



CITY COUNCIL WORK SESSIONS AGENDA
Small Cell Procedures and Policy Review/ Memorial Wall Piece
Community Center
15 Crescent Road, Room 201
Wednesday, March 11, 2020
8:00 PM

Work Session Packet -
Agenda

- *Introductions*
- *Council Discussion*
- *Questions and Answers*
- *Other Items*

Consideration of Proposal from CTC Technology and Energy to Oversee City's Small Cell Process

Suggested Action: Attached is a proposal from CTC to review our Small Cell Ordinance and to further help the City process applications that come in.

The proposals scope includes:

1. Small Cell Ordinance
A technical review of our Small Cell ordinance and recommendations.
Recommend any changes to protect the City's rights
Development of technical and aesthetic standards for infrastructure.
2. On Call Technical Support
Provide technical support as needed during Small Cell buildout
Provide technical guidance related to Federal regulations, City requirements and carrier requirements
3. Small Cell Applications
Review Small Cell applications
Recommend actions
Manage application life cycle and timelines as imposed by FCC regulations

The FCC regulations are very restrictive, impose short timelines for approvals and favor the

carriers while imposing significant burdens on the jurisdictions. Navigating these types of regulations requires specific expertise, both from a legal perspective and from an operational perspective. The City anticipates having representatives from CTC and BBK at the work session. The anticipated outcome from the work session would be a consensus from Council on how to proceed with review of, and possible changes to, our ordinance and the processing of applications that will be arriving.

The City has met several times with CTC Technology & Energy (CTC) to discuss how the City should review Small Cell applications. At this time, there is no City employee with the expertise or time to handle these applications in the manner in which to delay/meet the deadlines that the FCC has placed on these applications. Staff believes that by utilizing CTC's 30+ years of expertise in vetting applications for thousands of cell towers, colocations, and small cells. They are highly qualified and the City of Greenbelt, Prince George's County and other municipalities have worked with them concerning cable issues for over 20 years. They are the company that is currently guiding the County through the small cell process.

Communication companies will have to get zoning and building permits first from the County, before they apply to the City. The City's rights are protected by the following language provided in the County's ordinance:

(g) Municipal Ordinances.

(1) The provisions of Section 5A-159 do not alter the authority of any municipality to regulate small wireless facilities in its right-of-way or preempt the adoption or operation of any ordinance enacted by a municipality to regulate small wireless facilities within its municipal right of way.

(2) A municipality that enacts an ordinance to regulate small wireless facilities within its municipal right-of-way, or amends an existing ordinance to regulate small wireless facilities within its municipal right-of-way, shall file a copy of the ordinance with the TTFCC Coordinator.

The first task of CTC's proposal would be to provide a complete review of the City's ordinance and application and suggest any changes to protect the City's rights. It has been expressed to them that there should be some mechanism for public review of applications. They are aware of this and will suggest changes that will allow for a public review process which will work in order to stay on track with the rigid FCC timelines. It is of utmost importance that the City adhere to the timelines, or we risk losing having any say in the matter. CTC is well aware of the timelines and knows how to extend the timelines when applications are incomplete. This type of expertise is not available within City staff at this time.

If you review Task 1 of their proposal, you will see that it is quite comprehensive and touches on many of our concerns. The cost for Task 1 is \$8,500 and would be money well spent. Upon completion of this task, the City will work with our attorneys BBK to make the necessary changes to the wording of our ordinance, application, and any other legislation which might be needed.

As for the review of each application, the amounts differ depending on the type of application. The FCC has limited the amount we can charge for applications, but we are allowed to file for the recovery of costs.

It is recommended that the City contract with CTC soon to work through these issues. The City needs to have all our legislation and applications in order, since now that the County has theirs in place, staff expects to be hearing from companies soon. CTC is very well known in

the country and staff believes that they will give the City the best chance at protecting its rights to the extent possible.

[CTC Proposal to Greenbelt - Wireless Siting Support - 20191030 \(2\).pdf](#)

Discussion on City's Small Cell Legislation

Suggested Action: A representative from the City's communications attorneys will be on hand to answer City Council's questions concerning the City's current small cell documents and legislation. Attached below are the current documents, which consists of the current ordinance, a Draft Application and Draft Franchise Agreement. City Solicitor, Todd Pounds has made some suggestions to the Draft Agreement which are also attached.

[Draft Application.pdf](#)

[Small Cell Ordinance Revised.pdf](#)

[right_of_way_use_franchise_agreement \(1\).pdf](#)

[RIGHT OF WAY USE AGREEMENT - pounds.pdf](#)

Memorial Wall Piece

Suggested Action:

Reference: Memo, D. Moran - 03/05/2020

Resolution Number 919

[Memo - D. Moran, 03-05-2020.pdf](#)

[Resolution #919.pdf](#)

City Council Work Sessions Agenda Item Report

Meeting Date: March 11, 2020

Submitted by: Beverly Palau

Submitting Department: Administration

Item Type: Work Session Item

Agenda Section:

Subject:

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Attachments:

[CTC Proposal to Greenbelt - Wireless Siting Support - 20191030 \(2\).pdf](#)

October 30, 2019

Ms. Beverly Palau, *Public Information and Communications Coordinator*
Mr. Dale Worley, *Director of Information Technology*
City of Greenbelt
25 Crescent Road
Greenbelt, MD 20770
Via email: bpalau@greenbeltmd.gov, dworley@greenbeltmd.gov

Subject: Proposal to support the City of Greenbelt on wireless facility siting issues

Dear Beverly and Dale:

CTC Technology & Energy (CTC) is pleased to provide this proposal to support the City of Greenbelt (the City) with engineering and application process expertise related to wireless facility siting.

Since the advent of the cellular industry, CTC has provided expert advisory services on the technical, strategic, and business aspects of wireless facility siting. Our clients primarily are local governments, state agencies, public utilities, and nonprofits. CTC is independent of the industry, and not affiliated with equipment manufacturers, cable operators, wireless providers, or tower companies.

We look forward to the opportunity to work with you and your colleagues on this important initiative. Please do not hesitate to contact me if I can provide any additional information about our proposal, our experience, or our expertise.

Sincerely,



Andrew Afflerbach, Ph.D., P.E.
CEO/Chief Technology Officer

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1. Statement of Work

Current trends in the wireless industry mean that tower and rooftop cells will be augmented with over a million small cell antennas in public rights-of-way nationwide. Concurrently with this wave of permit applications, the FCC's recent preemption Order¹ ("In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment") changes the dynamic between local governments and the wireless companies by giving wireless companies low-cost, streamlined access to public property to mount wireless facilities.

To help the City efficiently respond to applications for siting wireless facilities in the public rights-of-way—and to effectively respond to changes in the industry and the FCC's regulatory framework—we propose to perform the range of strategic and tactical tasks described below. Our statement of work encompasses a holistic approach to supporting the City.

Task 1: Provide technical and strategic guidance on revisions and future amendments to the City's small cell ordinance

Although the City's ordinance contains specifications related to small wireless facilities, we recommend that these standards and the City's related processes be reviewed and, if necessary, developed in more detail.

We propose to review the City's current language and, to the extent necessary, develop more detailed **technical standards** for wireline and wireless attachments to utility poles and utility street lights. (We have provided similar support to Montgomery, Prince George's, and Anne Arundel counties over the past year as those governments developed zoning text amendments to address small cell deployment issues.²) These standards will include but not be limited to sizes, clearances, mounting requirements, noise levels, powering, and emergency practices.

We will also review and assist in developing or expanding **aesthetic standards** consistent with practices in the City, as described to us by the City and documented in any relevant City guidelines or requirements. We will collaborate with the City and its counsel (internal or external) to confirm counsel's interpretation of the requirements in this regard.

These aesthetic standards may include requirements or guidance related to:

- Size of antennas, equipment boxes, and cabling
- Painting of attachments to match mounting structures

¹ In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, 2018 WL 4678555, (rel. September 27, 2018) ("Order") (available online: <https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf>).

² See, for example: "2018 Proposed Zoning Text Amendment (ZTA)," Montgomery County, Maryland, Government, <https://montgomerycountymd.gov/cable/towers/zta-links.html>

- Use of shrouds, stealth techniques, or other camouflage
- Flush-mounting of antennas
- Placement of equipment
- Consistency with the character of historic neighborhoods
- Minimum spacing between attachments

We note that our work in this task will inform our application reviews and other tasks described here.

We will also be prepared to provide technical guidance on future amendments to the small cell ordinance—as internal or external factors require the City to review and revise those requirements.

Task 2: Provide on-call technical support related to wireless facilities

On an as-needed basis, we will be prepared to provide technical support to City staff on issues related to small cells and wireless facilities siting (including with technical analysis and support of zoning and planning documents).

We will be prepared to provide expert guidance to the City on technical and land-use issues related to wireless facility siting. These tasks may include, but will not be limited to:

- Providing technical engineering support on a wide range of subjects as they emerge, including RF emission issues, projecting future small cell deployments, developing approaches to 5G and other new technologies
- Developing a cost analysis of the City's wireless facilities permitting activities and provide guidance on application fee setting
- Working with applicants and industry to find mutually acceptable technical approaches to placing infrastructure
- Working as a liaison with PEPCO, Verizon and other potential pole owners on pole attachment issues in the City
- Serving as liaison between telecommunications service providers and land use agencies, to assist in identification of sites for co-location and preparation and submission of applications for wireless facility sites
- Preparing and circulating documentation, presenting cases, and responding to questions from the City and the public

- Responding to requests for information from interested parties, including, but not limited to, individual homeowners, homeowner associations, or other community organizations
- Determining which federal regulations apply and making recommendations regarding technical standards (e.g., RF emissions) and applicability to local process and authority
- Preparing an annual wireless facilities siting report to the City as requested
- Attending public meetings as a technical resource
- Briefing City staff and elected officials
- Facilitating dialogue with industry representatives to help continuously refine and improve the City's application review process
- Coordinating with the City government on issues related to small cells
- Serving as liaison between telecommunications service providers and the City to assist in identification of sites for co-location and preparation and submission of applications for wireless facility sites
- Providing guidance to the City on leasing fees for wireless facilities on public lands
- Performing site visits to proposed antenna and new wireless facility siting locations as required (or substituting GIS or similar desk survey approach); conducting physical inspections of surrounding areas to determine level of community impact
- Providing a centralized source for private providers, the City, and the public to obtain information regarding the City's wireless facility siting process and the location and description of potential sites

Task 3: Review and recommend action on wireless facility siting applications

As requested, CTC's team will provide written technical review and recommendations of wireless facility siting applications submitted to the City.

Our tasks may include, but will not be limited to:

- Managing the complete application lifecycle, from initial application to recommendation
- Receiving applications, either from the City or directly from the telecommunications service providers, for siting of telecommunications facilities in the City

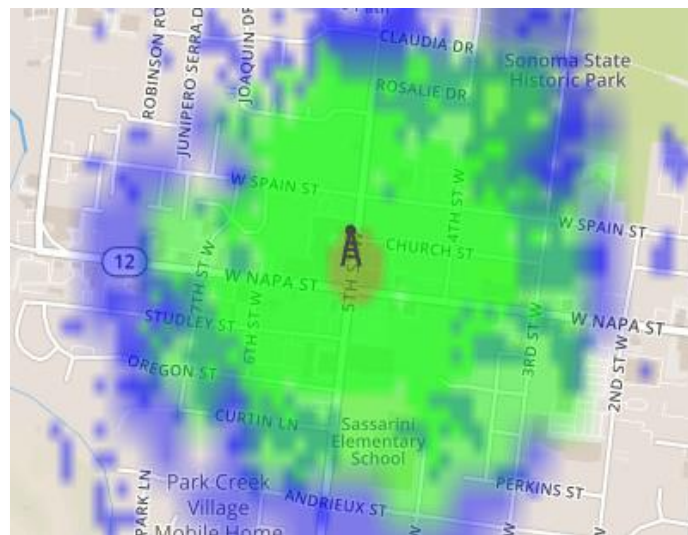
- Processing applications and adding the applications to the City’s database (or developing and maintaining a database as needed)
- Managing data storage, tracking applications, and preparing on-demand analytics related to applications, using a proprietary database structure we have developed and deployed on behalf of other government clients in Maryland and Virginia for which we perform similar tasks (see Figure 1 for an illustration)

Figure 1: Sample Application Fields

Stats	Applications	Sites	Intake	Site Survey	Pre-Engineering	Engineering	RFI	Report
ApplNo	201802-10	Engineering to Verify:		Milestone Completion Dates				
SiteID	624	Application Description	Colocation		Intake	1/8/2018		
SiteName	Damascus VFD 13	Co-Location Options			Site Survey	1/10/2018		
PropertyAddress		PROW ☐ Zone	CRT-1.75		Engineering			
ColoNewMM	Colocation	Recommendation		Clipboard		App Complete		
Days Since Receipt	10					Recmdtn Report		
Applicant	Joshua Schakola							
Folder Link	Y:\Mc-Tower\Sites\624 Damasc							
Type	Request Date	Requestor	Complete Date	Notes				
Eng_Review	1/10/2018	Crystal Rowe			Detail			
Intake Review	1/8/2018	Crystal Rowe	1/8/2018		Detail			
Pre-Eng	1/8/2018	Crystal Rowe	1/9/2018	This is a co-location and a new site in our data	Detail			
Site Survey	1/8/2018	Crystal Rowe	1/10/2018		Detail			
	1/15/2018				Detail			

- Reviewing applications for completeness and accuracy—and submitting requests for additional information to applicants, as needed
- Collaborating with the agencies designated by the City to confirm site zoning and review the zoning history for each application
- Determining whether an application should be considered “by-right” or whether it requires special zoning approval in accordance with City law
- Performing site visits of proposed colocation or new siting locations as required (or substituting Google Earth or similar desk survey approach); conducting physical inspections of surrounding areas to determine level of community impact
- Conducting a review of radio frequency (RF) engineering elements related to the application to determine potential for interference, RF emission, or siting conflict issues

- Reviewing and providing recommendations on each application based on relevant technical standards, effects on the public rights-of-way, and potential impacts on surrounding communities
- Preparing a written report (in a format developed in collaboration with the City) that documents our analysis and recommendations
- Discussing our technical review with City staff and attending scheduled meetings via teleconference as needed
- Conduct post-installation inspections
- In the event that propagation maps are submitted, we will be prepared to review the data and include our analysis in our written technical review. We will also be prepared to assist the City with RF coverage predictions, like the one that we recently prepared for a municipal client in California (see below).



2. CTC's Expertise

Every year, “small cell” applications inundate state and local authorities as the wireless industry “densifies” existing networks, prepares for 5G, and upgrades public safety networks. CTC provides expert, independent guidance and staffing for public agencies seeking to protect their assets and the public interest while facilitating deployment of new services.

Since 1983, CTC's wireless team has helped public agencies and utilities vet applications for thousands of towers, colocations, small cells, and distributed antenna system deployments. Our expertise includes:

- Developing best practices in wireless siting to enable efficient deployment while protecting community interests
- Defining technical standards for wireless facilities that protect public assets and public safety
- Addressing technical challenges in siting, including ADA violations, radio frequency (RF) interference, and unsightly deployment
- Developing strategies to comply with state, federal, and local requirements and zoning considerations
- Vetting applications for zoning compliance, RF coverage, interference, and colocation opportunities
- Developing local processes and standards to enable deployment while protecting public interests and property

Evaluating and vetting wireless facility siting applications

Our engineers analyze siting applications and RF studies to evaluate the accuracy of applicant-claimed technical service objectives, the extent to which proposed wireless sites are necessary to fill gaps in coverage or capacity, and the significance of such gaps. Analysis typically includes:

- Vetting an applicant's application, including RF propagation studies or drive tests
- Identifying colocation options in the vicinity of a proposed site
- Considering options to minimize the visual or other community impact of a wireless facility, such as painting antennas to match a mounting location, requiring a stealth monopole design, or requiring that equipment meets local noise ordinances
- Visiting and reviewing sites to evaluate community impact

- Reviewing applications and requesting additional information as necessary
- Evaluating relevant reports, studies, public input, and other materials
- Presenting findings to planning departments, counsel, and elected bodies
- Preparing reports, maps, charts, documentation, or presentations to document findings and recommendations

We coordinate the wireless facility siting application and review processes for **Montgomery and Prince George's counties** in Maryland; **Fauquier and Louisa counties** in Virginia; and a dozen local governments in California, including **the cities of Palo Alto, Sonoma, Arcadia, Fremont, Hillsborough, Monterey, Napa, Piedmont, Rancho Palos Verdes, Rolling Hills, and Palos Verdes Estates.**

Developing technical and safety standards

Our engineers develop and help enforce technical standards to protect the public interest, public safety, public assets, and utility worker safety, including through:

- Assessing whether proposed attachments increase congestion on a sidewalk or block motorists' views of traffic
- Ensuring that proposed installations meet ADA requirements and DOT rules that allocate right-of-way space for varying uses
- Verifying adherence with pole spacing requirements and—in the case of new tall towers—standards for soil and drainage
- Confirming clearances between new equipment and roads and buildings, and proper placement of power meters and shutoff devices
- Verifying compliance with FCC rules on RF emissions and related warning signage
- Testing RF signals to ensure non-interference with public safety, city, and utility wireless operations

We have developed technical standards for small cell siting in the rights-of-way on behalf of clients that own utility poles, including **CPS Energy** (San Antonio, Texas), **Huntsville (Alabama) Utilities**, the **City of Opelika, Alabama**, and a half-dozen municipal light plants in Massachusetts.

Augmenting technical and administrative staff during application bursts

Not all jurisdictions have the capacity to manage the wireless applications they receive, especially when bursts of applications appear or when the applications involve structures like light poles in addition to utility poles.

CTC's wireless engineers and analysts have provided staff augmentation services to vet and process thousands of siting applications for towers and antennas. We provide this on-call support to agencies as large as the Northern Virginia Regional Parks Authority and to small communities nationally. Our clients include numerous jurisdictions in the New York, Washington, D.C., and Los Angeles metro areas—as well as rural localities in Massachusetts, Tennessee, Michigan, Maryland, Virginia, and Washington.

We have worked with applications from AT&T, American Tower, Clearwire, Cricket, Crown Castle, ExteNet, Mobilitie, Sprint, T-Mobile, Verizon Wireless, and many others.

Developing new processes to address preemption threats or comply with preemptive laws

In light of ongoing efforts at the state and federal levels to preempt local agency authority in wireless siting and asset use—including the FCC's recent Order—CTC's analysts develop strategies for technical compliance with new or potential laws that address policymakers' desire for new deployment while protecting public assets, interests, and mission-critical public infrastructure.

For example, in areas where all utilities are underground, a locality might require that boxes containing network equipment also be placed below grade. Other rules could include requiring the use of existing poles or the replacement of those poles with ones that resemble existing ones; and restricting inappropriately tall poles in residential areas. For example, we advise a dozen California cities (including Sonoma, Palos Verdes Estates, Arcadia, Hillsborough, and Rancho Palos Verdes) on standards that minimize the visual impact of wireless facilities while improving mobile coverage.

Developing Smart City strategies that benefit from cellular expansion and densification

As wireless carriers densify 4G networks with small cells, there is opportunity for agencies to leverage new infrastructure for public purposes, such as installing public safety cameras, other kinds of sensors, and traffic controls.

In Baltimore, our engineers developed small cell policies and standards that align with Smart City goals. Our analysts developed a public-private partnership strategy for Seattle for deployment of wireless infrastructure and services. In Boulder, Colorado, and Newark, Delaware, we developed

wireless plans that leverage public fiber and provide a platform for Smart City and other public applications.

Advising on public safety wireless and FirstNet

As FirstNet is rolled out, states and localities face challenges related to vetting the adequacy of the service and developing business strategies for public safety broadband, including the degree to which FirstNet can serve public safety needs and potential migration plans.

CTC advises public entities regarding the full range of technical, business, and financial areas of interest in FirstNet. For **Delaware**, we developed an **independent baseline assessment of AT&T and Verizon network performance**, and now monitor improvements over time. In suburban New York, we developed a **plan for public safety wireless network development and operations**.

3. Representative Project Experience

Our engineers and analysts advise public agencies across a range of tasks related to wireless facilities siting and planning. The following are a few representative examples.

City of Baltimore

We have supported the City of Baltimore on a range of projects that have positioned the city as a leader in the state in terms of small cell deployment. Our recent and ongoing engagements have included performing:

- A detailed review of existing small cell siting processes and developing related recommendations
- A cost analysis of the City's small cell siting process to support the development of a fee structure
- A predictive study of future small cell deployment across the City
- A comparative analysis of small cell and DAS permit fees in jurisdictions across the country, to support the development of a fee structure

We have also worked with the City on the design of "smart poles" and helped the City to negotiate its original agreement with Crown Castle and ExteNet.

Montgomery County, Maryland

CTC was central to the development of Montgomery County's wireless siting process, which has been identified by the Intergovernmental Advisory Committee at the FCC and others as providing notable examples of many best practices.³

We have been the designated coordinator for the Montgomery County Telecommunications Facilities Coordinating Group (TFCG) from its inception in 1996 until today—marshaling DAS, small cell, and other wireless siting applications from filing to final action by the TFCG.

We subject each application—for antenna colocation, new facilities, or modifications to existing sites—to rigorous review. In addition to evaluating applications from a technical and regulatory standpoint, we subject each application to the high bar of its potential community impact: Is the siting necessary to meet the applicant's coverage goals? Has the applicant considered all available options for colocation rather than constructing a new mounting structure? Would a

³ Report on Siting Wireless Communications Committee Presented to the Federal Communications Commission, July 12, 2016, <https://transition.fcc.gov/statelocal/IAC-Report-Wireless-Tower-siting.pdf>

lower antenna mounting level achieve the same coverage objective? Would smaller, less noticeable antennas suffice?

In this way, we seek to balance the County's rights and regulations, the wireless industry's interest in delivering services, and the public's interest in minimizing the visual impact of wireless facilities in their neighborhoods.

We provide technical engineering support, coordinate and review carriers' applications to site transmission facilities in the County, conduct physical inspections of proposed siting locations, review applicants' RF engineering submittals, and provide recommendations on each siting request based on zoning standards, the potential visual impact of the installation, and other parameters. We also ensure the County's compliance with the FCC's "shot clock" for processing applications.

Through this 20-year commitment and collaboration, we have developed an unparalleled understanding of all aspects of wireless facilities siting in Montgomery County. And we ensure that the County is prepared for and responsive to regulatory and industry changes:

- We have drafted policies and procedures for review of applications, provided recommendations on related aspects of zoning text amendments (including a significant small cell zoning text amendment in 2018),⁴ and informed the TFCG of changes in federal regulations governing the processing of applications to site wireless facilities in the County.
- We have overseen the transition of the County's paper-based application process to a fully online system.
- We have worked with the County and its applicants to develop mutually acceptable designs and processes.
- We advise the County on approaches to enabling robust wireless service while being as mindful as possible of the impact of new antennas in the community.

Texas Department of Transportation (TxDOT)

For TxDOT, we are developing a full strategic plan and guidance for wireless siting requirements, developing technical standards, establishing processes, and recommending appropriate fees—all intended to protect state interests while enabling efficient private use of TxDOT assets along more than 80,000 miles of roadways.

⁴ "2018 Proposed Zoning Text Amendment (ZTA)," Montgomery County, Maryland, Government, <https://montgomerycountymd.gov/cable/towers/zta-links.html>

4. Proposed Project Team

The following are brief descriptions of a sample of our project team; additional staff resumes are available on request.

Andrew Afflerbach, Ph.D., P.E., *Chief Technology Officer*, will be a project adviser and will oversee all technical research and analysis. Andrew advises local government clients on technical issues related to wireless facility siting in the public rights-of-way. He has written extensively on local governments' strategic options for addressing the FCC's recent wireless preemption Order,⁵ and has submitted technical analyses to the Federal Communications Commission on issues related to small cell deployment.⁶ He recently testified before the Maryland House of Delegates' Economic Matters Committee on pending legislation that would preempt local authority in small cell siting matters.

Andrew has planned and specified fiber optic and wireless networks for large cities, counties, and regions, and conceived and developed the super-regional interoperable fiber optic network in the National Capital Region (including the District of Columbia, Maryland, Virginia, and 22 large local communities). He is an experienced network planner who understands the business and financial implications of various network designs.

Shawn Thompson, *Principal Engineer*, is a recognized expert in wireless engineering, radio propagation, and issues related to wireless siting in the public rights-of-way and on private property. He manages the CTC teams that provide ongoing wireless facility application review services to Montgomery and Prince George's counties in Maryland, and Fauquier and Louisa counties in Virginia. He is also supporting the State of Texas Department of Transportation (TxDOT) on strategic planning and the development of standards for its wireless facility siting program. Shawn's expertise includes strategic approaches that local governments can take to address the FCC's recent preemption Order.⁷

Shawn performed a cost analysis of the City of Baltimore's small cell and distributed antenna system (DAS) application and review process. The analysis will assist the City in understanding the various elements of the review process, and the magnitude and relative contribution of each

⁵ See, for example, "Ten Strategies to Protect State and Local Property After the FCC's Small Cell Preemption Order" (<http://www.ctcnet.us/blog/ten-strategies-to-protect-state-and-local-property-after-the-fccs-small-cell-preemption-order/>) and "The Three 'Ps' of Managing Small Cell Applications: Process, Process, Process" (<http://www.ctcnet.us/blog/the-three-ps-of-managing-small-cell-applications-process-process-process/>)

⁶ See, for example, Andrew's filings related to "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment" (<http://www.ctcnet.us/publications/declaration-of-andrew-afflerbach-in-response-to-the-fccs-draft-order-accelerating-wireless-broadband-deployment-by-removing-barriers-to-infrastructure-investment/>) and the proposed T-Mobile/Sprint Merger (<http://www.ctcnet.us/publications/declaration-of-andrew-afflerbach-for-submission-to-the-fcc-in-response-to-the-proposed-t-mobile-sprint-merger/>)

⁷ See, for example, "Documenting the True—and High—Local Administrative Costs of Small Cell Siting" (<http://www.ctcnet.us/blog/documenting-the-true-and-high-local-administrative-costs-of-small-cell-siting/>)

part. The review documents the current state for the City's planning purposes and establishes an accounting of costs if the City needs to justify the fees charged to applicants. Shawn also developed a predictive model that mapped the locations and quantities of expected small cell locations throughout the City.

Shawn has overseen the design and implementation of more than 1,000 distributed antenna systems (DAS) nationwide, and, prior to joining CTC, advised wireless carriers such as AT&T, Sprint, and Verizon Wireless on indoor coverage and capacity planning.

In a previous engagement, Shawn provided strategic and technical guidance to the City of San Antonio's Aviation Department on the design of a neutral host DAS and Wi-Fi implementation in the San Antonio International Airport. Among his other recent client engagements, Shawn developed Wi-Fi network designs for the cities of Boulder, Colorado, and Newark, Delaware, and for agencies of Montgomery County, Maryland.

Shawn led the CTC team that designed a neutral-host DAS network to enable the government of the District of Columbia to use its citywide fiber to distribute wireless signals. He then worked with the District to develop a program for installing commercial, public safety, and Wi-Fi wireless systems in its key facilities. This five-year program will improve wireless communications in 60 city-owned buildings.

Additionally, Shawn assisted the District in developing a strategy for the use of small-cell technology, in which cellular carriers use poles and rooftops owned by municipalities to increase the density of their high-speed 4G LTE networks and deliver better service. Shawn helped the District move to the forefront of cellular deployment technology by developing a plan for standardizing equipment and space utilization for hundreds of proposed tower sites. Shawn's plan will allow the city to maximize profits, reuse sites efficiently, and maintain sites more easily. His work will also benefit the area's cellular carriers and citizens by paving the way for streamlined cooperation between the municipal government and the carriers.

In his previous role as the Associate Director of Wireless Solutions for Henkels & McCoy, Shawn oversaw the national build-out of wireless installation for Verizon, Sprint, and AT&T. In that role, Shawn also helped Verizon Wireless upgrade its DAS networks across the state of Ohio. That project included putting together a plan to evaluate existing systems; and developing a procedure and cost estimates for accomplishing the upgrades. Shawn also developed public safety DAS systems for the courthouse in Franklin County, Ohio, and Long Beach, California, as well as for other local government buildings.

Jasmina Rivas, *Project Coordinator*, will be the City's primary contact. In her role as coordinator of CTC's wireless facility application services for Montgomery and Prince George's counties, Jasmina oversees the intake, tracking, and engineering review of applications; performs site visits and local zoning reviews; prepares requests for information to applicants that have submitted

incorrect or incomplete applications; writes recommendation reports for each proposed site; interfaces with applicants performing wireless siting work in the counties; attends public meetings to present recommendations; and acts as an on-call resources to County staff.

For Montgomery County Jasmina also helped create the online application that is currently in use and helps maintain all public access records on the County's website, including an interactive map that shows all current and proposed wireless sites in the County.

Jasmina's other client engagements include Louisa County, Virginia, for which she also serves as coordinator for the County's wireless application services. Jasmina has also conducted small cell ordinance research for the Texas Department of Transportation.

Joanne Hovis, *President*, will be a project adviser. An attorney who has provided network business model analysis and recommendations for some of the largest public broadband networks in the country (i.e., large-scale concession planning and design-build projects), she is a nationally recognized authority on the broadband market and community broadband topics—and on the evolving role of government in the provision of communications services to the public.

Joanne oversees all ongoing CTC analysis for local government clients and provides innovative business planning for communications networking initiatives such as the pioneering broadband public-private partnerships in the cities of Boulder, Madison, Westminster, and Huntsville (Ala.).

Joanne has extensive experience developing business case and business model scenarios for public sector broadband initiatives; she draws on her deep knowledge of the decision-making process and decision metrics employed by network developers and investors, and her related understanding of the municipal bond market (e.g., credit analysis and ratings). She leads the CTC team that advises the states of Connecticut, Kansas, Massachusetts, and New Mexico, the cities of Atlanta, Boston, Palo Alto, San Francisco, Seattle, and Washington, D.C., and the statewide broadband networks in Colorado, Maryland, and Pennsylvania.

Joanne is CEO of the Coalition for Local Internet Choice (CLIC) and a former president of the National Association of Telecommunications Officers and Advisors (NATOA). She is a member of the boards of directors of the Benton Foundation, the Fiber to the Home Council, and Consumer Reports.

5. Cost and Terms

CTC proposes to perform the scope of work described above for the following fees:

- Task 1: \$8,500
- Task 2: Time and materials
- Task 3: Time and materials. For the City's planning purposes, our average billings for similar work in other jurisdictions have been:
 - New wireless facility application: \$3,500
 - Replacement or colocation application: \$1,500
 - Minor modification of existing site application: \$725

We will bill our work at the fully burdened hourly rates established in our contract with Montgomery County, Maryland:

Labor Category	Contract Rate
Director of Engineering/Business Consulting	\$175
Principal Analyst	\$165
Principal Engineer	\$158
Telecommunications Engineer III/Analyst III	\$145
Telecommunications Engineer II/Analyst II	\$130
Telecommunications Engineer I/Analyst I	\$115
Telecommunications Technician	\$95
Senior Inspector	\$80
Staff Inspector	\$70
Engineer Aide II	\$69
Engineer Aide I	\$58

CTC's billing rates are inclusive of all expenses, including travel.

City Council Work Sessions Agenda Item Report

Meeting Date: March 11, 2020

Submitted by: Beverly Palau

Submitting Department: Administration

Item Type: Work Session Item

Agenda Section:

Subject:

Discussion on City's Small Cell Legislation

Suggested Action:

A representative from the City's communications attorneys will be on hand to answer City Council's questions concerning the City's current small cell documents and legislation. Attached below are the current documents, which consists of the current ordinance, a Draft Application and Draft Franchise Agreement. City Solicitor, Todd Pounds has made some suggestions to the Draft Agreement which are also attached.

Attachments:

[Draft Application.pdf](#)

[Small Cell Ordinance Revised.pdf](#)

[right_of_way_use_franchise_agreement \(1\).pdf](#)

[RIGHT OF WAY USE AGREEMENT - pounds.pdf](#)

CITY OF GREENBELT
APPLICATION FORM INSTRUCTIONS FOR WIRELESS PERMIT:
FACILITIES IN PUBLIC RIGHT-OF-WAY

In addition to obtaining and maintaining any other permit or franchise required for placement and operation of the proposed facility in the rights-of-way, Chapter 5.A of the City of Greenbelt Municipal Code (the "Code") requires a wireless permit prior to the construction or modification or repair of most wireless telecommunications facilities ("WF"). Entities that are required by the Code to obtain a wireless permit must apply for one using the attached form, which must be complete when submitted. Failure to submit a complete form may result in the application being declared incomplete, or rejected. The form must be submitted in hard copy, and in an electronic format that can be posted to the City's website. 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.** The electronic copy must be of a quality so that all information is eligible, and in a standard format readable without specialized software (e.g., .pdf).

Each application may be for up to ten (10) wireless telecommunications facilities, provided that the facilities are of similar design and intended to be placed in a similar manner as part of a single project. To avoid duplication, applicant may cross-reference information from one application to another if the applications are submitted at the same time.

When you are requested to provide the dimensions of a WF (or a supporting structure to which it will be attached), the dimensions should include all elements of a WF. For example, if the diameter of a supporting structure will change, that diameter should be identified. If the diameter will not change, but conduit will be added to or next to the supporting structure, it should be clear how far the conduit will extend from the structure, and whether it is flush-mounted or not.

If your response to a question includes attachments, label the attachments as exhibits that reference the Part and Question numbers. For example, for information requested in Part A, Question 5(a), label the documents: Exhibit A(5)(a).

It is up to you to determine what other authorizations and permits are required in addition to the wireless permit. The City is happy to meet with potential applicant to discuss the City's permitting requirements, and to review designs prior to submission of an application. An appointment can be scheduled by calling _____. **This pre-application meeting is strongly encouraged.**

Under 5A-4, placement of WFs on City-owned infrastructure that is subject to a proprietary contract does not require an application. A person who wishes to use those facilities may submit a request to the City in accordance with Section 5A-10. Those requests should be submitted to _____,

and should set out a proposed contract, compensation terms, an agreement to pay City the costs of negotiating the agreement, and a detailed description of the project, including detailed engineering that shows not only the proposed placement of the requester's facilities, but also the relation of those facilities to the existing facilities, and that contained certified statements as to the impact, if any, of the proposed installation on any existing facility. It should also include information identical to that request in Part A 1-2. A person who wishes to discuss placement on City facilities prior to submitting a formal request may schedule an appointment by calling _____.

All engineering plans should be in detail with specifications and facility types clearly indicated.

CITY OF GREENBELT

APPLICATION FORM FOR WIRELESS PERMIT: FACILITIES IN PUBLIC RIGHT-OF-WAY

PART A: BASIC INFORMATION (ALL APPLICANTS)

1. Type of Application

Please check the applicable box(es) and provide the information required below as an attachment to this Application, along with a written explanation identifying the facts relied upon to support the claimed treatment. Please note that the reference to the FCC shot clocks does not bind the City to those clocks, but is included as a matter of convenience and is designed to reference the rules that were effective at the time this application was prepared. City will only be bound to comply with the shot clocks to the extent required by law. References to CFR provisions refer to those provisions or their successor provisions.

a) **Check all that apply:**

- ☐ This is a request for a “neutral host” facility. [that is, the facility is designed to be used by more than one provider of personal wireless facilities.
- ☐ Applicant will own and control all parts of the WF, other than a support structure owned by a third party. (if a portion of the facility will be owned by a third party, is subject to an IRU, or will be operated or maintained by a third party, do not check this box).

b) **Check one. This application is:**

- ☐ Eligible Facilities Requests. Applicant asserts that the application qualifies as an “eligible facilities request” (EFR) (as defined in 47 CFR § 1.6100(b)(3), or any successor provision). Applicant shall submit the information required in the Application Requirements Part A, Part B. and Part C.1, ***The applicable FCC shot clock is sixty (60) days.***
- ☐ Small Wireless Facility (Existing Structure). Applicant asserts that the application is being submitted for approval of a Collocation of a Small Wireless Facility, that is, the proposed facility both meets the definition of “small wireless facility” and is a “collocation” (both as defined by 47 C.F.R. § 1.6002). Replacements of existing structures are not “collocations”. Applicant shall submit the information required in Part A, Part B and Part C.2, and C.4 is applicable. ***The applicable FCC shot clock is sixty (60) days.***

Small Wireless Facility (New Structure). Applicant asserts that the application is being submitted for approval to deploy a Small Wireless Facility (as defined by 47 C.F.R. § 1.6002(l)) involving placement of a new structure. Replacements of existing structures are considered new structures. Applicant shall submit the information required in Part A, Part B and the Application Requirements Part C.2

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Notes may be used to identify issues with application in more detail., or to mark a particular requirement “NA” “Complete” means information was provided, and it is not an affirmation that the City has determined it is accurate.

☐ Complete
☐ Incomplete
Note: Multiple boxes may be checked.

☐ Complete
☐ Incomplete
Note: only one box should be checked

and if applicable, C.4. ***The applicable FCC shot clock is ninety (90) days.***

- ☐ Other Wireless Facility State or Federal Law Requires City to Allow in the ROW. Applicant asserts that the application is being submitted for approval of a type of WF that state or federal laws require the City to allow in the City's ROW. If you checked this box, please attach an explanation of the basis for your assertion, including citations to supporting law, and state what FCC shot clock you assert applies to this application, if any. Submit the information required in the Application Requirements Part A, B, Part C.2 and C.4 is applicable.
- ☐ Permit Renewal. Applicant asserts that the application is being submitted for a renewal of an existing wireless permit. If you checked this box, please submit a copy of the original permit, any prior renewals or extensions thereof, and the information required in the Application Requirements Section Part C.3 below, and Section C.4 if applicable.

2. Contact Information

- a) Applicant shall notify City of any changes to the information submitted within fifteen (15) calendar days following any such change.
- i) Identity of applicant:
Name: _____
Address: _____

Email: _____
Telephone: _____
Fax: _____
- ii) Identity of the person or persons that will respond to questions regarding this application. If a facility is a "neutral host" facility, a name must be provided of a person or persons who can attest to the answer to questions regarding the facilities and their operation.
Name: _____
Address: _____

Email: _____
Telephone: _____
Fax: _____
- iii) Identity of the any person who will own, control, operate or maintain any part of the proposed WF, other than a support structure owned by a third party.
Name: _____
Address: _____

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- ☐ Complete
☐ Incomplete
NOTES

- ☐ Complete
☐ Incomplete
[Note: Must be more than one contact for neutral host]

- ☐ Complete
☐ Incomplete
[Note: Must be more than one name if 2d box in 1.a is checked]

Email: _____
Telephone: _____
Fax: _____

Identity of the owner of any part of the structure on which the proposed WF would be installed.

Name: _____

Address: _____

Email: _____

Telephone: _____

Fax: _____

- iv) Identity of a contact person available to respond 24x7 to emergencies, or requests to shut down facilities.

Name: _____

Address: _____

Email: _____

Telephone: _____

Fax: _____

3. Purpose of Wireless Telecommunications Facility/Overview of Project

- a) Please provide a brief description of the project for which the permit is sought.
- b) Attach a map showing the location of the proposed WF (the electronic version should link to a map that can be opened in Google Earth, or a similar, generally available program).
- c) Except for eligible facilities requests, if the application is part of the development of a wireless network, please describe that network, including the number of facilities and the manner in which they will be connected (and whether excavation will be required, and if so, where), and provide a map (see requirements for part 3(b) showing the location of all facilities).
- d) Except for eligible facilities requests: Is the proposed wireless communications facility to be used for the provision of "personal wireless services" as defined by 47 U.S.C. Section 332(c)(7)(C)(i) on a sole or comingled basis?
- ☐ No. Specify the type(s) of wireless communications services to be provided using the proposed facility:
- _____.
- ☐ Yes. Specify the type(s) of personal wireless services: _____
- _____
- _____
- e) Except for eligible facilities requests: Identify the purpose of the proposed WF, including, specifically, the service objectives, and the specific personal wireless service problems that would be addressed by the facility. A neutral host should provide

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☐ Complete
☐ Incomplete
[Note: One box must be checked and additional information may be required]

☐ Complete
☐ Incomplete
NOTES

information that demonstrates that the proposed WF is not being built speculatively.

- f) Are you seeking a waiver of any provision of the City Code applicable to wireless facilities other than a waiver for reasons described in Section C.4?

☐ No.
☐ Yes

If yes, at the same time you submit this application you must submit a request for waiver, justifying the waiver to the City in accordance with the City Code. A copy of the waiver must be attached to this application.

4. Application Fees

- a) Applicant shall pay all applicable fees in the amounts established by the current fee schedule. In the event applicant has pre-paid all or a portion of applicable fees, please include a copy of the receipt from that transaction.

- b) Applicant must sign the following:
As required by the City Code of the City of Greenbelt, applicant agrees to pay all costs reasonably incurred by City in reviewing the application, including costs incurred in retaining outside consultants, and understands that the validity of any permit depends upon payment of that fee.

Signed: _____

Title: _____

5. Franchises, Authorizations and Licenses

To have a complete application, the applicant must have: (a) authorization to use the public rights-of-way; (b) licenses to provide proposed services; and (c) authorization to use the proposed structure.

- a) Does applicant have an existing franchise or other authorization to place wireless facilities in the public rights-of-way?

☐ No.

If no, the application will be considered incomplete unless applicant requests that authorization from City (see Part B).

☐ Yes.

If yes, explain source of applicant's right to use the public rights-of-way and submit related documentation.

- b) Has applicant (or other person identified in this application) obtained all applicable licenses or other authorizations to provide the services proposed in connection with the application, whether required by the Federal Communications Commission, Maryland Public Utilities Commission, or any other agency with authority over the proposed services.

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☐ Complete
☐ Incomplete
[Note: One box must be checked and additional information may be required]

☐ Complete
☐ Incomplete
[Note: One box must be checked and additional information may be required]

- ☐ No.
- ☐ Yes.

If yes, submit related documentation such as FCC licenses or authorizations, a certificate of public convenience and necessity or a wireless identification registration (WIR) from the Maryland Public Utilities Commission.

- c) Is proposed wireless facility to be attached to a structure owned or controlled by a third party (not the owner of the proposed wireless facility)?

- ☐ No.
- ☐ Yes.

- d) Do you have an agreement with that person to use the facility?

- ☐ No.

If no, the application will be considered incomplete.

- ☐ Yes.

If yes, provide a copy of the authorization or license to use the structure.

6. **RF.** : Please provide a study by a qualified RF engineer demonstrating and certifying that the proposed facility will comply with FCC RF standards. Any conditions on the certification (e.g., steps that should be taken to prevent exposures) should be identified. The study should be performed consistent with accepted practices, taking into account cumulative exposures from all relevant sources. The methodology and calculations used to determine exposures should be clear, and all sources considered in performing the calculation, the equipment and emissions levels should be identified. The study should clearly identify any area, in any plane, where the occupational or general public exposures limits would be exceeded.

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- ☐ Complete

- ☐ Incomplete

Note: if answer to (c) is no, skip (d).

- ☐ Application is Complete

- ☐ Application is Incomplete

[Note: If answer to (c) was yes, application is only complete if "yes" is checked and additional information provided]

- ☐ Complete

- ☐ Incomplete

NOTES

PART B: ADDITIONAL PERMITS

1. Based on the work proposed in connection with this project, identify any and all additional permits, approvals, or agreements ("Ancillary Permissions") that will be required for any work within the boundaries of the City in order to deploy the WFs which you contend must be issued (absent agreement or exceptional circumstances) no later than by the same time the City must take action on the wireless application. It is your responsibility to review Code and policies and other state or FCC regulations applicable to the deployment of the WF within the City and identify every Ancillary Permission that will be sought in conjunction with that deployment. The failure to conduct the investigation and to accurately identify all Ancillary Permissions may be grounds for denying the application or for declaring it incomplete. For example, if the WF would be placed on a structure where historical review would be required at the state, federal or local level, the applications required for that review must be identified.
2. With respect to Ancillary Permissions please check one of the following:
☐ I have not applied for, or obtained any Ancillary Permissions.
☐ I have applied for or obtained Ancillary Permissions.
If you have already sought or obtained Ancillary Permissions, please identify the entity from whom you have sought/obtained approval, and provide a copy of the final permit, or the identifying code if the application is still pending.
3. If you have not already applied for every permit or authorization, or initiated every review required in connection with the deployment of the facility, please indicate by checkmark whether you agree with the following:
☐ I agree that any permit, authorization or review for which I have not identified and applied need not be issued by the time the City is required to act on this application, and any time limits for action on such permit, authorization or review will not commence until I file complete applications for the same.

If you do not check the box in response to item 3 *this application will be incomplete unless you have filed complete applications for all permits, authorizations or reviews that may be required prior to deployment. This requirement is inserted strictly to ensure compliance with federal standards for action on permits and authorizations and reviews required in connection with an application. The City recognizes that as normal practice the same may be applied for after placement review is completed, and the City does not intend to require departure from that practice as long as review can be conducted consistent with FCC regulations.*

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☐ Complete
☐ Incomplete
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☐ Complete
☐ Incomplete
NOTES

☐ Complete
☐ Incomplete
Note: list need not be provided if box for item 3 is checked, and item 2 is completed.

PART C: DETAILED APPLICATION REQUIREMENTS (RESPOND TO RELEVANT SECTIONS)

1. ELIGIBLE FACILITIES REQUESTS: *For an application asserted to be an eligible facilities request*, the application must provide the following information:

a) Identify the existing facility that will be modified; the existing WF that is installed on that facility; and provide a complete copy of the documents authorizing placement of the existing facility that is to be modified, including the original and any modifications to the authorizations. In order to identify a facility, you must provide its GPS coordinates; the cross-streets and relative location of the facility in connection to the cross-streets; and the pole number or identifier, if any.	☐ Complete ☐ Incomplete NOTES
b) A description of all changes made to the existing facility that is to be modified (whether or not approved) including a description of the changes in height from January 22, 2012.	☐ Complete ☐ Incomplete NOTES
c) Provide proof that applicant is authorized to modify the existing facility, and provide any lease for use of the existing facility. Such submissions need not disclose financial terms.	☐ Complete ☐ Incomplete NOTES
d) If not clearly shown as part of the lease, or other authorization for the existing facility, identify and provide proof of the boundaries defining the site where the existing facility is placed.	☐ Complete ☐ Incomplete NOTES
e) Will the existing supporting structure be replaced as part of the work proposed? ☐ Yes ☐ No	☐ Complete ☐ Incomplete Note: if yes is checked, this is not an eligible facilities request and the EFR should be denied in writing.
f) Provide a detailed description of the existing wireless facility, including the physical dimensions of all each element of the existing facility; and describe all the modifications that will be made to the wireless facility, including but not limited to the modifications that will be made to the existing support structure (increases in height, additional guying or other strengthening), and identify the dimensions and all elements of the wireless facility after work proposed is completed.	☐ Complete ☐ Incomplete NOTES
g) In addition to Item g, identify what equipment, if any, will be added to the existing facility, and what will be removed, and the locations of equipment after work proposed is completed.	☐ Complete ☐ Incomplete NOTES
h) In addition to item g, identify what ground cabinets, if any, will be added. If none, say so.	☐ Complete ☐ Incomplete NOTES

- i) In addition to item g, identify what excavation or ground disturbance will be required, if any, and clearly identify where the excavation will occur. If the work will affect any other structure, or vegetation, that effect must be clearly identified. If no excavation or ground disturbance, say so.
- j) Provide photographs showing the site proposed before the proposed installation, and photographic mock-ups and scale drawings showing the site after installation (multiple photographs should be submitted as required to show the all Facilities that will be visible at the site from all angles).
- k) Provide site plans detailing proposed improvements¹
Drawings must depict improvements related to the applicable requirements including property boundaries, setbacks, topography, elevation sketch, and dimensions and other elements of proposed.
- l) Provide a report signed by a qualified Maryland licensed professional engineer:
 - (1) Certifying that the structure to which the WF is to be attached will be able to support the WF as proposed; and
 - (2) Specifying any specific steps that should be taken to either ensure that the WF and its supporting structure are in compliance with applicable codes (e.g, additional foundational work required, requirements for placement of equipment); and
 - (3) Providing a list of the safety standards examined, along with a description of the methodology and assumptions used making the certification.

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 NOTES

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☐ Incomplete
 NOTES

¹ Site plans should be at a scale of 1"=20' or larger so that all information is legible, and should include and should include a series of sheets before and after showing:

- (1) Overhead view of the existing and proposed WF location of lot lines, streets (with street names), easements, and all structures and improvements, including accessory equipment, underground utilities and support structures, existing and proposed and identifying all pertinent elements of the site, including slopes, contours, and trees. Detail should be provided to show relation of existing and proposed WF to easements, streets sidewalks, ramps and signage so that City may determine whether structure will interfere with other uses, or present hazards.
- (2) Elevation drawing of the existing and proposed facility with dimensions and locations of all elements of the WF shown, and identifying all pertinent elements of the site, including slopes, contours, and trees. Detail should be provided to show relation of existing and proposed WF to streets sidewalks, ramps and signage. Detail should be provided to show relation of existing and proposed WF to streets sidewalks, ramps and signage so that City may determine whether structure will interfere with other uses, or present hazards.
- (3) Diagrams of all equipment that will be installed as part of the project, including make, model, weight and physical dimensions, and any equipment that will be removed.
- (4) If landscaping is involved, separate sheets showing landscaping before and after and providing details as to what sort of vegetation/barriers will be installed, removed or replaced, and showing land contours.
- (5) Title block with applicant's name, owner's name, and contact information; and for overhead and elevations, scales and compass markings.

- m) Describe the concealment elements, if any, associated with the facilities as they will be modified, including but not limited to painting, and shielding as modified. The showing should be sufficient to demonstrate that the modifications will not defeat any existing concealment elements. If in an historic district please show compliance with requirements for that district. If there will be no concealment elements, so state.
- n) Identify all the conditions that were placed upon the base station or tower which is to be modified, or to which it was subject under the City Code, and for each condition, demonstrate that the facility is in compliance with the conditions, and that the conditions will continue to be satisfied after modification. For example, applicant should submit studies as required to demonstrate that the modified facility will comply with applicable noise limits. For any condition where the WF is not now, or after modification will no longer be in compliance, provide a clear description of the variation from the underlying conditions, explain any steps proposed for compliance, and explain why applicant believes the facility is nonetheless an eligible facility. ☐ Check if included - see Exhibit ____
- o) Applicant certifies that, before commencing, during performance of and upon completion of, the work proposed, the permitted wireless facility will comply with all applicable laws, regulation, practices or other requirements under federal, state or local law, including but not limited to, building and electrical codes, and all required permits, authorizations will be received, and reviews completed.
- ☐ Yes
☐ No

☐ Complete
☐ Incomplete
NOTES

☐ Complete
☐ Incomplete
NOTES

☐ Complete
☐ Incomplete
Note: if answer is "No"
application will be
subject to denial

2. ALL OTHER APPLICATIONS: *For all other types of applications*, the following must be provided:

- a) If you are proposing to install a WF on an existing support structure, or to replace an existing structure:
- (1) State if the application is for a replacement facility or a supporting structure at a location where there is not an existing support structure.
 - (2) Identify the existing facility that will be utilized/replaced. In order to identify a facility, you must provide its GPS coordinates; the cross-streets and relative location of the facility in connection to the cross-streets; and the pole number or identifier, if any. For replacement structures, you must clearly identify where the replacement pole will be placed in relation to the existing pole.
 - (3) Identify the zoning classifications that apply on either side of the ROW where the WF will be installed, and any other special district that may overlay the zones.

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☐ Incomplete
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☐ Complete
☐ Incomplete
NOTES

☐ Complete
☐ Incomplete
NOTES

- (4) If an existing structure will be replaced, provide a detailed description of the differences in the physical dimensions between the existing and replacement structure (including both visible and below-ground elements), and explain why any differences in any physical dimension are required.
- (5) If an existing structure will be utilized, provide measurements showing the dimensions of the existing support structure prior to and after the proposed work.
- (6) If an existing structure will be utilized, provide measurements showing the dimensions of the existing/replacement supporting structure after installation of the WF.
- (7) Provide measurements showing the dimensions and location of all elements of the proposed WF, other than the dimensions provided in response to question (a)(4)-(6); and the dimensions and locations of any WF that will be on or at the same location as the support structure after the proposed construction is completed. If no other facility, say so.
- (8) Unless the structure is a replacement structure, a description of all changes made to the support structure that is to be used for the attachment, and all work that will be required to install the proposed WF (excavation, strengthening, addition of guy wires and so on).
- (9) For replacement structures, provide a plan and timetable for removal of the existing structure.
- (10) A copy of all approvals and/or permits for the existing facility that is to be used, or replaced.
- (11) A showing that the replacement or existing structure and WF associated with the same, will be in compliance with existing conditions, whether or not it is in compliance with conditions as of the date of application. There must be a plan submitted for correction of any non-compliant condition.
- (12) If you have indicated that the WF proposed qualifies for treatment as an small wireless facility attachment to an existing support structure under FCC rules, identify the facts you rely upon for that contention.
- b) For WFs that involve placement of a new supporting structure,
- (1) Identify the location of the proposed facility. In order to identify a facility, you must provide its GPS coordinates; the cross-streets and relative location of the facility in connection to the cross-streets.

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☐ Complete

☐ Incomplete

Note that if there is a response to 4, 5-6 will be skipped

☐ Complete

☐ Incomplete

NOTES

☐ Complete

☐ Incomplete

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Note no answer required to b unless it is for a new supporting structure

- (2) Identify the zoning classifications that apply on either side of the ROW where the WF will be installed, and any other special district that may overlay the zones.
- (3) Provide measurements showing the dimensions and location of all elements of the proposed WF, including the supporting structure. This should include both the visible and underground elements of the proposed supporting structure (e.g., the size and depth of any required foundation).
- (4) Are there aboveground utility poles within 1000 feet on the same side of the street where you proposed to place a new structure?
☐ Yes
☐ No
 If yes, describe the height and diameter of those poles, and identify the distance to the poles within 1000 feet
- (5) Are there aboveground utility poles within 1000 feet on the opposite side of the street where you propose to place a new structure?
☐ Yes
☐ No
 If yes, describe the height and diameter of those poles, and identify the distance to the poles within 1000 feet.
- (6) Are there any above-ground structures vertical structures which can support a WF within 1000 feet of the proposed structure?
☐ Yes
☐ No
 If yes, describe those structures, and identify the distance to them from the proposed site.
- (7) Explain why you are not using the facilities identified in items (b)(4)-(6) for placement of the proposed WF. The response should include detail that will permit the City to determine whether installation of a new structure is permitted.
- (8) If you believe that the WF proposed qualifies for treatment as an small wireless facility attachment to an new support structure under FCC rules, please explain the basis for that contention.
- c) To the extent not provided in response to subsections (a) or (b), provide a detailed description of the proposed WF, including the physical dimensions of all each element of the existing facility; and describe all the modifications that will be made to any existing WF, including but not limited to the modifications that will be made to the existing support structure (increases in height,

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additional guying or other strengthening), and identify the dimensions and all elements of the wireless facility after work proposed is completed. If already provided, you may cross-reference the relevant portion of your answer.

- d) In addition to Item c, identify what equipment, will be installed as part of the WF, and what will be removed (if anything), and the locations of equipment after work proposed is completed.
- e) In addition to item c, identify what ground cabinets, if any, will be added. State whether there are ground cabinets in the right of way within 1000 feet of the proposed installation, and identify their sizes. If none, say so.
- f) In addition to item c, identify what excavation or ground disturbance will be required, if any, and clearly identify where the excavation or ground disturbance will occur. If the work will affect any other structure, or vegetation, that effect must be clearly identified. If none, say so.
- g) In addition to item c, a description of the site and any deployment outside the site necessary to complete the proposed project.
- h) Provide photographs showing the site proposed before the proposed installation, and photographic mock-ups showing the site after installation (multiple photographs should be submitted as required to show the all Facilities that will be visible at the site), and to provide a clear indication of the impact on adjoining properties and the corridor in which the WF will be placed. The photosimulations should include any landscaping that will be performed in connection with the project.
- i) Provide site plans detailing the proposed WF consistent with the requirements of n.1, above.
- j) Provide a report signed by a qualified Maryland licensed professional engineer:
 - (1) Certifying that the structure to which the WF is to be attached will be able to support the WF as proposed; and
 - (2) Specifying any specific steps that should be taken to either ensure that the WF and its supporting structure are in compliance with applicable codes (e.g, foundational work required, requirements for placement of equipment); and
 - (3) Providing a list of the safety standards examined, along with a description of the methodology and assumptions used making the certification.
- k) A written description of the concealment measures applicant proposes to use to aesthetically blend the facility to the immediate surroundings and to minimize its visual impact. This should include, but not be limited to, a description of proposed concealment techniques, sizing and placement of elements of

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the WF (including undergrounding proposed), measures proposed to limit visibility of the WF from residential dwelling units, and the textures and colors to be used in the concealment process. If none, say so.

- l) If the proposed facility is in an historic district, provide the information required by Section 5A-5 of the City Code.
- m) If any landscaped ground will be disturbed, or landscaping is proposed as a concealment element, provide a landscape plan for the site, at a scale of 1/8"=1' or larger and including the following. If no landscaping is proposed, say so:
 - (1) Existing trees with trunk diameter over six inches (6") at four feet (4') above grade and/or fifteen feet (15') in overall height within fifty feet (50') of the proposed WF;
 - (2) Species, diameter and condition of all such trees;
 - (3) Final disposition of all existing trees; and
 - (4) Species, location and sizes of trees and other vegetation proposed to be installed in conjunction with the wireless communication facility.
- n) Demonstrate compliance with the City's noise ordinance by providing, among other relevant information, a description of the facilities and/or equipment within the applicant's project that are expected to induce or generate noise, as well as anticipated noise levels of said facilities and/or equipment at maximum output. For facilities that generate noise, please provide testing data for noise in accordance with the City Code.
- o) Justification for WF
 - (1) Review the standards set forth in the City Code, and for each standard in subsection 5A-5(c)-(f) explain why you believe the proposed facility satisfies the standard. If you do not believe it satisfies a standard, so state. You may cross-reference prior answers.
 - (2) Show the search area for placement of the WF proposed, and explain why the particular location was chosen. If the search area is driven by the characteristics for particular frequency bands, identify those bands.
 - (3) Provide a written assessment of not less than two (2) alternative locations considered by the applicant and the reasons why said alternative locations were rejected as candidates.
 - (4) Provide a map of all existing WFs used by the wireless service provider who will be utilizing the proposed WF that serve any portion of City, applicant which are located within the City, and show the coverage those facilities provide within the City by frequency band.

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- (5) Provide a written report setting forth how and why the proposed WF will improve personal wireless services being provided by the wireless service provider. The answer may identify as an "improvement" any personal wireless service that the wireless service provider does not now provide, which it has a planned timetable to provide. The report shall identify areas where the wireless service provider has no coverage, a significant degradation in coverage, or "dead zones". The report shall include a capacity analysis, a propagation analysis, and/or a decibel level report to indicate the quality of service provided by the applicant both at present and after installation of the proposed wireless communication facility. In describing the improvements, applicant should identify the performance indicators that are used by the wireless provider to determine the adequacy of its services (whether for existing or planned personal wireless services), and show the projected improvement in those indicators if the proposed WF were approved. *Please do not include performance indicators for services that are not personal wireless services.*
- (6) Please describe any smaller form factors that applicant or the wireless provider has used in rights of way in the last 24 months, or that it is planning to use to provide service for facilities that include one, two and three frequency bands. Explain why a smaller form factor is not proposed here. The explanation should include strand-mounted facilities.
- (7) If applicant or wireless provider has undergrounded any portion of the WF in other communities in the last 24 months, or is planning to underground in another community, please explain why it is not proposing similar undergrounding here.
- p) Applicant certifies that, before commencing, during performance of and upon completion of, the work proposed, the permitted wireless facility will comply with all applicable laws, regulation, practices or other requirements under federal, state or local law, including but not limited to, building and electrical codes, and all required permits, authorizations will be received, and reviews completed.
- ☐ Yes
- ☐ No

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 Note: a "no" may make the application subject to denial.

3. RENEWAL OF PERMIT

If applicant proposed to renew a permit, it may provide the information required by this section if no modifications are proposed to the facility that is the subject of the permit.

- a) Identify the permit that is to be renewed.
- b) Provide a copy of approvals related to the WF, including approved modifications.
- c) Provide photographs of the WF in place. Provide photos from multiple angles, so that all elements of the WF are shown.
- d) Provide drawings of the WF, and identify all equipment (whether part of the WF or not) located on the support structure on which the WF is located. The drawings should show dimensions of all elements of the WF, and without limitation include the dimensions of the supporting structure.
- e) Demonstrate that there is a continuing need for the facility, and that its visual impact may not be reduced by providing the information required under subsection 2(n).

4. CLAIM CITY IS REQUIRED TO ISSUE PERMIT

- a) If it is contended that the City is required by federal or state law to approve a proposed WF, other than an EFR, applicant must submit the information it relies upon to support that claim, identifying: (i) the legal standard it claims applies; (ii) the showings it relies upon for its claim; (iii) alternative legal standards that may apply that it claims to meet; and (iv) the showings it relies upon for those claims. Applicants are cautioned that, should they choose not to submit with respect to items (iii) and (iv), and the City believes that applicant misapplies or relies on the wrong legal standard, the waiver (and consequently the application) may be denied. In addition, the showing should be sufficient to show that the placement and size of each element of the WF must be approved by City. For example, if applicant proposed a ground cabinet where one would not otherwise be permitted, but only shows that some type of WF is required at the site proposed, the placement of ground cabinet may be denied.
- b) Any permit issued pursuant to this section will be subject to a contingency that, if any federal legal standard pursuant to which an application was granted changes or is invalidated, the permit will be terminate unless applicant shows that the proposed facility must be approved under applicable law.

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PART D: CERTIFICATION (ALL APPLICANTS)

I (we) hereby certify under penalty of perjury that (1) after diligent investigation, the information provided pursuant to this Application Form is true, accurate, and complete to the best of my (our) knowledge and belief; and (2) upon completion of the work proposed, the permitted personal wireless services facility will comply with all applicable laws, regulation, practices or other requirements under federal, state, or local law, including, but not limited to, building and electrical codes, the FCC's radio frequency emissions standards, and the requirements of the Americans with Disabilities Act.

Applicant's Signature

Date

Applicant's Printed Name

[end of document]

Introduced:
1st Reading:
Passed:
Posted:
Effective:

ORDINANCE NUMBER 13XX

AN ORDINANCE TO AMEND CHAPTER 5 OF THE CITY CODE TO ADD A NEW CHAPTER 5A TITLED “FRANCHISES AND PERMITS FOR WIRELESS COMMUNICATIONS FACILITIES” AND AMEND CHAPTER 18 OF THE CITY CODE BY ADDING A NEW DIVISION 6 TITLED “MINIMUM REQUIREMENTS FOR OCCUPATION OF RIGHTS-OF-WAY”

WHEREAS, 5-202 of the Local Government Article of the Annotated Code of Maryland provides that the Mayor and Council of the City of Greenbelt have the authority to pass such ordinances as it deems necessary to preserve peace and good order, and to protect the health, comfort and convenience of the residents of the municipality; and

WHEREAS, 2(a)(13) of the Local Government Article of the Annotated Code of Maryland provides that the Mayor and Council of the City of Greenbelt have the authority to pass such ordinances to provide for the City to generally grant public utility franchises; and

WHEREAS, the City Code, Chapter 5, “Cable Television”, the City’s Cable Communications Regulatory Code and lends itself to outline the Regulatory Code for other Communications Systems; including wireless facilities; and

WHEREAS, § 3(5) of the Local Government Article of the Annotated Code of Maryland provides that the Mayor and Council of the City of Greenbelt to regulate the use of sidewalks and all structures in, under, or above them; and

WHEREAS, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority. NOW, THEREFORE,

BE IT ORDAINED by the Council of the City of Greenbelt, Maryland, that the City Code be amended to read as follows:

Chapter 5A

Franchises and Permits for Wireless Telecommunications Facilities

Section 5A-1. General provisions.

- (a) *Title.* This chapter shall be known and may be cited as the "Wireless Telecommunications Code."
- (b) *Effective date and repealer.* This chapter shall take effect and be in force from and after passage. All prior ordinances or parts of ordinances in conflict with the provisions of this chapter are hereby repealed.
- (c) *Findings and purpose.*
 - (1) The City of Greenbelt, Maryland (the "City") finds that the further development of wireless communications may result in great benefits for the people of the City. However, it is projected that development of wireless telecommunications networks may require placement of more and different facilities in the rights-of-way than have been placed in the rights-of-way previously, and those facilities can vary dramatically in size and form, and may have significant impacts on the community.
 - (2) The City finds that minimization of clutter and vertical structures in the rights-of-way is important to the welfare of the community, and that placement near residential structures, in underground areas, or areas that will be undergrounded, and in historical areas should be restricted where not critical to the provision of services.
 - (3) The City already regulates the placement and design of other facilities that are placed in the rights-of-way, to the extent permissible under law, through franchising and permitting processes and local regulations and practices. The City intends to apply similar principles to the regulation of wireless telecommunications facilities.
 - (4) However, because Federal Communications Commission regulations and federal law require that special procedures be applied to consideration of applications for certain wireless telecommunications facilities, the City finds that it is appropriate to specify certain requirements in the code to provide clearer guidance with respect to the placement of wireless telecommunications facilities in the rights-of-way.
- (d) *Intent.* The City intends that all provisions set forth in this chapter be construed to serve the public interest and the foregoing public purposes, and that any franchise issued

pursuant to this chapter be construed to include the foregoing findings and public purposes as integral parts thereof.

- (e) Delegation of powers. The City may delegate the performance of any act, duty, or obligation, or the exercise of any power, under this chapter or any franchise agreement to any employee, officer, department or agency, except where prohibited by applicable law.
- (f) Implementing regulations. The provisions of this chapter, and the forms for submission of applications may be adopted by regulation approved as provided in this Code.
- (g) Public use. Except as otherwise provided by Maryland law, any use of the rights-of-way authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

Section 5A-2. Definitions and usage.

- (a) Definitions and usage, general. For the purposes of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender, and vice versa. The words "shall" and "will" are mandatory, and "may" is permissive. References to state or federal laws or regulations refer to those laws or regulations as they may be amended. References to agencies refer to the agencies or their successors or designees.
- (b) Application: A formal request, including all required and requested documentation and information submitted by an Applicant to the City for a wireless placement permit.
- (c) Applicant: A person filing an application for placement or modification of a wireless telecommunications facility in the right-of-way.
- (d) Base Station: The term "base station" shall have[s] the same meaning as in 47 C.F.R. Section 1.40001.
- (e) City Manager: The chief administrative officer for the City of Greenbelt, or its designee.
- (f) Construction, modification and repair: shall be broadly construed to include all activities conducted in the rights-of-way with respect to a facility, including but not limited to construction, removal, relocation, alteration, and replacement.
- (g) FCC: The Federal Communications Commission.
- (h) Micro wireless facility: A wireless facility having dimensions no larger than twenty four (24) inches in length, fifteen (15) inches in width and twelve (12) inches in height, and an exterior antenna, if any, no longer than eleven (11) inches, and which antenna may be enclosed in an imaginary cylinder no larger than one (1) inch in diameter.

- (i) Operation: Activities affecting detectable attributes of facilities in the rights-of-way that may physically affect persons or property, such as noise and radio frequency emissions. The term as used in this section does not include radio frequency interference with other licensed facilities.
- (j) Right-of-Way, or ROW: The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, park, parkway, easement, or similar property within the City, and in whole or part under the control of the City which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a wireless telecommunications facility.
- (k) Support Structure: Any structure capable of supporting a base station.
- (l) Tower: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless services, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.
- (m) Underground areas: Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right-of-way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled, whether now or at a future time, to be converted from overhead to underground. “Electrical facilities” are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.
- (n) Utility Pole: A structure in the rights-of-way designed to support electric, telephone, and/or similar utility lines, and which cable operators or telecommunications service providers may use at regulated rates. A utility pole is not a tower.
- (o) Wireless Permit: A permit issued pursuant to this Chapter, authorizing the construction, modification, or repair of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way.
- (p) Wireless Service Provider: An entity that provides wireless services to end users.
- (q) Wireless services: Any FCC-licensed or authorized service, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul and the associated site.
- (r) Wireless Infrastructure Provider: A person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.
- (s) Wireless Regulations: Regulations adopted implementing the provisions of this Chapter.

- (t) Wireless Telecommunications Facility: A facility at, or proposed for, a fixed location consisting of a base station, any accessory equipment, and the support structure, if any, associated that is, or that the application proposes will be, associated with the base station.

Section 5A-3. Franchise Required.

- (a) Franchise required. Any person (other than the City, the State, or a subdivision of the State) who will own or control a wireless telecommunications facility in the right-of-way used to provide wireless services must obtain a franchise therefore from the City, unless that person holds a franchise from the State which authorizes it to use the rights-of-way for that purpose, without further permission of the City. An additional franchise is not required for installation of a utility pole or equipment required to install communications lines, electricity or other services to a wireless telecommunications facility by an entity that occupies the rights-of-way and is permitted to perform such work pursuant to a franchise from the City or State.
- (b) Not in lieu of permit or agreements. The franchise is not in lieu of a wireless permit, or any other permit that may be required under this Code in connection with the construction, modification or repair or operation of a wireless telecommunications facility. The permit is not in lieu of agreements required for use of City-owned or controlled support structures, conduit, pipes or other infrastructure which may be used to deploy facilities.
- (c) Divisibility/Transferability. A franchise is not divisible, nor may it be transferred without the permission of City as specified in the franchise.
- (d) Exceptions.
- (1) Facilities used exclusively for public safety purposes are excepted from the requirements of this Section.
- (2) Because a wireless infrastructure providers may not own or control all of the facilities within the wireless telecommunications facility that are used in the provision of wireless services, and may bear full responsibility for constructing, modifying and maintaining those facilities, the franchise for a wireless infrastructure provider may except any customer of the provider from this franchise requirement with respect to a wireless telecommunications facility, if a customer who owns or controls equipment within the wireless telecommunications facility acknowledges and agrees, in a form acceptable to the City Attorney, that the City has not granted it a franchise or consent to be in the rights-of-way for any purpose; that it is bound by franchisee's representations; that it shall have no rights or claims against the City of any sort related to the facilities; that its facilities may be subject to taxes, fees or assessments as provided in Section 5A-3(d)(3); that the City may treat any equipment owned by such entity as if it were owned by franchisee for all purposes (including, but not limited to, removal and relocation); and that the facilities may only be used for

services specified in the franchise. Such customer must further acknowledge and agree that, to the extent it operates a wireless facility, it is responsible for complying with applicable law governing radio frequency emissions, and the City may take appropriate action against it and the franchisee for a violation thereof; and that it agrees that it will be jointly and severally liable for any acts or omissions associated with the wireless telecommunications facility; and will jointly and severally indemnify the City in accordance with this Code and any applicable provision of the franchise. The acknowledgement and agreement may be provided for all wireless telecommunications facilities of a franchisee occupied by the customer within the City, and need not be provided separately, facility by facility.

- (3) Wireless telecommunications facilities installed by a franchised utility solely for internal communications purposes do not require an additional franchise or a permit under this chapter, but the placement and design of such facilities is subject to the review and approval of the City.
- (e) Franchise fees. As a condition of exercising the franchise, each franchisee shall pay a franchise fee, which fee may be set from time to time by the City so that entities making similar use of the rights-of-way, for similar purposes, pay similar fees.
- (f) Limitations. The City may issue a franchise for placement of wireless facilities in the rights-of-way used in the provision of personal wireless services, or in the provision of Internet services to the public, subject to such conditions as the City may reasonably establish. For any other wireless services, City shall only issue a franchise upon a showing that the services to be provided are in the interest of the City, and placement in the right-of-way is appropriate; or that a franchise must be issued as a matter of law.

Section 5A-4. Wireless Permit Required.*

*In conformance with Chapter 18 “Streets and Sidewalks” of the City Code

- (a) Permit. A wireless permit is required for the construction, modification or repair of any wireless telecommunications facility, except as provided herein.
- (b) Exemptions. A wireless permit is not required for:
 - (1) The placement or modification of wireless telecommunications facilities on support structures owned, or under the control of, the City, the use of which is subject to control by enforceable contract for use of the facility between the City and the entity or entities that own or control the wireless telecommunications facility.
 - (2) The placement or modification of wireless telecommunications facilities by the City or by any other agency of the state solely for public safety purposes.

- (3) Modifications to an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity necessary to modify the facility does not disrupt or impede traffic in the traveled portion of a street or sidewalk, and if the work activity does not change the visual or audible characteristics of the wireless telecommunications facility.
- (4) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement or removal of existing facilities.
- (5) A micro wireless facility strung between two utility poles and provided further that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles, and complies with all applicable safety codes.
- (6) The City, by wireless regulation, may also exempt wireless telecommunications facilities that otherwise are subject to the provisions of this section from the obligation to obtain a permit to install or modify a wireless telecommunications facility where it is determined that because of the physical characteristics of the proposed facilities, and the work associated with them, such a permit is not required to protect the public health, welfare or safety, to maintain the character of a neighborhood or corridor, or to otherwise serve the purposes of this ordinance.

Section 5A-5. General Standards for Placement in the Rights-of-Way.

- (a) *Generally.* Wireless telecommunications facilities shall meet the minimum requirements set forth in this ordinance and the wireless regulations, in addition to the requirements of any other applicable law. Without limitation, the provisions of Chapter 18 apply to the construction, modification, repair and operation of wireless telecommunications facilities in the rights-of-way.
- (b) *Waiver of Requirements.* The wireless regulations and decisions on applications for placement of wireless telecommunications facilities in the rights-of-way shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, under circumstances such that deployment of the facilities must be authorized. If that determination is made, the requirements of this ordinance, including any regulations and forms to implement this ordinance, may be waived, but only to the minimum extent required to avoid conflict with federal law.
- (c) *Standards.* Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities

in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, avoids placement in a residential area when commercial areas are reasonably available, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights-of-way and compliance with health and safety codes; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon or vacate the rights-of-way or any portion thereof, or the ability of the City or other government agencies to cause the improvement, modification, relocation, vacation or abandonment of facilities in the rights-of-way.

- (d) *Concealment.* Wireless permits shall incorporate specific concealment elements to minimize visual impacts, and shall incorporate design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive or placement is required under applicable law:
- (1) Antennas located at the top of support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;
 - (2) Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.
 - (3) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on the utility pole, placed to avoid interfering or creating any hazard to any other use of the public rights-of-way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.
 - (4) Wiring and cabling shall be neat and concealed within, or or within conduit, flush to the support structure, ensuring concealment of these components to the greatest extent possible.
 - (5) Ground-mounted equipment associated with a wireless telecommunications facility shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be undergrounded, located in alleys or otherwise shielded. Ground-mounted equipment shall not interfere with pedestrian or vehicular traffic.
 - (6) Wireless telecommunications facilities shall comply with FCC regulations governing radio frequency (“RF”) emissions. Every wireless facility shall at all

times comply with applicable FCC regulations governing RF emissions, and failure to comply shall be treated as a material violation of the terms of any permit or lease. No permit shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with those regulations; any areas where occupational or general public exposures will exceed FCC limits are identified, and there is a clear plan addressing safety for any areas where exposures may exceed those limits.

- (7) No towers shall be permitted in the public rights-of-way, and no wireless telecommunications facilities shall be permitted above-ground in underground areas; provided that the City may permit placements where all elements of the wireless telecommunications facility are concealed and the facility does not appear to a casual observer to be a wireless telecommunications facility. Any tower design must in any case be consistent with the corridor in which the facility is placed, and minimize the obtrusiveness of the facility considered individually and as part of a network of wireless telecommunications facilities.
- (e) No speculation. No permit shall be issued except to wireless service providers with immediate plans for use of the proposed wireless telecommunications facility; or wireless infrastructure providers with contracts with wireless service providers which require the service provider immediately to use the proposed wireless telecommunications facility.
- (f) Historic Districts. For placement of wireless telecommunications facilities in rights-of-way in historic districts:
 - (1) The application must describe the impacts of the proposed construction, modification or repair, if any on the historic district, which analysis must consider the impact of any construction work required as well as the impact of the wireless telecommunications facility on the district. If any impacts are identified, the report should describe the steps taken by the applicant to mitigate the effect on the district.
 - (2) Wireless telecommunications facilities in historic districts should be placed:
 - a. so that they are not readily visible to the public, and are designed consistent with their surroundings; or
 - b. on existing or replacement utility poles in the rights of way, with equipment and any replacement poles designed, sized and located consistently with existing facilities in the rights of way; and
 - c. subject to conditions that preclude changes in the design or size of facilities without the discretionary approval of the City to ensure consistency with the historic district.

- (3) Permits will not be granted for construction, modification or repair of the wireless telecommunications facility if the City determines that there would be a material adverse effect on the district.

Section 5A-6. Application Submission Requirements.

- (a) Submission. Unless the wireless regulations provide otherwise, applicant shall submit a paper copy and an electronic copy of any application, amendments or supplements to an application, or responses to requests for information regarding an application to the Department of Planning and Community Development, or such other Department as the City Manager may specify. If forms are prescribed by the City, applications for a permit for a wireless telecommunications facility, and any other permit required in connection with that facility, must be submitted on those forms. Each application may be for up to ten (10) wireless telecommunications facilities, provided that the facilities are of similar design and intended to be placed in a similar manner as part of a single project. To avoid duplication, applicant may cross-reference information from one application to another if the applications are submitted at the same time.
- (b) Content. An application must contain:
 - (1) Any information required pursuant to the wireless regulations;
 - (2) The name of the applicant, its telephone number and contact information, and if different, the name and contact information for the owner, operator, and/or wireless service provider that will be using the wireless telecommunications facility;
 - (3) A complete description of the proposed wireless telecommunications facility and the work that will be required to install or modify it, including, but not limited to, detail regarding proposed excavations, if any; detailed site plans showing the location of the wireless telecommunications facility and each piece of equipment, and specifications for each element of the wireless telecommunications facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and describing the distance to the nearest residential dwelling unit and any historical structure within 500 feet of the facility. Before and after 360 degree photo-simulations must be provided. The electronic version of an application must be in a standard format that can be easily uploaded on a web page for review by the public.
 - (4) If the application is an eligible facilities request, within the meaning of 47 C.F.R. Section 1.40001, the application must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must include all the information required by Section 5A-6 (b)(1)-(3), and must:
 - a. include the permit that was granted for the existing facility;
 - b. show compliance with all conditions associated with that permit;

- c. identify all changes to the facility from the date of the issuance of the permit;
 - d. provide before and after 360-degree photo-simulations;
 - e. specify the excavation, if any, that will associated with the facility;
 - f. specify whether the supporting structure will be replaced, or a new supporting structure installed;
 - g. identify the number of ground cabinets and their sizes associated with the existing wireless telecommunications facility, and the number and sizes of all ground cabinets that will be associated with the wireless telecommunications facility after modification; and
 - h. identify changes to the height of the support structure; identify what, if any horizontal additions will be attached to the support structure; and identify the size and volume of all components of the wireless telecommunications facility before and after modification.
- (5) If applicant contends that denial of the application would prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, under circumstances such that deployment of the facilities must be authorized, the application must provide all information on which the applicant relies in support of that claim. Applicants are not permitted to supplement this showing, if doing so would prevent City from complying with any deadline for action on an application and applicant does not agree to toll such deadline for the of time necessary to accomplish review of the supplemental materials.
- (6) Applicant must submit any required fees as part of the application.
- (7) To the extent that filing of the wireless application establishes a deadline for action on any other permit that may be required in connection with the facility, the application shall include complete copies of applications for every required permit, including, without limitation, electrical permits, building permits, traffic control permits, and excavation permits, with all engineering completed, and with all fees associated with each permit included with the application. It is the applicant's sole responsibility to determine which, if any, additional permits are required in connection with the facility.
- (8) Requests for waivers from any requirement of this section shall be made in writing to the City Manager or his or her designee. The same may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought.

Section 5A-7.

- (a) *Fees.* For wireless telecommunications facilities, applicant must agree as part of its application to pay costs incurred by the City in reviewing the application.
- (1) The City Manager may set the fees for review, and shall review the fees periodically, and raise or lower those fees based on costs the City expects to incur.
- (2) Until and unless the City Manager directs otherwise, the initial fee for review of each wireless telecommunication facility will be \$1,500 per facility, and an additional \$4,500 per wireless facility for each facility where applicant contends denial would result in an effective prohibition. If additional costs are incurred by the City in connection with the review, as may occur if the City is required to hire additional staff or third parties to review applications within time frames established by applicable law, City may require applicants to pay those additional costs.
- (3) Prior to submitting an application, an applicant may seek a waiver of the fee requirement if it believes that because of the nature of the requests and number of requests submitted, the cost to the City of reviewing the application may be lower. City may grant that waiver subject to such conditions as may ensure that the City can recover the costs incurred by the City is reviewing the application.

Section 5A-8. Rejection for Incompleteness.

- (a) For personal wireless facilities, as that term is defined under federal law, and eligible facilities requests, as that term is defined under federal law, applications will be processed, and notices of incompleteness provided, in conformity with state, and local and federal law.
- (b) Incomplete applications may be rejected by a written order specifying the material omitted from the application, or the City may notify the applicant of the material omitted and provide an opportunity to submit the missing material. If the wireless application is incomplete, all permits that must be acted upon by the same date as that application will also be deemed incomplete, or denied. If any permit that must be acted upon by the same date as the wireless application is incomplete, both it the wireless application, and any other permit application associated therewith shall be declared incomplete or denied.

Section 5A-9. Termination of Permit/Breach.

- (a) *For breach.* A wireless telecommunications permit may be revoked for failure to comply with the conditions of the permit, franchise, or applicable law. Upon revocation, the wireless telecommunications facility must be removed; provided that, a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with

the revocation and removal shall be paid by entities who own or control any part of the wireless telecommunications facility.

- (b) *For installation without a permit.* A wireless telecommunications facility installed without a wireless permit (unless for those exempted by this Chapter) must be removed; provided that, removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless telecommunications facility.
- (c) *Term.* A wireless permit, other than a permit issued pursuant to an eligible facilities request, shall be valid for a period of five (5) years. A permit issued in response to an application constituting an eligible facilities request shall expire at the same time as the permit for the underlying existing wireless telecommunications facility, and shall only be valid so long as federal law requires the City to issue permits in response to eligible facilities requests. A person holding a wireless telecommunications permit must either remove the wireless telecommunications facility upon expiration (provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or, at least ninety (90) days prior to expiration, must submit an application to renew the permit, which application must demonstrate that the visual impact of the wireless telecommunications facility cannot be reduced. The wireless telecommunications facility may remain in place until the application is acted upon by the City, and any appeals from the City's decision are exhausted.
- (d) *Municipal Infraction.* Any violation of this ordinance will be subject to the same penalties as a violation of outlined in Chapter 18 "Streets and Sidewalks" Article II. Construction, Improvements, Etc. Division I Sec.18-34. Violations and Penalties.

Section 5A-10. Vertical Infrastructure Controlled By City.

- (a) *Statement of Policy.* The City, as a matter of policy, will negotiate agreements for the use of City-owned or controlled light standards and traffic signals in the public rights-of-way.
- (b) *Subject to Agreement.* The placement of wireless telecommunications facilities on City-owned or controlled light standards and traffic signals in the public rights-of-way is contingent upon entry into, and shall be subject to the terms and conditions in the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for an agreement. It may, in its discretion, refuse attachment. Proposed placements will be expected to be consistent with the design of the light standards and/or traffic signals to which the wireless telecommunications facility is to be attached, and consistent with the design of other attachments to light standards and traffic signals in the area. Generally, the wireless telecommunications facility should be concealed, unless

placement without concealment will better preserve the design of the underlying facility. The placement may not adversely affect the operation of any light standard or traffic signal, or the financing for the same. Subject to the foregoing, in considering whether to permit a particular use, the City will consider standards that apply to other wireless telecommunications facilities in the same rights-of-way.

Section 5A-11. Administration.

- (a) City Manager. The City Manager is responsible for administering this Chapter. As part of the administration of this Chapter, the City Manager may:
- (1) Adopt administrative regulations governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless telecommunications facilities, and guidelines for placement of wireless telecommunications facilities on City-owned or controlled structures in the rights-of-way.
 - (2) Interpret the provisions of this Chapter;
 - (3) Develop acceptable designs for wireless telecommunications facilities in particular corridors, taking into account the zoning districts bounding the rights-of-way. If an applicant uses an approved design for a particular corridor it will be deemed to satisfy the aesthetic standards of this ordinance and the wireless regulations.
 - (4) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued.
 - (5) Develop forms and procedures for submission of applications for placement or modification of wireless telecommunications facilities, and proposed changes to any support structure consistent with this Chapter.
 - (6) Collect, as a condition of the completeness of any application, any required fees.
 - (7) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;
 - (8) Subject to appeal as provided herein, determine whether to grant, grant subject to conditions, or deny an application; and
 - (9) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including, without limitation, issuing written decisions and entering into agreements to extend the time for action on an application.

(b) Decision; Reconsideration.

- (1) The City Manager may, in its discretion, conduct any investigation and take any steps necessary to determine, within the time limits specified by applicable law whether an application for a wireless telecommunications facility complies with the requirements of this Chapter, applicable provisions of the City Code, and any wireless regulations, and whether, based on that review, it should be granted, denied, or granted subject to conditions. Any person adversely affected by a decision of the City Manager may submit a request for reconsideration of that decision, and the City Manager may deny that request or grant it, and conduct such further investigations, or take such additional steps as may be required to reconsider the issues. Any decision on an application for a wireless telecommunications facility shall be in writing and based upon substantial evidence in a written record.
- (2) Reconsideration requests that involve eligible facilities requests, or small wireless facilities as defined in FCC regulations, or any successor provision, must be filed within five (5) business days of the written decision of the City Manager; all other reconsideration requests must be filed within ten (10) days of the written decision of the City Manager, unless the City Manager extends the time to do so; provided, however, that an extension may not be granted where an extension would result in approval of the application by operation of law. If no reconsideration request is filed, the decision of the City is final on the day after the last day reconsideration may be filed; if a request is filed, the decision of City is final on the date that the City Manager acts on the request.
- (3) Reconsideration is not permitted where reconsideration would result in a violation of applicable deadlines for action on an application.

Section 5A-12. Severability.

If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid and enforceable.

Chapter 18

STREETS AND SIDEWALKS

DIVISION 6. MINIMUM REQUIREMENTS FOR OCCUPATION OF RIGHTS-OF-WAY

Section 18-122. Application.

- (a) Occupant Defined. An “occupant” is a person who owns or controls permanent facilities in the rights-of-way, or (in the case of an application that will result in occupation of the rights-of-way), a person who will own or control permanent facilities in the rights-of-way.
- (b) Generally. Each occupant shall be subject to the requirements of this Section, except as may be provided in a valid franchise held by such occupant, or as may be prohibited by law; provided that, an occupant’s obligations may be limited to the duty to indemnify where:
 - (1) the facilities of an occupant (such occupant being a “secondary occupant”); are wholly within the facilities of another occupant;
 - (2) the secondary occupant holds no franchise, and has no right to enter into the rights-of-way, or perform any work on its facilities;
 - (3) the secondary occupant’s property may be treated for all purposes (including notice) as the property of the occupant within whose facilities the secondary occupant is located;
 - (4) the occupant within whose property the secondary occupant’s property is located accepts full responsibility and liability for complying with all obligations hereunder with respect to the facilities of the secondary occupant and can grant such access to the secondary occupant’s facilities as necessary to permit the City, without liability to the secondary occupant, to perform any action contemplated hereunder;
 - (5) the secondary occupant accepts joint and several liability for the acts and omissions of the occupant;
 - (6) the City owes no duties to the secondary occupant; and
 - (7) the secondary occupant and the occupant responsible for the secondary occupant’s facilities submit a jointly-signed writing affirming the provisions hereof.
- (c) Code Compliance. An occupant shall at all times comply with all applicable provisions of the City Code and regulations. Any permit and any franchise authorizing occupancy of the rights-of-way may be terminated for violations of the Code and regulations, or the terms of any permit, as provided in this Chapter. Costs associated with compliance shall be borne solely by the occupant, and not by City, except as explicitly provided in a franchise or in the Code or regulations.

- (d) *Inspections; Emergencies.* The City may inspect an occupant's property, and may as a condition of the inspection require occupant to disconnect or remove any facilities that may present a hazard to the inspectors. City may direct occupant to correct any non-compliance found. The occupant shall cooperate with all inspections and may be present for any inspection of its facility by the City. Notwithstanding the foregoing, in an emergency or when the facility threatens imminent harm to persons or property, City may, without notice, inspect, support, repair, disable, or remove any elements of the occupant's facilities and charge occupant the costs therefore, which costs may be recoverable from the bond provided by occupant.
- (e) *Contact.* The occupant shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person who may be contacted at all times in the event of an emergency.
- (f) *Resources.* An occupant shall maintain the persons and equipment necessary to allow it to respond immediately to any condition of or relating to the facility presenting a hazard to persons or property.
- (g) *No guarantee or warranty by City.* The City does not guarantee it has the authority necessary to permit an occupant to place or maintain a facility at any site. An occupant is responsible for ensuring it has all authorizations required in order to place a facility at a particular location. Permits improperly granted may be revoked. An occupant assumes all risks associated with placement of facilities in the rights-of-way.
- (h) *Insurance.* Occupant shall obtain and maintain insurance in the amounts and of types, and subject to such conditions, as may be specified by in any franchise, license or permit, or as may be specified by any other lawful means.
- (i) *Indemnities.* The occupant shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the City or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with any action, or failure to act of occupant or those acting on its behalf, and arising out of the construction, modification, maintenance or operation of facilities in the rights-of-way, except where instances where indemnification is prohibited by Maryland law.
- (j) *Performance and Removal Bond.*
- (1) Prior to issuance of a permit, the occupant shall file with the City, and shall maintain in good standing for so long as the facility is in place, a performance bond or other surety or form of security for the removal of the facility in the event

that the use is abandoned or the occupant's rights to occupy expire, or are revoked, or are otherwise terminated, or which may be drawn upon to reimburse City for any costs it incurs as a result of the failure of an occupant to comply with its obligations.

- (2) The amount of the performance bond will be specified by City and adjusted from time to time, following the valuation guidelines for determination of the amount of the bond required under Division 3. The City may increase or decrease the amount of the security based on the type and extent of the facilities of an occupant.
- (3) Where an occupant is required to obtain a bond under Division 3, the City may permit it to satisfy this requirement by a single bond covering construction of the facility and the ongoing occupancy of the rights-of-way.
- (k) *Adverse Impacts on Adjacent Properties.* Occupant shall place and maintain its facilities to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility, and is responsible for restoring property damages to their condition prior to the facility's installation, except as state law otherwise provides.
- (l) *Visual burden minimized. Maintenance of facilities.* All facilities shall be neatly placed and maintained, with unused facilities removed, so that the burden and visual impact of the facilities in the rights-of-way is minimized. Without limitation, it is not permissible to leave wires hanging, or leaving disconnected cabling and conduits on the sides of supporting structures in the rights-of-way.
- (m) *Noninterference with pedestrian and vehicular traffic.* Use by any occupant is secondary to use of the rights-of-way by vehicular and pedestrian traffic, and no facility may be placed in a manner that interferes with such uses. Without limitation, facilities may not be placed or maintained at locations that present a hazard to pedestrians or vehicular traffic (whether physically, or by obstructing sight lines); that violate ADA requirements; or that overhang any street, sidewalk, ramp or driveway unless the City has specifically approved that placement.
- (n) *Noninterference with public projects.* An occupant must promptly move, alter, temporarily relocate, or remove its facilities as necessary for any public project, including, but not limited to, installation of any publicly-owned utility, structure or facility, street widening or regrading, widening or installation of sidewalks, or as part of an undergrounding project. If an occupant fails to move, alter, temporarily relocate, or remove its facilities by a time specified by City, City may cause the facilities to be removed, and charge the occupant for the cost thereof, which cost shall be recoverable against the bond.
- (o) *Movement for others.* An occupant must promptly, and at no charge to the City, move, alter, or temporarily relocate its facilities as necessary to permit use of the rights-of-way by other franchised entities or entities holding special permits from City that require such

movement, alteration or relocation. An occupant may charge the entity that causes such work to be performed for the cost of the work, except as may otherwise be provided by applicable laws or contract.

- (p) *No Right, Title, or Interest.* Permissions granted by the City to occupy the rights-of-way shall not in any event constitute an easement on or an encumbrance against the public right-of-way. No right, title, or interest in the public right-of-way, or any part thereof, shall vest or accrue in an occupant by reason of issuance of such permissions.
- (q) *General Maintenance.* The site and the facility, including, but not limited to, all landscaping, fencing, and related equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the occupant permittee within forty eight (48) hours after notification from the City.
- (r) *Abandonment and termination.* If a facility is not operated for a continuous period of six (6) months, rights to occupy the rights-of-way it may be treated as abandoned and rights to occupy terminated. City will provide notice of abandonment, and unless an occupant contends in writing submitted within ten (10) days of the notice, that the facility has not been abandoned, the facility will be deemed abandoned and the rights to occupy terminated. If an occupant contends that the facility has not been abandoned, it must provide all facts on which it relies for that contention as part of the submission to City. The City may then determine whether or not the facility is abandoned. If the facility is deemed or determined to be abandoned, City may direct the facility to be removed, and if not removed City by a time specified by the City, City may remove the facility and charge the occupant the cost therefore, which cost may be charged against the bond.
- (s) *Records.* Any occupant must maintain complete and accurate copies of all applications filed, and all permits and other regulatory approvals issued in connection with the facility, and maintain full and complete records identifying and showing the location of the facilities of occupant in the rights-of-way. Copies of the record shall be promptly provided to City on request, unless production of the records is prohibited by law. Maps of facilities must be provided in a format that will permit the information to be incorporated in the City's GIS system.

BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately upon the date of its passage.

PASSED by the Council of the City of Greenbelt, Maryland, at its regular meeting of _____, 2018.

Emmett V. Jordan, Mayor

ATTEST:

Bonita Anderson, City Clerk

Key:

Underscoring indicates language added to existing law.

~~Overstriking~~ indicates language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.

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

ALEXANDER & CLEAVER

ATTORNEYS AT LAW

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Admitted to Practice in State

March 6, 2019

City of Greenbelt
25 Crescent Road
Greenbelt, Maryland 20770

All,

I have reviewed the Right-of-Way Use Agreement as well as the Application Form instructions for the small cell wireless permit, and I have the following comments as indicated below. Surprisingly, the Agreement and the Permit provide substantial protections for the City and it is certainly not one-sided. However, I do have a few comments based upon discussions from Greenbelt.

- Under Paragraph 2.1, the paragraph should begin “Subject to any condition as indicated in the permit by the City,...”
- At end of Paragraph 2.1 please insert, “All items as indicated in this paragraph are subject any and all conditions as indicated in the City permit”.
- Under Paragraph 2.5, the first sentence should be revised to state, “No towers may be placed in the rights-of-way unless company demonstrates...” and insert “in detail with specific reasoning”...
- At the end of Paragraph 2.5, insert “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.”
- Under Paragraph 2.10, in the second line, change the word “must” to “shall”.
- Under Paragraph 2.10, this paragraph deals with the RF emissions. The second to last sentence in that paragraph states, “On request, or to the extent the 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”. I would like to insert “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."

- Under Paragraph 4, which is somewhat surprising, the Agreement is only for a term of five years and shall continue in force and effect until properly terminated by either party. Either party may terminate the Agreement at the end of the initial five-year term by giving written notice of its' intention to do so greater than 180 days before the proposed date of termination. All of the Company's duties relating to the use of the right-of-way and the duties to indemnify the City survive termination until the facilities are removed. And, then, the Agreement goes on to provide "it is understood and agreed that the decision of whether to renew or 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 made then obtained, and the Company has no reasonable expectation of renewal or termination". This is somewhat surprising that it will be a new negotiation and renewal as opposed to an automatic renewal.
- Under Paragraph 12, the last sentence states that "the City may require additional insurance if, in the City's reasonable view, the facilities present additional risks to it, the public or property". The insurance limitation of one million dollars is to low and should be increased.
- Under Paragraph 12.4, it is good that the Company provides that the General Liability Policy is to contain an endorsement to name the City, it's officers, officials, agents, and employees as additional insureds which provides this additional direct protection.
- Under Paragraph 12.7, there is an indication that the Performance Bond is \$50,000.00 which I believe is too low.

With regard to the application form:

- Under the second paragraph, the first sentence states "Each application may be for up to ten wireless telecommunications facilities provided that the facilities are of similar design intended to be placed in a similar manner as part of a single project". This paragraph is a little confusing, but, tends to indicate that each application shall only include ten facility locations. Obviously for Greenbelt, there will be far more than 10 of these pole locations which, according to this language, is going to require a number of different applications and associated fees. I am not sure if that is the intent, but, that is how I am reading the instruction.
- Under the fifth paragraph, the sentence at the end of that paragraph should read, "This preapplication meeting is strongly encouraged".
- At the end of the final paragraph, add "All engineering plans should be in detail with specifications and facility types clearly indicated".

Please accept my comments and if you have further questions, please feel free to contact the undersigned.

Very truly yours,

Todd K. Pounds

TKP/cal

City Council Work Sessions Agenda Item Report

Meeting Date: March 11, 2020

Submitted by: Shaniya Lashley-Mullen

Submitting Department: Administration

Item Type: Work Session Item

Agenda Section:

Subject:

Memorial Wall Piece

Suggested Action:

Reference: Memo, D. Moran - 03/05/2020
Resolution Number 919

Attachments:

[Memo - D. Moran, 03-05-2020.pdf](#)

[Resolution #919.pdf](#)

CITY OF GREENBELT, MARYLAND

TO: Nicole Ard
City Manager

FROM: David E. Moran *DEM*
Assistant City Manager

DATE: March 5, 2020

SUBJ: Status of Wall of Honor Memorial

Background

In June 1999, Council approved a Memorial Action Plan which established the Wall of Honor memorial at the Greenbelt Community Center for deceased Greenbelt residents who made a significant contribution to the quality of life in Greenbelt. The Wall of Honor is also intended to replace the naming of streets, buildings, parks, etc. in memory of deceased residents. Staff was directed to work on three action steps.

1. Enact changes to the City's Memorial Guidelines.
2. Solicit artists for proposals to design and construct the Memorial.
3. Establish a memorial implementation task force to identify deceased citizens to include on the memorial.

As envisioned by the Community Relations Advisory Board (CRAB), the Wall of Honor would contain the names of inductees on some type of large plaque or display. There would also be biographical information (podium with a book, kiosk, etc.) about the inductees.

In September 2000, Council passed Resolution 919 which revised the Memorial Guidelines and conceptually established the Wall of Honor memorial. The City's Guide to Memorials contained the process for making a nomination to the Wall of Honor.

The next step to create the Wall of Honor was the solicitation of design proposals. In February 2005, staff issued a Call for Designers. It was mailed to 15 entities including arts colleges, design firms and professional associations. It was also emailed to a list of 75 local artists and arts groups. Two responses were received and staff was disappointed by the low response rate. Staff evaluated the two proposals. The first proposal was non-responsive to the criteria listed in the Call. The second proposal was from a local artist/designer and staff determined it to be acceptable to the criteria, although there was some concern that it would only show 100 names at a time.

Due to staff workload, there was not follow-up on this project. Funds (\$13,000) were included in the Capital Projects Fund in Fiscal Years 2002-2013 to complete this project. The project was not funded in FY 2014. Staff does not believe \$13,000 is sufficient to hire a professional to design and construct the Wall of Honor. (The second proposal referenced above had a price of \$15,700 in 2005.)

Memorial Construction - Next Steps

If Council still desires a Wall of Honor memorial, two options for moving forward to implement a Wall of Honor memorial are suggested.

The first option would be to update and re-issue the Call for Designers, evaluate proposals in conjunction with stakeholder groups (CRAB, AAB, etc.), and recommend a design for Council approval. This option is consistent with Council's direction in 1999. If this option is pursued, staff would contact the individual who submitted the previous proposal, explain the situation and issue a new RFP or similar document. There is significant workload associated with this option.

The second option would be to contract for the installation of a large tree plaque. Multiple vendors produce these plaques (usually to recognize contributions as part of a donor campaign) and a variety of styles are available. They are often seen in churches, hospitals and other public buildings. Over the years, people have seen these plaques and suggested this type of design for the Wall of Honor (see attached examples).

This would be the fastest and least expensive (approximately \$10,000 in 2014) option. When this "plaque" idea was suggested following Council's approval of Resolution 919, some concerns were expressed by members of the arts community that such a plaque was not an appropriate fit for the Community Center which prompted the direction to solicit proposals from artists.

Direction is needed on how to proceed with design and construction of the Wall of Honor, as well as its priority given workload and other priorities/projects.







Introduced: September 11, 2000
First Reading: Mr. White
Passed: September 25, 2000
Posted: September 26, 2000
Effective: September 25, 2000

RESOLUTION NUMBER 919

A RESOLUTION TO REPEAL RESOLUTION 774 AND ESTABLISH NEW MEMORIAL GUIDELINES FOR THE PURPOSE OF COMMEMORATING AND HONORING INDIVIDUAL CITIZENS WHO HAVE MADE SIGNIFICANT CONTRIBUTIONS TO THE CITY OF GREENBELT AND TO PROVIDE FOR THEIR RECOGNITION ON THE GREENBELT WALL OF HONOR

BE IT RESOLVED by the Council of the City of Greenbelt, Maryland, that the Memorial Guidelines established for the purpose of commemorating and honoring citizens who have made significant contributions to the City of Greenbelt, Maryland are hereby enacted to read as follows:

Section I. Eligibility for Commemoration.

Any person who has been deceased for at least three years, has lived in Greenbelt and who has made a significant contribution to the City of Greenbelt or its citizens is eligible for commemoration on the Wall of Honor Memorial.

Section II. Nominations for Commemoration.

Organizations, elected officials, and individuals within the City of Greenbelt may nominate worthy persons for commemoration on the Wall of Honor Memorial. However, city advisory boards and committees shall not be permitted to nominate persons for commemoration.

Section III. Form of Nomination.

A nomination package to commemorate a person shall be submitted in writing to the City Clerk. The nomination package must include the following:

- An extensive, detailed biography of the individual
- Five letters of nomination
- A suggested sentence or phrase to summarize the nominee's contribution

Section IV. Consideration by the Community Relations Advisory Board.

The City Clerk shall refer completed nominations to the Community Relations Advisory Board for consideration and recommendation. The Board shall evaluate the merits of the nomination

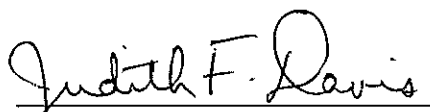
and may at its discretion request an oral presentation of the nomination. The Board may seek the advice of other boards, committees or organizations that may have a special interest in the person nominated. The Board may conduct one or more public hearings. In compliance with Maryland law, the board may meet in executive session. Following its evaluation, the Board shall make a recommendation to the City Council.

Section V. Final Determination by the City Council.

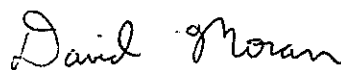
1. The City Council, upon receipt of recommendation from the Community Relations Advisory Board, shall make its determination in accordance with normal City Council procedures.
2. Only those Citizens who have made significant and outstanding contributions to the City of Greenbelt shall be recognized.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon passage.

PASSED by the Council of the City of Greenbelt, Maryland, at its regular meeting of September 25, 2000.


Judith F. Davis, Mayor

ATTEST:


David Moran, Acting City Clerk