of Facilities Outside the rights-of-way

This Agreement does not confer upon Company any right to place or attach Facilities directly upon or to structures that are owned by the City or by a third party, or to install Facilities on land or structures owned by the City or a third party whether inside or outside the right-of-way.

4. Public Notification

At least thirty (30) calendar days prior to the acceptance of the Application for Wireless Permit for Facilities in the Public Right of Way, every applicant shall send an informational mailing to all adjoining property owners, including owners whose property lies directly and diagonally across a street, alley, or stream and to every municipality located within one mile of the new facility, and to all civic associations registered with the Maryland-National Capital Park and Planning Commission located within one mile of the new proposed small wireless facility. For a listing of civic associations, applicants shall submit a request at <https://mncppc.org/4750/Planning-Information-Services>. On that page, applicant would go to the Online Information Request Form. The request should ask for the Mailing List for the relevant property in regards to a Cell Tower Application. The parties will be notified by the informational mailing that they may request a briefing.

A copy of letter, a list of recipients and tracking number should be provided to the City of Greenbelt City Council, 25 Crescent Road, Greenbelt, MD 20770, Attention: City Manager, and to the Prince George's County Telecommunications Transmission Facility Coordinating Committee.

In addition, the application will be available for public review and comment. Public review may be gathered by, but not limited to; website response, email, public hearing and/or any other method provided by the City. A summary of the application will also be posted in the local paper and will include information on how to access the complete application on the website.

5. Term

This Agreement shall be in force and effect for an initial term of five (5) years, and shall continue in force and effect thereafter until properly terminated by either party. Either party may terminate the Agreement at the end of its initial five-year term, or at any time thereafter, by giving written notice of its intention to do so no less than 180 days before the proposed date of termination. Upon termination, all of City's consents to the use and occupancy of rights-of-way, and Company's rights to use and occupy the rights-of-way are also terminated. Notwithstanding the foregoing, all of Company's duties related to use of the rights-of-way, and its duties to indemnify the City, shall survive termination until the Facilities are removed (as certified by the City), or Company's obligations terminate by agreement of the parties. It is understood and agreed that the decision of whether to renew or to terminate this Agreement pursuant to this Section shall be made by those in the City responsible for making that determination at that time, under such circumstances as may then obtain, and that the Company has no reasonable expectation of renewal or non-termination.

6. Agreement Fee

6.1. Flat Fee. Company shall pay costs incurred by City in connection with this Agreement, in the amount of \$1,000.

6.2. Recurring Amount for Use of the rights-of-way to Provide the Services.

6.2.1. For each wireless facility in the rights-of-way, Company shall pay \$250.00 per annum, increased annually by \$25.00. [Note: fee may be based on size of facilities]

6.2.2. For wireline facilities installed in the rights-of-way, Company shall pay an amount established by City consistent with fees charged for other, similar uses of the rights-of-way.

6.2.3. If Company contests the fee being charged, it may pay the presumptively reasonable fee established by applicable FCC regulations (but no less than the amount provided under those regulations as of January 14, 2018); but it then be liable to pay the maximum fee provided under this Agreement, or is higher, the maximum fee permitted under federal law.

6.2.4. The initial fee shall be paid to the City on or before the Effective Date, and thereafter on _____ of each calendar year the Agreement remains in effect.

6.3. Not In Lieu. The fee specified in Section 6.2 is not in lieu of any other license, tax, fee or assessment; or in lieu of rents for use of or in return for a license to use public property other than the property specified in Section 6.2, whether or not located in the rights-of-way. Without limitation, the fee is not in lieu of additional fees that may be charged for the the use of the rights-of-way to provide additional services, including but not limited to video programming services.

6.4. Preemption. Nothing herein prevents Company from challenging a fee on the ground that it is unduly discriminatory, or prohibited by state law or statutes.

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

7. Work in the rights-of-way

7.1. No Limitation on Obligation to Comply With Applicable Laws. Without limiting its obligations under Section 2, Company shall comply with the requirements of this Section.

7.2. No Interference.

7.2.1. No right-of-way or other public place shall be obstructed longer than necessary during its work of construction, modification or repair, and shall be restored to the same condition existing prior to the commencement of the work. No part of any right-of-way, or other public place of the City, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be damaged. However, should any such damage occur, the Company shall repair the same as promptly as possible, and, in default thereof, the City may make such repairs and charge the reasonable cost thereof to and collect the same from the Company. In

no event may facilities be constructed, modified or repaired in a manner that creates a hazardous condition, or a condition that is inconsistent with applicable laws and regulations protecting persons with disabilities.

7.2.2.If City receives multiple requests for placement of wireless telecommunications facilities similar to those authorized hereunder, City, after providing Company and other affected entities an opportunity for comment, may require consolidation of facilities or develop a non-discriminatory means of allocating sites that may be appropriate for placement of facilities in the rights-of-way.

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

7.4. Relocation of Facilities.

7.4.1. Company may be required to remove and relocate its Facilities, subject to such notice as may ordinarily be provided to users of similar structures, if: (a) the structures to which they are attached or located within are removed, ordered to be removed or relocated; (b)to accommodate the use of the rights-of-way by other entities; or (c) to ensure that the structures to which they are attached or located within do not interfere with the use of the rights-of-way by the public, or present a risk to public health or safety. To the extent that Company is required to remove or relocate its wireless Facilities to accommodate the use of the rights-of-way by a third party, nothing herein prevents Company from seeking compensation from that third party.

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

7.4.3.The City shall cooperate with Company in finding a suitable alternative location for any relocated Facilities removed pursuant to this Section in a manner that, to

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

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

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

7.6. Condition of Facilities and Surrounding Property.

7.6.1. Company shall maintain the Facilities in good condition and neat and orderly appearance, and in compliance with this Agreement, as well as all applicable laws, permits, Authorizations and site licenses.

7.6.2. Company shall keep the Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the City gives Company written notice of a failure by Company to maintain the Facilities, Company shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice. If Company defaults in its obligations hereunder, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Company.

7.6.3. Company shall at all times keep and maintain the Facilities free of all graffiti located thereon. If City notifies Company that graffiti is located on Facilities, Company shall remove the graffiti within three (3) business days of the written notice. If Company defaults in its obligations hereunder as provided for in Section 10, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Company.

7.6.4. All construction, modification, repair and operation shall be performed in a manner that protects surrounding property from harm, and 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.

7.7. Emergency Notification. The Company shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the Company, not voice mail or a

recording, can be contacted in the event of an emergency. The Company shall respond immediately to address a reported emergency.

7.8. Excavation Notices. Company must at all times be a member of Maryland Miss Utility or successor association, and comply with the requirements of Title 12, Subtitle I of the Public Utility Companies Article of the Annotated Code of Maryland.

7.9. Inspection by City. The City shall have access to inspect any work conducted by Company during the construction, modification or repair of Facilities.

8. Removal Due to Termination or Abandonment

Following the termination of the Agreement for any reason, or in the event Company ceases to operate and abandons any Facilities, Company shall, within one hundred twenty (120) days, remove such Facilities from the rights-of-way and restore the rights-of-way to specifications prescribed by City. If Company defaults in its obligations hereunder as set forth in Section 10, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Company.

9. Required Reports

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

9.2. Upon request, and to the extent not expressly required under a permit, Company will keep the _____ apprised of the status of any work in the rights-of-way.

9.3. Upon request, Company shall provide any required certificate of public convenience and necessity, and shall provide other proofs that it has authority to Construct, Modify, Repair or Operate the Facilities.

10. Default and Remedies

10.1. Defaults. The following are defaults under this Agreement. A default of Company’s customers may be treated as a default of Company:

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

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

10.1.3. Company’s acts or omissions (or those of its customers) create an imminent hazard to persons or properties which Company cannot or does not immediately correct.

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

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

11. City Termination Right

City shall have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the rights-of-way; or (ii) if Company's licenses to operate the Facilities and/or provide Service are terminated, revoked, expired, or otherwise abandoned; (iii) if any term of this Agreement related to the design or placement of the Facilities is unenforceable; or (iv) there is a default by Company that is not cured within the time limits set forth within this Agreement.

12. Indemnification

The Company; and its customers who own any portion of the wireless telecommunications facility; shall save the City, its elected officials, employees, contractors and agents harmless from all liability or damage (including judgments, decrees, court costs, and defense costs) arising out of or related in any manner to their operations within the corporate limits of the City, the exercise of the privileges granted herein by City, or the acts or omissions of the Company, its officers, employees, contractors, or agents, or customers related in any way to the construction, modification, repair or operation of the Facilities unless said claims result from the gross negligence or willful misconduct of a party indemnified under this Agreement.

13. Insurance and Performance Bond.

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

13.2. Minimum Coverages and Limits:

- 13.2.1. General Liability: \$1,000,000 per occurrence
- 12.2.2 Automobile Liability: \$1,000,000 per occurrence
- 12.2.3 Workers' Compensation: Statutory Limits
- 13.2.2. Employer's Liability: \$500,000/\$500,000/\$500,000

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

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

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

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

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

14. Transfer

The Agreement, or control of the Agreement or of Facilities within the right-of-way may not be assigned or transferred directly or indirectly by any means without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed, provided:(1) Company is in compliance with this Agreement in all respects; and (2) that the transfer or assignment does not create any additional burden upon the right-of-way, or adversely affect the City's interests under this Agreement. An assignee or transferee must accept all obligations of the Company, and responsibility for all acts and omissions of Company, known and unknown, if the transaction results in a change in Company. A license or lease of capacity on Facilities owned or controlled by Company is not a Transfer under this Section.

Company may mortgage, pledge, or hypothecate its interest in Facilities without consent to any

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

15. Notices

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

City: Nicole Ard
City Manager
City of Greenbelt
25 Crescent Road
Greenbelt, MD 20770

Company: [INSERT]

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

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

16. Miscellaneous

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

16.2. No Advertisement. Company shall not place any advertisement or other notice on or about the Facilities which identifies the Company in any way (except for emergency notification postings, or postings required by law).

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

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

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

16.6. Governing Law; Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. If suit is brought by a Party to this Agreement, the Parties agree that trial of such action shall be vested exclusively in Prince George's County, Maryland

16.7. Change in Law and Severability. If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

16.8. Representations.

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

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

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

APPROVED AS TO FORM:

City Solicitor

Date

REVIEWED BY:

Name

Date

Title

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Name:

Date:

Title: Mayor, City of Greenbelt,
Maryland

ATTEST:

Name

Date

Title

ATTACHMENT A CUSTOMER ACKNOWLEDGEMENT AND AGREEMENT

The undersigned is a customer of _____ (“Company”), and will own or remotely operate equipment that will be constructed, modified and maintained by _____, pursuant to its Agreement with the City of Greenbelt authorizing occupancy of the rights-of-way for the installation of certain equipment to provide certain services.

We do not have a separate franchise or similar authorization from the City consenting to and establishing conditions on our use of the rights-of-way. Our occupancy of the rights-of-way will be permitted subject to this acknowledgement and agreement is limited to the ownership and remote operation of certain facilities within a facility that will be constructed, modified and maintained by _____.

A. We acknowledge and agree:

1. That the City has not granted us a franchise or consent to be in the rights-of-way for any purpose and that Company will have sole responsibility for constructing, modifying and maintaining the facilities;
2. That we are bound by Company’s representations and commitments it made to the City is obtaining the authority to place facilities in the rights-of-way;
3. That we shall have no rights or claims against the City of any sort related to the facilities constructed, modified and maintained by Company, including those facilities that we may own;
4. That facilities we we may own may be subject to taxes, fees or assessments as provided in The City of Greenbelt Code, Chapter 5A, **Error! Reference source not found.**;
5. That the City may treat any equipment owned by us as if it were owned by Company for all purposes (including, but not limited to, removal and relocation); and
6. That the facilities may only be used for services specified in the agreement between Company and the City.

B. To the extent that we operate a wireless facility (or part of a wireless facility) within the rights-of-way pursuant to the Agreement between Company and City and this acknowledgment and agreement, we agree that:

1. We are responsible for complying with applicable law governing radio frequency emissions, and the City may take appropriate action against us and Company for a violation thereof.
2. We are jointly and severally liable for any acts or omissions associated with the wireless telecommunications facility we own and of which our facility is a part;
3. We will jointly and severally indemnify the City in accordance with the City Code and any applicable provision of the Agreement between Company and City.

This acknowledgement and agreement is provided for [SPECIFY FACILITIES] or [ALL WIRELESS TELECOMMUNICATIONS FACILITIES OF COMPANY WHICH WE NOW OR MAY IN THE FUTURE OCCUPY]