



Howard County Government

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County Executive
Allan H. Kittleman

Howard County Council
Mary Kay Sigaty, Chairperson
District 4
Calvin Ball, Vice Chairperson
District 2
Jon Weinstein
District 1
Jennifer Terrasa
District 3
Greg Fox
District 5

September 19, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket 17-79

Dear Secretary Dortch:

The County Executive and County Council writes to express our concerns about the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment.

Howard County Government represents 330,000 residents and has already passed legislation to allow small cell installations needed to provide our residents and visitors with all the benefits small cell and 5G technology will have to offer.

Throughout the development of this legislation, Howard County Government worked with providers to ensure, it met their needs, while protecting the health, safety and welfare of our residents.

As a result of this legislation (CB26-2017), Howard County Government permits the deployment of the new technology through our *AGREEMENT FOR USE OF PUBLIC STREET LIGHTS* and *AGREEMENT FOR USE OF HOWARD COUNTY RIGHT-OF-WAY*. (Please see attached.)

While we appreciate the Commission's efforts to ensure the growth of cutting-edge broadband services for all Americans, we strongly oppose the Commission's consideration of significant broadband deployment preemptions.

Howard County Government objects to any rules that usurp local authority to manage the public rights-of-way, including rules that would preempt localized decisions as to the location of small cell infrastructure and aesthetic concerns.

Howard County Government is proud of the cooperative partnerships with our local cable, gas, electric and telecommunications providers.

To date, we have an agreement covering 21 small cell nodes, eight of which are substantially complete. We have issued permits to small cell providers without incident and anticipate more requests as the technology advances.

The Commission's proposal for fee caps, "deemed granted" remedies, mandated access to rights-of-way, municipal poles and other public property by small cell providers are unreasonable.

Jurisdictions must consider complex and site-specific factors when evaluating requests to install infrastructure in the public rights-of-way.

The factors such as aesthetics, space constraints, ADA compliance, damage to other utilities, public infrastructure and other site-specific issues that are unique to each request.

Fee caps prevent jurisdictions from recouping the actual costs associated with processing applications; forcing taxpayers to subsidize a for-profit company's access to public assets. This should be factored into the wireless providers' business plan as the cost of doing business.

The additional burden of "deemed granted" remedies that reduce our review time, forces jurisdictions to give unfair priority to small cell applications over reviewing other essential services such as electric, gas, sewer and water.

Each jurisdiction possesses the expertise to manage their public assets of land use and rights-of-way on behalf of its citizens.

We work with all businesses to provide the best infrastructure to our residents and oppose any effort to restrict local authority, while limiting the obligations providers have to our community.

Our primary concern is addressing safety while facilitating technology advances. Below are some examples that illustrate the need for diligence in review of documentation and construction.

The typical fiberglass street light pole, when damaged, can be removed from the roadway or walkway by a single worker because the carrying weight is less than 50 pounds.



Photo 1 - Damaged Fiberglass Street moved by hand

The average kitchen refrigerator weights about 400 pounds. The outfitted 35' tall metal street light weighs twice as much as the average kitchen refrigerator. The drawings and construction need to address hazards to the traveling public.



Photo 2 - Metal Street Light w/Antenna requires equipment to move

The larger, much heavier street light pole requires a much larger foundation than a simple fiberglass street light and the hazards that accompany the additional weight and construction along the roadway must be addressed: The foundation construction is very similar to construction of a traffic signal pole.

The following are some of the tasks required to facilitate antenna in the public Right-of-Way:

- 1) Review of the pole structural design by a professional engineer qualified in antenna design – The County pays a consultant for this service.
- 2) Foundation Drilling 8' deep, 2' diameter hole – Confirm required separation from County infrastructure and hole made safe until backfilled. Verify geotechnical recommendations when hole collapsed due to weather, or waiting weeks for concrete. The drilling typically requires multiple attempts and traffic control set-ups because unground utility conflicts are frequently encountered.
- 3) Erecting Foundation Reinforcing Steel – verify size, type and spacing.



Photo 3 - Foundation hole with reinforcing steel

- 4) Pouring Concrete Foundation – verify depth diameter, conduit, bolt setting technique



Photo 4 - Concrete Foundation Pour

- 5) Erect Pole – Verify concrete allowed sufficient time and conditions to cure, breakaway bolts installed, and pole is plumb.
- 6) Field verify As Built Drawing – Confirm that equipment loading is less than or equal to approved structural drawings and that penetrations in pole do not compromise structural integrity. Confirm that street light is functioning properly. Confirm restoration complete.



Photo 5 - Restoration by County after contract unable to clear construction debris from R-O-W

*Please note that the 900 pounds street light plus antenna weight does not include back-up batteries. Batteries substantially increase weight and introduce a chemical hazard which is over approximately, 10 feet over-head. Mitigation of battery hazards should be clearly detailed during permitting and inspected during construction.

Presently, 14 firms have agreements for use of the County Right-of-Way. One has entered into an agreement, as noted above, covering 21 small cell nodes. Three other firms have requested agreement forms to add small cell nodes.

A standard is needed to ensure that legitimate communication companies have access to the Right-of-Way. Our standard is accepted by the Public Service Commission. Allowing unauthorized entities to construct 5G services or any other technology on County property would create many unintended consequences.

We urge you to oppose this declaratory ruling and report and order.

Respectfully,

Allan H. Kittleman
County Executive, Howard County

Mary Kay Sigaty
Chairperson, Howard County Council

Enclosures

Introduced 4/3/17
Public Hearing 4/19/17
Council Action 5/1/17
Executive Action 5/5/17
Effective Date 7/5/17

County Council of Howard County, Maryland

2017 Legislative Session

Legislative Day No. 6

Bill No. 26 -2017

Introduced by: The Chairperson at the request of the County Executive

AN ACT requiring a permit for the installation of certain wireless facilities on public street lights; defining certain terms; amending certain definitions; requiring certain information in support of an application for a permit; requiring certain agreements; requiring that certain agreements include fair compensation; providing for the review of applications; authorizing certain fees; and generally related to public rights-of-way in Howard County.

Introduced and read first time April 3, 2017. Ordered posted and hearing scheduled.

By order Jessica Feldmark
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on April 19, 2017.

By order Jessica Feldmark
Jessica Feldmark, Administrator

This Bill was read the third time on May 1, 2017 and Passed ✓, Passed with amendments ✓, Failed .

By order Jessica Feldmark
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 3rd day of May, 2017 at 1 a.m./p.m.

By order Jessica Feldmark
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive May 5, 2017

Allan H. Kittleman
Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **Section 1. *Be It Enacted*** by the County Council of Howard County, Maryland that the Howard
2 *County Code is amended as follows:*

- 3
- 4 1. *By amending Title 18 “Public Works”*
5 *Subsection (a) and Subsection (c), both of Section 18.205 “Roads, bridges, and rights-of-*
6 *way – Obstructions, damage, and drainage”.*
- 7
- 8 2. *By adding Title 18 “Public Works”*
9 *Section 18.206A. “Wireless Facilities on Public Street Lights”.*

10

11 **Title 18. Public Works.**

12 **Subtitle 2. Roads.**

13

14 **Section 18.205. Roads, bridges, and rights-of-way--Obstructions, damage, and drainage.**

15 (a) *Definitions:*

16 (1) In this [[section and in section 18.206]] SECTION, SECTION 18.206 AND SECTION
17 18.206A, the following terms have the meanings indicated:

18 (2) *Department* means the Howard County Department of Public Works.

19 (3) *Director* means the Director of the Department.

20 (4) *Public property* means a County-owned or controlled road, road right-of-way, shoulder,
21 sidewalk, ditch line, bridge, culvert, curbing, drainage facility, utility easement, or any
22 appurtenances or signs associated with any of the above.

23 (5) (i) *Structure* means anything constructed, the use of which requires permanent or
24 temporary location on the ground or attached to something having a temporary or
25 permanent location on the ground.

26 (ii) *Structure* does not include:

- 27 a. A newspaper box, or a mailbox meeting the standards of the United States
28 Postal Service, provided that each is mounted on a post in conformance with
29 "A Guide for Erecting Mailboxes on Highways" by the American Association
30 of State Highway and Transportation Officials, Third Edition, dated 1994;

1 b. A utility pole or utility box WHICH ARE NOT A PART OF A WIRELESS FACILITY AS
2 DEFINED IN SECTION 18.206A OF THIS SUBTITLE; or

3 c. A sign permitted in a right-of-way under subtitle 5 "Signs" of title 3
4 "Buildings" of the Howard County Code.

5 (c) Structures on Public Property. A person may not install temporary or permanent structures
6 in, on, over, through, or across public property [[without]]:

7 (1) WITHOUT the permission of the Director; OR

8 (2) UNLESS THE PERSON HAS AUTHORITY TO INSTALL THE STRUCTURE WITHOUT PERMISSION
9 UNDER STATE LAW, OR UNDER A FRANCHISE OR LICENSE ISSUED BY THE COUNTY.

10
11 **SECTION 18.206A. WIRELESS FACILITIES ON PUBLIC STREET LIGHTS.**

12 (A) *APPLICATION FOR A PERMIT.* A PERMIT IS REQUIRED FOR THE INSTALLATION, OPERATION,
13 MAINTENANCE, AND REMOVAL OF WIRELESS FACILITIES ON A PUBLIC STREET LIGHT. A PERMIT
14 SHALL NOT BE ISSUED BY THE DIRECTOR UNLESS AND UNTIL AN AGREEMENT FOR USE OF PUBLIC
15 STREET LIGHTS SETTING FORTH THE TERMS AND CONDITIONS FOR THE INSTALLATION OF THE
16 WIRELESS FACILITIES HAS BEEN REACHED BETWEEN THE COUNTY AND THE APPLICANT, ~~WHICH~~
17 ~~SHALL INCLUDE FAIR COMPENSATION TO THE COUNTY FOR APPLICANT'S USE OF THE PUBLIC~~
18 ~~STREET LIGHTS. AND WHICH AGREEMENT MAY INCLUDE THE ITEMS LISTED IN SUBSECTION (D) OF~~
19 THIS SECTION.

20 (B) *DEFINITIONS.* IN ADDITION TO THE TERMS PREVIOUSLY DEFINED IN THIS SUBTITLE, THE
21 FOLLOWING TERMS SHALL HAVE THE MEANINGS INDICATED:

22 (1) *PUBLIC RIGHT-OF-WAY* MEANS THE ROADS LISTED AS OWNED AND MAINTAINED BY THE
23 COUNTY IN THE "HOWARD COUNTY MASTER ROAD BOOK" AND WHICH ARE CLASSIFIED
24 AS ARTERIAL OR COLLECTOR.

25 (2) *PUBLIC STREET LIGHT* MEANS THE EXISTING STRUCTURE OWNED BY THE COUNTY,
26 PRIMARILY DESIGNED FOR LIGHTING A PUBLIC RIGHT-OF-WAY, INCLUDING THE SUPPORTING
27 POLE, LUMINAIRE, ARMS, LEASED ELECTRIC WIRES, FOUNDATIONS, INTERNAL DIVIDERS,
28 HAND HOLES, VAULTS, PEDESTALS, AND BASES. A PUBLIC STREET LIGHT DOES NOT
29 INCLUDE:

30 (i) A LIGHTING SYSTEM ATTACHED TO A UTILITY POLE, TRAFFIC SIGNAL POLE, BUILDING,
31 OR SIMILAR STRUCTURE; OR

1 (II) ANY FACILITY THAT IS PRIVATELY OWNED.

2 ~~(3) WIRELESS FACILITY MEANS A FACILITY AT A FIXED LOCATION THAT WIRELESSLY CONNECTS~~
3 ~~TO MOBILE STATIONS AND IS USED TO PROVIDE PERSONAL WIRELESS SERVICES AS DEFINED~~
4 ~~AT 47 U.S.C. 332(c)(7). WIRELESS FACILITY INCLUDES:~~

5 (3) WIRELESS FACILITY.

6 (I) WIRELESS FACILITY MEANS A FACILITY THAT:

7 A. IS LICENSED OR AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION;

8 B. IS AT A FIXED LOCATION; AND

9 C. ENABLES WIRELESS COMMUNICATIONS BETWEEN USER EQUIPMENT AND A
10 COMMUNICATIONS NETWORK.

11 (II) A WIRELESS FACILITY INCLUDES:

12 A. EQUIPMENT ASSOCIATED WITH WIRELESS COMMUNICATIONS SERVICES SUCH AS
13 PRIVATE, BROADCAST, AND PUBLIC SAFETY SERVICES;

14 B. UNLICENSED WIRELESS SERVICES AND FIXED WIRELESS SERVICES SUCH AS
15 MICROWAVE BACKHAUL;

16 ~~(H)C.~~ ALL ELEMENTS OF THE FACILITY, INCLUDING INCLUDING, WITHOUT
17 LIMITATION, ANTENNAS, CABINETS, CABLES, WIRES, BACK-UP POWER SUPPLIES, AND
18 RADIO UNITS; AND

19 ~~D.(H)~~ FACILITIES IN, AT, OR NEAR THE WIRELESS FACILITY AND ASSOCIATED WITH
20 THE FACILITY'S OPERATIONS, INCLUDING ELECTRIC METERS AND ELECTRICAL
21 WIRING WHETHER OR NOT IRRESPECTIVE OF WHETHER THE METERS AND WIRING
22 ARE OWNED OR MAINTAINED BY THE SAME PERSON THAT OWNS OTHER PORTIONS OF
23 THE WIRELESS FACILITY.

24 (4) *WIRELESS PROVIDER* MEANS THE ENTITIES THAT ARE AUTHORIZED BY THE FEDERAL
25 COMMUNICATION COMMISSION TO PROVIDE PERSONAL WIRELESS SERVICES AS DEFINED AT
26 47 U.S.C. SECTION 332(c)(7).

27 (C) *INFORMATION REQUIRED.* THE COUNTY SHALL CREATE AN APPLICATION FORM THAT MAY
28 REQUIRE AN APPLICANT SHALL TO SUBMIT THE FOLLOWING INFORMATION IN THE REQUEST TO USE
29 THE PUBLIC STREET LIGHTS, AND SUCH OTHER INFORMATION AS THE COUNTY MAY
30 REQUEST IN CONNECTION WITH ITS REVIEW OF THE APPLICATION:

31 (1) A TECHNICAL DESCRIPTION OF THE PROPOSED WIRELESS FACILITIES INCLUDING DETAILED

1 SPECIFICATIONS AND DIAGRAMS ACCURATELY DEPICTING THE PROPOSED WIRELESS
2 FACILITIES, AND THE LOCATIONS OF THE PUBLIC STREET LIGHTS ON THE PUBLIC RIGHTS-
3 OF-WAY THE APPLICANT PROPOSES TO USE;

4 (2) A DETAILED DEPLOYMENT PLAN DESCRIBING CONSTRUCTION OF THE WIRELESS FACILITIES
5 PLANNED FOR THE 12-MONTH PERIOD FOLLOWING THE ISSUANCE OF THE PERMIT;

6 (3) ENGINEERING CERTIFICATIONS RELATING TO THE PROPOSED CONSTRUCTION;

7 (4) A STATEMENT DESCRIBING THE APPLICANT'S INTENTIONS WITH RESPECT TO COLLOCATION,
8 AND IF THE APPLICANT IS NOT A WIRELESS PROVIDER, THE IDENTITY OF THE WIRELESS
9 PROVIDER(S) USING THE PROPOSED WIRELESS FACILITIES;

10 (5) A STATEMENT DEMONSTRATING THE APPLICANT'S DUTY TO COMPLY WITH APPLICABLE
11 SAFETY STANDARDS FOR THE PROPOSED ACTIVITIES IN THE PUBLIC RIGHT-OF-WAY
12 INCLUDING EMERGENCY RESPONSE PLAN, SCHEDULE OF MAINTENANCE, OPERATION,
13 RELOCATION, AND REMOVAL OF THE WIRELESS FACILITIES AT APPLICANT'S SOLE COST; ~~AND~~

14 (6) SUCH OTHER INFORMATION AS THE COUNTY MAY REQUIRE IN AN APPLICATION ~~FORM~~.
15 FORM; AND

16 (7) SUCH OTHER INFORMATION AS THE COUNTY MAY REQUIRE IN ITS REVIEW OF THE
17 APPLICATION.

18 (D) AGREEMENT FOR USE OF PUBLIC STREET LIGHTS. AN AGREEMENT FOR USE OF PUBLIC STREET
19 LIGHTS SHALL INCLUDE TERMS AND CONDITIONS FOR THE INSTALLATION OF THE WIRELESS
20 FACILITIES AS AGREED UPON BY THE APPLICANT AND THE COUNTY, WHICH SHALL INCLUDE FAIR
21 COMPENSATION TO THE COUNTY FOR THE APPLICANT'S USE OF THE PUBLIC STREET LIGHTS AND
22 WHICH MAY ALSO INCLUDE:

23 (1) PROVISIONS THAT ALLOW FOR THE ROUTINE MAINTENANCE OF THE WIRELESS FACILITY;

24 (2) PROVISIONS THAT ALLOW FOR THE REPLACEMENT OF A WIRELESS FACILITY WITH ANOTHER
25 SMALL WIRELESS FACILITY THAT IS SUBSTANTIALLY SIMILAR OR SMALLER IN SIZE, WEIGHT,
26 AND HEIGHT;

27 (3) PROVISIONS THAT ALLOW FOR MULTIPLE WIRELESS FACILITIES;

28 (4) THE LENGTH OF TIME FOR WHICH AN APPLICATION MAY BE CONSIDERED; OR

29 (5) THE LENGTH OF TIME FOR WHICH A PERMIT WILL BE VALID.

30 ~~(D) DISCRETION OF DIRECTOR. A PERMIT SHALL NOT BE ISSUED WITH RESPECT TO ANY PUBLIC~~
31 ~~STREET LIGHT, WHERE, IN THE JUDGMENT OF THE DIRECTOR, SUFFICIENT CAPACITY NO LONGER~~

1 (E) DISCRETION OF DIRECTOR. THE DIRECTOR:

2 (1) MAY NOT ISSUE A PERMIT WHERE, IN THE JUDGMENT OF THE DIRECTOR, SUFFICIENT
3 CAPACITY NO LONGER EXISTS FOR ADDITIONAL WIRELESS FACILITIES TO BE PLACED IN THE
4 PROPOSED LOCATION WITHOUT JEOPARDIZING THE PHYSICAL INTEGRITY OF PUBLIC WATER
5 AND SEWER AND OTHER UTILITIES OR OTHER FACILITIES ALREADY PRESENT IN THE
6 PROPOSED LOCATION, OR THE SAFE AND EFFICIENT VEHICULAR OR PEDESTRIAN USE OF THE
7 PUBLIC RIGHT-OF-WAY; OR WHERE THE USE OF THE PUBLIC STREET LIGHT OR WORK
8 ASSOCIATED WITH THE USE OR MAINTENANCE OF THE WIRELESS FACILITY WOULD VIOLATE
9 APPLICABLE LAW.

10 (2) SHALL REVIEW THE APPLICATION FOR A PERMIT IN LIGHT OF THE APPLICATION'S
11 CONFORMITY WITH APPLICABLE REGULATIONS AND COMMUNITY DESIGN GUIDELINES AND
12 SHALL ISSUE A PERMIT ON NONDISCRIMINATORY TERMS AND CONDITIONS.

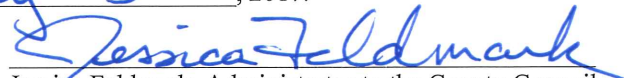
13 ~~(EF)~~ *FEE FOR PERMIT REVIEW.* THE COUNTY SHALL CHARGE AND AN APPLICANT SHALL PAY AN A
14 REASONABLE APPLICATION REVIEW FEE FOR THE REVIEW OF A PERMIT ISSUED UNDER THIS
15 SECTION. THE PUBLIC STREET LIGHT PERMIT REVIEW FEE SHALL BE ADOPTED BY RESOLUTION OF
16 THE COUNTY COUNCIL AND SHALL BE IN ADDITION TO ANY COMPENSATION AGREED TO BY THE
17 PARTIES UNDER THE AGREEMENT FOR USE OF THE PUBLIC STREET LIGHTS.

18 ~~(FG)~~ *USE OF PUBLIC RIGHT-OF-WAY.* NOTHING IN THIS SECTION SHALL AFFECT OR LIMIT THE
19 COUNTY'S RIGHT TO CHARGE A SEPARATE FEE OR TO REQUIRE A SEPARATE CONSENT FOR ACCESS
20 TO OR THE USE OF THE PUBLIC RIGHTS-OF-WAY. ANY PERMIT GRANTED PURSUANT TO THIS
21 SECTION SHALL BE IN ADDITION TO, AND NOT IN LIEU OF, THE FEE AND PERMIT REQUIRED TO
22 UTILIZE AND CONSTRUCT WITHIN THE PUBLIC RIGHT-OF-WAY.

23
24 ***Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland that***
25 ***this Act shall become effective 61 days after its enactment.***

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on May 5, 2017.


Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2017.

Jessica Feldmark, Administrator to the County Council

Amendment 1 Amendment 1 to Council Bill No. 26-2017

BY: The Chairperson at the
request of the County Executive

Legislative Day No.
Date: May 1, 2017

Amendment No. 1

(This amendment inserts a missing word.)

- 1 On page 3, in line 6, before "FACILITY" insert "WIRELESS".

ADOPTED 5/1/17
FAILED _____
SIGNATURE Jessica Addmark

Amendment 1 to Council Bill No. 26-2017

BY: The Chairperson at the
request of the County Executive

Legislative Day No. 7
Date: May 1, 2017

Amendment No. 1

(This amendment:

1. Clarifies when a person can place a structure on public property;
2. Adds a section listing possible items that may be included in the Agreement;
3. Clarifies the definition of Wireless Facility;
4. Clarifies the process for obtaining a permit;
5. Clarifies that a permit will be issued in light of the applicant's conformity with applicable regulations; and
6. Clarifies that fees will be reasonable.)

1 On page 1, in line 5, after "(a)", insert "and Subsection (c), both".

2

3 On page 2, in line 5, insert:

4 "(c) Structures on Public Property. A person may not install temporary or permanent structures
5 in, on, over, through, or across public property [[without]]:

6 (1) WITHOUT the permission of the Director; or

7 (2) UNLESS THE PERSON HAS AUTHORITY TO INSTALL THE STRUCTURE WITHOUT PERMISSION
8 UNDER STATE LAW, OR UNDER A FRANCHISE OR LICENSE ISSUED BY THE COUNTY."

9

10 On page 2, in line 11, strike " , WHICH".

11

12 On page 2, strike lines 12 and 13, inclusive and in their entirety and substitute:

13 "AND WHICH AGREEMENT MAY INCLUDE THE ITEMS LISTED IN SUBSECTION (D) OF THIS SECTION.".

14

15 On page 2, strike lines 26, 27 and 28, inclusive and in their entirety and substitute:

16 "(3) WIRELESS FACILITY.

17 (I) WIRELESS FACILITY MEANS A FACILITY THAT:

18 A. IS LICENSED OR AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION;

19 B. IS AT A FIXED LOCATION; AND

20 C. ENABLES WIRELESS COMMUNICATIONS BETWEEN USER EQUIPMENT AND A

1 COMMUNICATIONS NETWORK.

2 (II) A WIRELESS FACILITY INCLUDES:

3 A. EQUIPMENT ASSOCIATED WITH WIRELESS COMMUNICATIONS SERVICES SUCH AS
4 PRIVATE, BROADCAST, AND PUBLIC SAFETY SERVICES;

5 B. UNLICENSED WIRELESS SERVICES AND FIXED WIRELESS SERVICES SUCH AS
6 MICROWAVE BACKHAUL;”.

7
8 On page 2, in line 29:

- 9 1. Strike “(I)” and substitute “C.”;
- 10 2. Strike “INCLUDING” and substitute “INCLUDING, WITHOUT LIMITATION.”; and
- 11 3. After “WIRES,” insert “BACK-UP POWER SUPPLIES.”.

12
13 On page 2, in line 31, strike “(II)” and substitute “D.”.

14
15 On page 3, in line 2, strike “WHETHER OR NOT” and substitute “IRRESPECTIVE OF WHETHER THE
16 METERS AND WIRING ARE”.

17
18 On page 3, inline 7, after the first “THE”, insert “COUNTY SHALL CREATE AN APPLICATION FORM
19 THAT MAY REQUIRE AN” and, in the same line, strike “SHALL” and substitute “TO”.

20
21 On page 3, in line 8, strike “, AND SUCH OTHER INFORMATION AS THE COUNTY MAY”.

22
23 On page 3, in line 9, strike “REQUEST IN CONNECTION WITH ITS REVIEW OF THE APPLICATION”.

24
25 On page 3, in line 23, strike the second “AND”.

26
27 On page 3, in line 24, strike “FORM.” and substitute “FORM; AND”.

28
29 On page 3, after line 24, insert:

30 “ (7) SUCH OTHER INFORMATION AS THE COUNTY MAY REQUIRE IN ITS REVIEW OF THE
31 APPLICATION.”

1 (D) AGREEMENT FOR USE OF PUBLIC STREET LIGHTS. AN AGREEMENT FOR USE OF PUBLIC STREET
2 LIGHTS SHALL INCLUDE TERMS AND CONDITIONS FOR THE INSTALLATION OF THE WIRELESS
3 FACILITIES AS AGREED UPON BY THE APPLICANT AND THE COUNTY, WHICH SHALL INCLUDE FAIR
4 COMPENSATION TO THE COUNTY FOR THE APPLICANT'S USE OF THE PUBLIC STREET LIGHTS AND
5 WHICH MAY ALSO INCLUDE:

6 (1) PROVISIONS THAT ALLOW FOR THE ROUTINE MAINTENANCE OF THE WIRELESS FACILITY;

7 (2) PROVISIONS THAT ALLOW FOR THE REPLACEMENT OF A WIRELESS FACILITY WITH ANOTHER
8 SMALL WIRELESS FACILITY THAT IS SUBSTANTIALLY SIMILAR OR SMALLER IN SIZE, WEIGHT,
9 AND HEIGHT;

10 (3) PROVISIONS THAT ALLOW FOR MULTIPLE WIRELESS FACILITIES;

11 (4) THE LENGTH OF TIME FOR WHICH AN APPLICATION MAY BE CONSIDERED; OR

12 (5) THE LENGTH OF TIME FOR WHICH A PERMIT WILL BE VALID.”.

13
14 On page 3, strike lines 25 and 26, inclusive and in their entirety and substitute:

15 “(E) DISCRETION OF DIRECTOR. THE DIRECTOR:

16 (1) MAY NOT ISSUE A PERMIT WHERE, IN THE JUDGMENT OF THE DIRECTOR, SUFFICIENT
17 CAPACITY NO LONGER”.

18
19 On page 4, after line 1, insert:

20 “(2) SHALL REVIEW THE APPLICATION FOR A PERMIT IN LIGHT OF THE APPLICATION'S
21 CONFORMITY WITH APPLICABLE REGULATIONS AND COMMUNITY DESIGN GUIDELINES AND
22 SHALL ISSUE A PERMIT ON NONDISCRIMINATORY TERMS AND CONDITIONS.”.

23
24 On page 4, in line 2, strike “E” and substitute “F” and, in the same line, strike the last “AN” and
25 substitute “A REASONABLE”.

26
27 On page 4, in line 7, strike “F” and substitute “G”.

ADOPTED as amended 5/1/17
FAILED
SIGNATURE Jessica Feldman

AGREEMENT FOR USE OF HOWARD COUNTY RIGHT-OF-WAY

This **Agreement for Use of Howard County Right-of-Way** (this “Agreement”) is made as of the ____ day of _____, 2018 by and between Howard County, Maryland (the “County”), a body corporate and politic and _____ (the “Company”), a _____, organized in the State of _____ and qualified to conduct business in and in good standing with the State of Maryland and claims that it is a public service company within the meaning of Maryland law and may hold an authorization issued by the Maryland Public Service Commission to provide facilities-based local exchange service and facility-based inter-exchange service, and if the Company has or will enter into an Agreement for Use of Public Street Lights with the County, the Company is entering into this Agreement in accordance with the Agreement for Use of Public Street Lights.

Recitals

A. In accordance with the Howard County Code, Sections 18.1001, 18.205, and 18.206, the County Rights-of-Way are operated, maintained, improved, and repaired by the Department of Public Works and any construction or excavation in, on, over, through, under, or across County Right-of-Way is prohibited without permission of the Director of the Department of Public Works. In addition, Maryland law Section 5-201 requires any public service company to obtain local consent before exercising any franchise granted by the Public Service Commission.

B. This Agreement sets forth the consent of the County, which consent shall be valid for the term of this Agreement and any renewal thereof, and governs the terms and conditions of the construction, installation, maintenance, replacement, removal, or repair of Facilities within the County Right-of-Way pursuant to that consent. The entry into this Agreement by the County and the Company is a prerequisite to the Company obtaining (i) a Utility Right-of-Way Construction Permit for each entry in, on, over, through, under, or across County Right-of-Way or (ii) an Agreement for Use of Street Lights.

NOW, THEREFORE, in accordance with the Code and in consideration of the Company’s payment of the Annual Agreement for Use of Howard County Right-of-Way Fee on the date hereof to the County, the County and Company agree Company shall have the non-exclusive right to utilize the County Right-of-Way for its Facilities, as such use is designated in the Utility Right-of-Way Construction Permit issued by the County from time to time upon the request of the Company pursuant to an Application for Utility Right-of-Way Construction Permit in accordance with the terms and conditions set forth in this Agreement and the Utility Right-of-Way Construction Permit, or in accordance with such other regulations and ordinances of the County as may apply to use of the County Right-of-Way.

Article 1 – Definitions

The capitalized terms used in this Agreement shall have the meanings set forth in this Article 1.

Agreement – means this Agreement for Use of Howard County Right-of-Way by and between County and Company, for Company’s construction, installation, maintenance, replacement, removal, or repair of Facilities in County Right-of-Way as required by the Code. (Formerly known as the “blanket agreement”.)

Annual Fee – means the fee adopted by the County Council of Howard County Maryland for each fiscal year for the entities subject to an Agreement for Use of Howard County Right-of-Way.

Application – means the completion of the information on the Utility Right-of-Way Construction

Permit as may be requested from time to time for the Company's construction, installation, maintenance, replacement, removal, or repair of Facilities in County Right-of-Way which is described in Exhibit 1, attached hereto and a part hereof.

Code – means the Howard County Code, as amended from time to time.

Company – means _____, a _____, formed under the laws of the state of _____, and duly authorized to conduct business in the state of Maryland and in good standing with the Maryland State Department of Assessments and Taxation, and its successors and assigns.

County – means Howard County, Maryland, a body corporate and politic and its successors and assigns.

County Right-of-Way – means the Public Property as defined under Section 18.205 of the Code.

Design Manual – means the Howard County Design Manual Volumes I – IV, as amended.

Director – means the Director of the County's Department of Public Works.

DPW – means the County's Department of Public Works.

Facilities – means the wire, cable, fiber optics, lines, conduits, access hand holes, pedestals, communication equipment and similar structures or equipment owned by the Company and installed in County Right-of-Way.

Financial Security – means the cash or letter of credit, as determined by the Company and provided to the County to ensure the Company's performance in accordance with this Agreement. If the Company elects to provide a letter of credit, it shall be an irrevocable letter of credit in a form acceptable to the Director.

Permit – means the Utility Right-of-Way Construction Permit, which is specific to a finite installation of Facilities, structure or excavation and/or the Utility Installation Permit issued by DPW authorizing the Facilities in the specified County Right-of-Way. The form of the Utility Right-of-Way Construction Permit is attached hereto as Exhibit 2. A Utility Right-of-Way Construction Permit is a type of Underground Utility Construction Permit as described in the legislation adopted by the County Council of Howard County in May 2017 approving the Permit Fee.

Permit Fee – means the fee adopted by the County Council of Howard County Maryland for the current fiscal year applicable to each Permit issued.

Street Light Agreement – means, if applicable, the Agreement for Use of Public Street Lights by and between the County and the Company to be entered into on or about the date hereof.

Structure – means anything constructed, the use of which requires permanent or temporary location on the ground or attached to something having a permanent or temporary location on the ground.

Traffic Control Plan – means the temporary traffic control plan to allow for motor vehicle, pedestrian, and bicycle traffic movement and access to adjacent properties in a reasonably safe and effective manner through and around a work area while protecting roadway users, workers and responders to traffic incidents. The Traffic Control Plan review and approval is performed by DPW

Traffic Engineering Division. The Traffic Control Plan shall be designed based on the Maryland Manual of Uniform Traffic Control Devices and the Temporary Traffic Control Section of the Maryland Book of Standards as amended.

Work Week – means the five days observed by the County and observance of the Holidays determined by the County Executive (allowing the permitted and maintenance work Monday –Friday, Emergency repairs to restore service may be made anytime as needed) as shown in Design Manual Volume IV, GC-1.03 DEFINITIONS Para. 27 Holidays

Article 2 - Non-Exclusive Right and Term

2.1. Non-Exclusive; Relocation or Removal. This Agreement authorizes the Company a non-exclusive right to use certain portions of the County Right-of-Way as determined by the County, within which Facilities may be installed pursuant to a Permit issued by the County, subject to the conditions of this Agreement. The County may enter into similar agreements with others. The Company acknowledges that this Agreement does not constitute an interest in the County Right-of-Way and the County may require the Company to remove or relocate all or a portion of the Facilities at the Company's expense as set forth in Sections 3(f) and 8.5. Company further acknowledges that this is not a consent to install anything other than the Facilities, within the County Right-of-Way approved by the County, and that an amendment to this Agreement, or an additional Agreement will be required if Company wishes to place other structures in the County Right-of-Way. Further, the Facilities may only be used to provide services within the scope of this Agreement and the Street Light Agreement with the County, except as the parties may otherwise agree. In no event may the Facilities be used by Company to deliver cable service or other video services to end users. The consent is not divisible or transferable, except with the express written consent of the County and as provided herein.

2.2. Term of Agreement. The term of this Agreement commences on the date hereof through June 30 of each year and will be renewed by the agreement of the Company and the County upon the Company's prompt payment of the Annual Fee. This Agreement may be terminated by the County or the Company, as hereinafter provided.

2.3. Compliance with Laws; Other Permission. Neither this Agreement nor any Permit issued hereunder, relieves the Company from its obligation to obtain other necessary approvals or from complying with all federal, state, or county laws and regulations which apply to the Company's work and operation, including any franchise, license or other required agreement, including, but not limited to, grading permit, traffic control plan approval, lane closure approval, and environmental approvals.

2.4 Street Light Agreement (if applicable). The Company and the County have entered into a Street Light Agreement which authorizes the Company to install and maintain certain Equipment, as defined therein, at the locations designated in the Street Light Agreement. Such Equipment may be maintained by the Company without additional County approval under this Agreement provided that the modification to the Equipment is only a substitution of internal components in the same location, and does not result in (a) any change to the external appearance, dimensions, and requires no excavation; and (b) an increase in the weight of the Equipment.

Article 3 - Representations and Warranties

Representations and Warranties of the Company: The Company represents and warrants as follows:

a) The Company is at the time of this Agreement and shall remain for the term of this Agreement, a member of the Maryland's "One-Call" system, which provides notice to members of the

intention of others to excavate or otherwise disturb the surface or subsurface of the earth in the vicinity of the Company's underground facilities.

b) The Company is duly registered with the Maryland Public Service Commission, and is a public service company.

c) The Company shall maintain a Financial Security acceptable to the County, in accordance with this Agreement.

d) The Company acknowledges and agrees that its obligations under Sections 5.10, 8.4 and 8.5 of this Agreement shall survive the termination of this Agreement.

e) The Company shall maintain the insurance coverage required under this Agreement throughout the term of this Agreement.

f) The Company shall, at its sole cost and expense, relocate, adjust, or remove, its Facilities as may be required at any time by the County for any public improvements to the County Right-of-Way or for use of the Right-of-Way by the County; may under no circumstances incommode the use of the Right-of-Way by the public; and may be required to relocate, adjust, or remove, its Facilities to accommodate use of the Right-of-Way by other public service companies, cable systems, or other communications facilities.

g) The Company must place Facilities (other than the Equipment as may have been authorized under the Street Light Agreement) underground in areas where undergrounding is required by the County, and must also place Facilities attached to utility poles underground whenever the owner of any utility pole places its lines underground.

h) The person signing this Agreement on behalf of the Company has been duly authorized by the Company in accordance with the Company's organizational documents to bind the Company to the terms of this Agreement and any Permit issued to the Company from time to time.

Article 4 - Permit

4.1. Permit Required. A Permit is required for all work related to the installation of Facilities and any work, which requires excavation, open face cuts, trenchless construction, or involves any of the following activities:

- a) Roadway and/or right-of-way boring crossings and/or test pitting.
- b) Installation of Facilities, which run longitudinally within the County Right-of-Way.
- c) Installation of Facilities, which require crossings (either by open cut or boring) of County Right-of-Way.
- d) Abandonment or removal of Facilities, unless the County agrees that it is more beneficial to abandon all or a portion of Facilities in place.
- e) Adjusting frames and covers within the County Right-of-Way.

4.2. Application Process. The Company shall submit a completed Application at least thirty (30) days before the proposed start date of the work. The Application shall be in accordance with

Exhibit 1 - Utility Right-of-Way Construction Permit Application. A separate Application and Permit Fee is required for each 2,000 linear feet of work or portion thereof.

4.3. Plans Required for Application. Plans of the proposed construction shall comply with the Design and Construction standards of the Design Manual. Plans of the proposed construction shall be submitted along with the Application in accordance with Exhibit 1 - Utility Right-of-Way Construction Permit Application and the Company's Plan Construction Drawings.

4.4. Review of Plans. DPW will perform a technical review of the Application, requesting comments from other Departments and agencies as appropriate, and will notify the Company whether the Application has been approved, approved with conditions or denied.

4.5. Approval of Application and Plans. If the Application is approved as requested or approved with conditions, DPW will complete the Permit and assign a permit number indicating approval. Before the Permit can be issued, the Company shall: (a) submit documentation to DPW that a sediment and erosion control plan approval and/or grading permit has been obtained or is not required under the Howard County Code or other applicable laws; and b) pay (or make arrangements satisfactory to DPW to pay) all required fees. If the Application is approved with conditions, the conditions will be written on the Permit. When completed and permit number assigned, the Permit becomes the approved Permit to do the work.

4.6. Denial of Application. If the Application is denied, DPW will explain the reasons in writing and indicate any changes that may be required for the Application to be approved.

Article 5 - Work Performed under the Permit

5.1. Completion of Work. Each Permit is valid during the Work Week for a period of 180 calendar days from the date of issuance, unless otherwise specified on the Permit.

5.2. Notice to Start Work. Before starting any work authorized by a Permit, the Company shall, in accordance with Section 7, provide DPW a list of projects in the format described in Exhibit 3 – "Construction Notification Requirements" by 7:00 a.m. of the work day. The Company shall obtain authorization from DPW before starting any work. All non-emergency work in the County Right of Way requires notice prior to starting work. Emergency work is work that is performed under an Emergency Miss Utility Ticket.

5.3. Seasonal Hours of Work. During January and February, utility construction activity shall be conducted between the hours of 7:00 a.m. and 3:00 p.m., though site restoration work may continue until 4:30 p.m. No weekend or Holiday work is authorized under a Permit. When the Howard County school system closes for inclement weather conditions, utility construction activity shall be suspended.

5.4. Permit on Site. A copy of the Permit and the related plans and drawings and Howard County Design Manual, Volume IV, Standard Specifications and Details for Construction (as amended) shall be kept on the job and shall be available for review. This includes, where required, the Traffic Control Plan.

5.5. Inspections. The County may inspect the Company's work at any time during the performance of work under a Permit.

5.6. Compliance. All work performed by the Company under a Permit shall meet the design and construction standards of the Design Manual, and shall conform to the plans and drawings approved with the Application. Except for the Equipment authorized under the Street Light

Agreement, the Company shall maintain a minimum 5-foot horizontal clearance and a minimum 1-foot vertical clearance from all existing and proposed sewer mains, water mains, including house connections, fire hydrants, storm drains and related appurtenances when installing facilities, i.e., fiber optics, cable, transformer pedestals, electric wire, conduit, gas lines, utility poles, guy wires, street lights and traffic signal poles. Contractors vehicles shall be marked with signage identifying them as Company contractors. Signage must include the Company phone number. Company contractors shall promptly notify the appropriate utility agency when any damage occurs to their facilities or the facilities of others.

5.7. Traffic Safety. The Company shall be responsible to ensure that all traffic controls comply with Design Manual. Approval of a Traffic Control Plan shall be obtained from DPW. Maintenance of traffic shall be performed in conformance with the most recent Manual on Uniform Traffic Control Devices. Lane closures and flagging operations are not permitted from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. All persons responsible for flagging operation must be certified through the State Highway Administration, must carry the card while performing work under the Permit, and present the card for inspection, upon request.

5.8. Stop Work Order. The Director may issue a Stop Work Order if the Director determines that:

a) The work violates either: (i) applicable law, (ii) construction standards of the Design Manual, (iii) any condition of this Agreement, or (iv) any condition of the Permit, including the approved plans and drawings; or

b) The activity in the County Right-of-Way poses either (i) a hazardous situation, or (ii) constitutes a public nuisance, public emergency or other threat to the public health, safety or welfare. Upon the issuance of a Stop Work Order the Company shall immediately restore the site to a safe condition. The Stop Work Order shall be in writing, shall specify the reason for the order, the time within the violation or activity must be corrected, and the conditions under which the work may be resumed.

5.9. As Built Drawings. The Company shall notify DPW when all work permitted by a Permit is completed. The completion date shall be noted on a copy of the plan, signed by a responsible individual and returned to DPW. A copy of the as-built drawings for the Facilities shall be provided to DPW within ninety (90) days of the completion of the Facilities

5.10. Maintain and Restore the County Right-of-Way. The Company shall, at all times, secure the work site and ensure the County Right-of-Way is safe for all forms of traffic. The Company shall restore the County Right-of-Way to its original condition or to such lesser condition determined to be acceptable by the Director. If restoration is not completed when the work is complete, the Director, after Notice to cure, may elect that the County do the work and charge the Company with the expense. This Section 5.10 shall survive the termination of this Agreement.

Article 6 - Repair and Maintenance

The Company may perform any maintenance or repair to existing Facilities during the Work Week upon Notice to the County prior to the start of the work and Notice to the One Call system if the Company has paid the Annual Fee, has provided a current Certificate of Insurance to the County, and the requisite Financial Security. During January & February, utility construction activity shall be conducted between the hours of 7:00 a.m. and 3:00 p.m., though site restoration work may continue until 4:30 p.m. No weekend or Holiday work is authorized under this Agreement. When the Howard County school system closes for inclement weather conditions, utility construction activity shall be suspended.

Article 7 - Notices

Notices required or permitted under this Agreement shall be given in the manner specified with respect to the type of notice to the following individuals, or such other individual designated in writing:

To the County:

Construction Inspection Division
Right-of-Way Utility Permits (RUP) Supervisor
9250 Bendix Road
Columbia, MD 21045
RUP Help Desk Phone: (410) 313-4207
Email: rup@howardcountymd.gov

The Construction Inspection Division (CID) in the Bureau of Engineering Department of Public Works administers all aspects of this Agreement and related permits, except Traffic Control which is regulated The Howard County Traffic Control Division in the Bureau of Highways, Traffic Engineering Division, 9250 Bendix Road, Columbia, MD 21045, 410-313-2430.

To the Company:

Regarding the Facilities, emergency (including 24-hour contact):

Email: _____

Cell Phone: _____

Name: _____

Regarding the Facilities, non-emergency:

Fax: _____

Email: _____

Financial information and invoices:

Fax: _____

Article 8 - Protection of County

8.1. Warranty. For a period of two years after the date as-built plans are submitted to the County, the Company warrants and guarantees the quality of the work performed and is responsible for (i) maintaining the site free from any defects related to the installation or maintenance of the Facilities and (ii) repairing or restoring the site to its original condition or to such other condition determined to be acceptable by the Director following the installation and removal of Facilities. Financial Security shall be posted at the time this Agreement is submitted to the County for signatures and evidence that it continues in effect shall be given before July 1st each year. If any defect is discovered within the two (2) year period, the warranty and Financial Security shall be extended for an additional one year period. This provision shall not limit the obligations of the Company under the Street Light Agreement, if applicable.

8.2. Financial Security Requirement. The Company shall submit and maintain Financial Security, for the benefit of the County, in the amount of One Hundred Thousand Dollars (\$100,000.00) throughout the term of this Agreement. The Financial Security shall be in the form of cash or an irrevocable letter of credit in a form acceptable to the Director to secure the faithful performance of the restoration obligations of the Company under the Construction this Agreement and compliance with all terms and conditions of this Agreement. Throughout the term, the Director may, from time to time, make deductions from the Financial Security to pay fees, offset the costs for any excavations, restoration or other repairs made by the County, or pay any fines or costs associated with violations of this Agreement or Section 18.206 of the Howard County Code. The Company shall replenish the Financial Security within fifteen (15) business days following notice from the County that the County has drawn upon the Financial Security.

8.3. Insurance. The Company and each of the Company's contractors performing work in the County Right-of-Way on its behalf, shall maintain commercial general liability insurance underwritten by companies licensed to do business in the State of Maryland, with combined single limits of not less than \$5,000,000 per occurrence and \$5,000,000 aggregate in any combination of primary and excess coverage as long as all policies include the following coverages: contractual liability, personal injury, products and completed operations, explosion, collapse, underground hazards and pollution liability. The County, specifically identified as "Howard County, Maryland, its elected and appointed officials, officers, employees, and authorized volunteers," shall be included as an additional insured under all of the foregoing policies. A certificate of insurance evidencing the foregoing shall be submitted at the time this Agreement is submitted to the County for signatures and evidence that such coverage in favor of the County continues in effect shall be provided to the County before the first day of July each year for the duration of this Agreement. If any policies are written on claims made basis, the insurance shall continue in force for three (3) years after the termination of this Agreement. Self-insurance may be substituted for commercial insurance only with prior approval of the County.

8.4. Indemnity. The Company agrees to waive all right of recovery against save harmless and indemnify the County from any cost, loss or damage suffered or incurred by the County, the County's officials, agents, employees, contractors, invitees, licensees, successors and assigns, by reason of any injury to persons or damage to or loss of property resulting from the use of the County Right-of-Way by the Company, or by any agent, servant, employee or contractor of the Company. The foregoing shall apply, without limitation, to losses of all types including destruction or degradation of the environment, including, without limitation, land, air, water, wildlife or vegetation, and all costs, fines, penalties, and other expenses related to the abatement of the destruction or degradation of the environment. The indemnity provided for in this paragraph shall not apply to any liability resulting or arising from the willful misconduct or negligence of the County or an indemnitee. This indemnification is not to be deemed as a waiver of any immunity that may exist in any action against County. In the event that the County seeks indemnification hereunder, it shall promptly notify the Company of the nature and amount of the claim and the method and means proposed by the County for defending or satisfying the claim. The County shall consult with the Company with respect to the defense and satisfaction of the claim, including the selection and direction of legal counsel. The County shall not pay or settle any claim for which it seeks indemnification without the prior written consent of the Company, which consent shall not be unreasonably withheld. This Section 8.4 shall continue to be in effect and enforceable for three years after the termination of this Agreement.

8.5. Relocation of Facilities. In the event that the County performs any work on existing or future public improvements, including but not limited to the construction, installation, maintenance and repair of road, storm drain, storm water management, water, sewer and other improvements, which work requires the removal, relocation and/or adjustment of any Facility; or in the event the Facilities interfere with the County's use of the Right-of-Way, the Company shall, upon notice, remove, relocate and/or adjust the Facilities at the Company's sole expense, in accordance with the schedule required

by the public improvements. Company shall be responsible for all costs attributable to its delay in relocating or adjusting the Facilities to accommodate the public improvements. This Section 8.5 shall survive the termination of this Agreement.

Article 9 - Default and Termination

9.1. Events of Default. Each of the following occurrences by the Company constitutes an event of default under this Agreement:

- a) Construction or operation in the County Right-of-Way without a Permit;
- b) Failure to perform work under the standards of this Agreement or the Permit issued hereunder;
- c) Failure to remove or relocate Facilities in accordance with this Agreement;
- d) Interference with County infrastructure, including but not limited to Water Main and House Connections, Sewer Main and House Connections, Road, Sidewalk, Street Trees, Drain, Storm Water Management, Fiber Optic System, etc.;
- e) Failure to promptly pay the Annual Fee or any Permit Fee when due;
- f) Breach of this Agreement;
- g) Cessation of operations as, or a change in status such that Company is no longer a public service company under Maryland law;
- g) Misrepresentation of any fact in connection with obtaining this Agreement, or any agreement or permit with County pursuant to this Agreement; and
- f) Violation of any applicable federal, state or local law or regulation.

9.2. Notice of Default and Cure. In the event of default, the Director will issue a Notice of Default to the Company. The Notice shall specify the event of default and state the time within the default must be cured. For any default other than the payment of money, if the default is not cured by the Company within the time given, or any extension granted by the Director, the Director may elect that the County do the work and charge the Company with the expense.

9.3. Remedies. The exercise of any remedies authorized under this Agreement, does not relieve the Company from the invocation by the County of civil or criminal penalties authorized by the Code.

9.4. Termination by Company. This Agreement may be terminated by the Company giving thirty (30) days written notice to the County. The Company shall remove the Facilities from the County Right-of-Way unless the Company obtains written consent from the Director to allow the Company to abandon the Facilities in place. The Company shall restore the County Right-of-Way to a condition satisfactory to the County. The County will release and return to the Company the balance of the Financial Security being held by the County at the termination of the Agreement less the amount of any fines, fees, or claims for damage to others' property or County Right-of-Way that are outstanding (which sums shall be deducted from the Financial Security).

9.5. Termination by County. This Agreement may be terminated by the County: if the Company (i) ceases to use the Facilities for a period of 365 days, (ii) fails to timely pay the Annual Fee, or (iii) fails to cure an event of default after notice and opportunity to cure pursuant this Agreement. Upon such termination, the Company shall remove the Facilities from the County Right-of-Way unless the Company obtains written consent from the Director to allow the Company to abandon the Facilities in place. The Company shall restore the County Right-of-Way to a condition satisfactory to the County. The County will release and return to the Company the balance of the Financial Security being held by the County at the termination of the Agreement less the amount of any fines, fees, or claims for damage to others' property or County Right-of-Way that are outstanding (which sums shall be deducted from the Financial Security).

Article 10 - Miscellaneous

10.1. Assignment This Agreement and any Permits issued hereunder may not be assigned without the express written consent of the County. The County will not approve any assignments unless the assignee enters into a new Agreement and complies with the Annual Fee, insurance and Financial Security requirements of this Agreement. In the event of the merger or acquisition of the Company, the surviving or acquiring entity shall be required to sign a new Agreement and provide the requisite Annual Fee, insurance coverage, and Financial Security.

10.2. Conflicts. The person signing this Agreement for the Company certifies that the person has read and understands the provisions of Section 901(a) of the Howard County Charter and Section 22.204 of the Howard County Code dealing with conflicts of interest.

10.3. Entire Agreement. This Agreement and any Permit entered into now or in the future, constitute the entire agreement between the parties and supersedes all prior oral and written agreements, representations, and negotiations between the parties hereto with respect to use of the County Right-of-Way. In the event of any conflict between the terms of the Permit or this Agreement, the term of this Agreement shall govern.

10.4. Amendment. This Agreement may be amended only in a written instrument executed by both parties.

10.5. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Maryland. The Company agrees that any lawsuit initiated under this Agreement shall be filed in the Circuit Court of Maryland for Howard County

10.6. Non-Severability. Each term and condition of this Agreement is an integral part of the consideration given by each party and, therefore, the terms and conditions are not severable, and the consent is conditioned on the continued enforceability of this Agreement. If any part of this Agreement should be held invalid by a court of competent jurisdiction, this Agreement shall terminate unless suitable replacement terms are agreed to by both parties and the Agreement amended to include the replacement terms.

(a) 10.7 Street Light Agreement (if applicable). It is understood that the Street Light Agreement allows the Company to operate its Equipment, as defined in the Street Light Agreement, within the County Right-of-Way. In the event of conflict between this Agreement and the Street Light Agreement or any other agreement between the Company and the County, or the Code, the provisions most favorable to the County shall prevail.

IN WITNESS WHEREOF, the Company and the County have caused their respective duly authorized representatives to sign and seal this Agreement for Use of Howard County Right-of-Way as of the date hereof.

[Signature of Company on following page.]

WITNESS/ATTEST:

COMPANY

Secretary

By: _____(SEAL)
President

STATE OF MARYLAND, _____ COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 20____, before me, the subscriber, a Notary Public of the State of Maryland, in and for County aforesaid, personally appeared _____, who acknowledged himself to be the President of _____, a Maryland corporation (the "Corporation"), and that he, as such officer being authorized so to do, executed the within Agreement for Use of County Right-of-Way for the purposes therein contained by signing the name of the Corporation by himself as such officer.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires:_____

[Signatures continued on following page.]

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____(SEAL)
Allan H. Kittleman
County Executive

APPROVED:

James M. Irvin, Director
Department of Public Works

APPROVED FOR FORM AND LEGAL SUFFICIENCY

on this _____ day of _____, 20__:

Gary W. Kuc
County Solicitor

Reviewing Attorney

Lisa Stello O'Brien
Senior Assistant County Solicitor

STATE OF MARYLAND, COUNTY OF HOWARD, to wit:

I HEREBY CERTIFY that on this _____ day of _____, 2017, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Allan H. Kittleman, County Executive of **HOWARD COUNTY, MARYLAND**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement for Use of Howard County Right-of-Way and acknowledged that he executed the same for the purposes therein contained and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires:_____

EXHIBIT 1

Utility Right-of-Way Construction Permit Application and the Company's Construction Drawings

Permit Requirements

The Company shall submit an application online for a Permit. DPW will provide online portal access. An application for a Permit to install communications or power (electric or gas) utilities within the County Right-of-Way shall be submitted at least 30 calendar days before the proposed start date of the work.

The Application shall include the following information:

- 1) Authorized agent's name, phone number and email – This is a Utility Company employee with responsible charge of the project.
- 2) Utility Company's Project Identification Number
- 3) Site Address – this is the address of work site
- 4) Public Road(s) affected by the work
- 5) Development Name
- 6) ADC 2008 4-digit Map Page and Grid for the location of work – this field is auto filled when a valid County address is entered in the Site Address Field above
- 7) Type of Construction – examples are wrapped steel or plastic 8" diameter gas main, direct bury of 4" conduit 13KV electric main, 12 pair fiber optic open trench, or co-axial cable pneumatic missile, etc.
- 8) Job Length in linear feet of installation within the County Right-of-Way
- 9) County Water/Sewer Contract number(s) – this is the As-Built Construction Contract number for the existing and proposed Water & Sewer Main and house connections.
- 10) County Council Election District
- 11) Proposed Construction Start Date
- 12) Duration for the work in calendar days
- 13) 24 Hour Contact name, phone number and email – this is the person that can direct emergency response specific to this permit
- 14) A description of work – this clarifies the limits of the work, the type of construction, and the means. For example – directional drilling installation of 3" conduit for 13KV electric beginning at Murphy Street with approximately 50L.F. of open trenching along house #3504 at transformer, directional drilling terminates at transformer and bore pit 30L.F. from Alexander Way intersection; 3 test pits for 12" water main and road crossing of Julia Way.

Permit Application Construction Drawings

A single Portable Document Format (PDF) attachment shall be submitted along with the information above; including construction drawing(s) showing the following:

- a) Plan view of the proposed construction must be to scale, using a minimum scale of 1 inch = 50 feet. At the discretion of County, fully dimensioned drawings may be submitted when projects are small, (i.e., service to a single dwelling).
- b) North Arrow.
- c) Graphic scale registering one inch distances of primary scale and an extension scale.
- d) The Company's Name and Project Identification Number

- e) The location of all easements, and Rights-of-Way, and their widths.
- f) Label the name(s) and pavement width of all roadway(s)
- g) Property boundary lines and address(es) of properties affected
- h) The location of all existing and proposed sewer & water mains (including relevant house connections as available), fire hydrants, manholes, storm drains, and street trees, sidewalks; and any related appurtenances.
- i) All existing and proposed Water & Sewer Mains labeled with their diameter, material type and County Construction Contract Number. Water & Sewer House Connection(s) that are crossed or in the area of construction shall also be shown and labeled. House connection information is to be shown when available on the As-Built Construction Contracts in the custody of the County.
- j) Label the diameter of all existing and proposed storm drain(s) that are crossed or in the area of construction.
- k) Crossing depth and separation distance at each utility crossing. If there are more than three crossings, at the discretion of the County, a profile is required to detail the proposed path depth changes, crossings and clearances.
- l) The location of insert manholes, handholes, pedestals, transformers, etc., should be on property lines without twin water/sewer house connections. In those areas where an insert manhole, handhole, pedestal, transformer, etc., is required at a property line adjacent to a water or sewer house connection, drawing shall indicate that the unit will be set back a sufficient distance from the front of the property line to minimize conflict with the service connections. The drawing shall clearly indicate the potential conflict and a note referencing that sufficient setback shall be provided.
- m) Limits of work area and proposed construction material (i.e. wrapped steel gas main, plastic gas main, PVC conduit, coaxial cable, fiber optic cable, antenna added to replacement utility pole etc.), use (i.e. gas main, gas insert, electric main, electric house service, communication main, communication house service, cellular antenna), size (i.e. 8" diameter gas, 13KV electric, 72 count fiber, 36" antenna, etc.) and construction type (i.e. direct bury, open trench, pneumatic missile, antenna and pole installation by BGE, etc.) and limits of the given construction type.
- n) Maintenance of a minimum 5-foot horizontal clearance and a minimum 1-foot vertical clearance from all existing and proposed sewer mains, water mains, including house connections, fire hydrants, storm drains and related appurtenances when installing facilities, i.e., fiber optics, cable, transformer pedestals, electric wire, conduit, gas lines, utility poles, guy wires, street lights and traffic signal poles.
- o) The placement of insert manholes, handholes, pedestals, transformers, etc., outside of all storm water management access easements.
- p) The Traffic Control Standard(s) that will be used during construction. If a separate Traffic Control Plan is needed reference it.
- q) The County Standard(s) and Specifications that will be used to restore the road, sidewalk, green space, etc., which was affected by the construction.
- r) Confirm that there are no impacts to environmentally protected areas.

General Notes Required on Plans:

- 1) The Utility Company shall notify the County of work on individual permits and utility construction work covered by the Annual Permit, other than emergency work. Notice shall be emailed from the Utility Company to the County in the required format before 7:00 a.m. each day of work.
- 2) Approximate locations of existing mains are shown. The contractor shall take all necessary precautions to protect existing mains and services and maintains uninterrupted service. Any damage incurred shall be repaired immediately to the satisfaction of the County at the Company's expense.
- 3) Maintain a minimum 5-foot horizontal clearance and a minimum 1-foot vertical clearance from all existing and proposed sewer mains, water mains, including house connections, fire hydrants, storm drains and related appurtenances when installing facilities, i.e., fiber optics, cable, transformer pedestals, electric wire, conduit, gas lines, utility poles, guy wires, street lights and traffic signal poles.
- 4) For details not shown on the drawing, and for materials and construction methods, use Howard County Design Manual, Volume IV, Standard Specifications and Details for Construction - as amended. The contractor shall have a copy of Volume IV on the job and available for review.
- 5) Where test pits have been made on existing utilities, they are noted by the symbol at the locations of the test pits. Note(s) containing the results of the test pit(s) is included on the drawings.
- 6) The contractor shall notify the following for Water and Sewer Main conflicts - Bureau of Utilities 410-313-4900. Also notify the Construction Inspector at 410-313-4207.
- 7) No staging of equipment or materials is allowed unless specified in writing and specifically approved by the County on a site by site basis.
- 8) Trees and shrubs are to be protected from damage to the maximum extent. Trees and shrubs located within the construction strip are not to be removed or damaged by the contractor.
- 9) Any pedestal placed in conflict with a sidewalk or County owned/maintained utility or other improvement will be moved at the Company's expense.
- 10) Trees damaged or destroyed will be replaced at the Company's expense.
- 11) Relocation of Facilities Statement - In the event that the County performs any work on existing or future public improvements, including but not limited to the construction, installation, maintenance and repair of road, storm drain, storm water management, water, sewer and other improvements, which work requires the removal, relocation and/or adjustment of any Facility, the Company shall, upon reasonable notice, remove, relocate and/or adjust the Facilities at the Company's sole expense, in accordance with the schedule required by the public improvements. This requirement shall survive termination of this Agreement."

Specific Notes Required on Plans:

- 1) Show dimensioned locations with note, "5 L.F. minimum clearance required' and, "1 L.F. minimum vertical clearance required" in areas of minimum clearance.
- 2) Add "**Do Not Disturb Buttress**" notation at all fire hydrants.

EXHIBIT 2



Utility Right-of-Way Construction Permit

Howard County Department of Public Works
Bureau of Engineering, Construction Inspection Division (CID)
9250 Bendix Road, Suite B-500, Columbia MD 21045
Phone: 410-313-4207 Fax: 410-313-1854
E-mail: rup@howardcountymd.gov

Permit #:

Permit Status:

Fee:

Permit Submittal Date:

Utility Company Info

Permittee:
Permittee
Email:

Authorized Agent:
Authorized Agent
Email: Authorized
Agent Phone:

Project
Number:
Development:

Site Address:
ADC
Map/Grid:

Roads Affected:

Job Length:
Council
District:
Duration:

Type of Construction:
WS Contract Number:
Construction Start
Date:

24 Hour Contact:
24 Hour Contact Email:
24 Hour Contact Phone:

NOTE: THIS PERMIT, ONCE GRANTED, MUST BE KEPT AT THE WORK SITE AND IN THE CUSTODY OF THE PERSON WHO IS DIRECTLY RESPONSIBLE FOR SUCH WORK UNTIL THE WORK IS COMPLETED, AND SHALL BE EXHIBITED TO THE POLICE OR OTHER PERSONS HAVING AUTHORITY TO EXAMINE IT. THIS PERMIT IS VALID FOR A TERM OF 180 DAYS; PROVIDED, THAT THE COUNTY MAY AT ITS SOLE DISCRETION REVOKE THIS PERMIT AT ANYTIME DURING ITS TERM.

Permit Notes:

Reviewed By:

Date:

Conditions of Utility Right-of-Way Construction Permit

The Following Conditions Apply:

Article 5.1. Completion of Work. Each Permit is valid during the Work Week for a period of 180 calendar days from the date of issuance, unless otherwise specified on the Permit.

Article 5.4. Permit on Site. A copy of the Permit and the related plans and drawings; and Howard County Design Manual, Volume IV, Standard Specifications and Details for Construction (as amended) shall be kept on the job and shall be available for review. This includes, where required, the Traffic Control Plan.

Article 5.6. Compliance. All work performed by the Company under a Permit shall meet the design and construction standards of the Design Manual, and shall conform to the plans and drawings approved with the Application. Maintain a minimum 5-foot horizontal clearance and a minimum 1-foot vertical clearance from all existing and proposed sewer mains, water mains, including house connections, fire hydrants, storm drains and related appurtenances when installing facilities, i.e., fiber optics, cable, transformer pedestals, electric wire, conduit, gas lines, utility poles, guy wires, street lights and traffic signal poles. Contractors vehicles shall be marked with signage identifying them as Company contractors. Signage must include the Company phone number. Company contractors shall promptly notify the appropriate utility agency when any damage occurs to their facilities or the facilities of others.

Article 5.7. Traffic Safety. The Company shall be responsible to ensure that all traffic controls comply with Design Manual. Approval of a Traffic Control Plan shall be obtained from DPW. Maintenance of traffic shall be performed in conformance with the most recent Manual on Uniform Traffic Control Devices. Lane closures and flagging operations are not permitted from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. All persons responsible for flagging operation must be certified through the State Highway Administration, must carry the card while performing work under the Permit, and present the card for inspection, upon request.

Article 5.10. Maintain and Restore the County Right-of-Way. The Company shall, at all times, secure the work site and ensure the County Right-of-Way is safe for all forms of traffic. The Company shall restore the County Right-of-Way to its original condition or to such lesser condition determined to be acceptable by the Director. If restoration is not completed when the work is complete, the Director, after Notice to cure, may elect that the County do the work and charge the Company with the expense. This Section 5.10 shall survive the termination of this Agreement.

Article 9.1. Events of Default. Each of the following occurrences by the Company constitutes an event of default under this Agreement:

- a) Construction or operation in the County Right-of-Way without a Permit;
- b) Failure to perform work under the standards of this Agreement or the Permit issued hereunder;
- c) Failure to remove or relocate Facilities in accordance with this Agreement;
- d) Interference with County infrastructure, including but not limited to Water Main and House Connections, Sewer Main and House Connections, Road, Sidewalk, Street Trees, Drain, Storm Water Management, Fiber Optic System, etc.;
- e) Failure to promptly pay the Annual Fee or any Permit Fee when due;
- f) Breach of this Agreement;
- g) Cessation of operations as, or a change in status such that Company is no longer a public service company under Maryland law;
- h) Misrepresentation of any fact in connection with obtaining this Agreement, or any agreement or permit with County pursuant to this Agreement and
- i) Violation of any applicable federal, state or local law or regulation.

Article 8.5. Relocation of Facilities. In the event that the County performs any work on existing or future public improvements, including but not limited to the construction, installation, maintenance and repair of road, storm drain, storm water management, water, sewer and other improvements, which work requires the removal, relocation and/or adjustment of any Facility; or in the event the Facilities interfere with the County's use of the

Right-of-Way, the Company shall, upon notice, remove, relocate and/or adjust the Facilities at the Company's sole expense, in accordance with the schedule required by the public improvements. Company shall be responsible for all costs attributable to its delay in relocating or adjusting the Facilities to accommodate the public improvements. This Section 8.5 shall survive the termination of this Agreement.

Sec. 18.205.(d)(3)(i) At the request of the Director the person who installed a structure on public property, or who caused water or wastewater to be discharged onto a public road shall remove the structure or stop the discharge. The Director may require removal of a structure even if the Director previously gave permission for the structure.

Sec. 18.206.(b) Permit. An application for a permit under this section shall be made to the Department. The application shall contain a plan and description of the proposed work and restoration of public property satisfactory to the Director. All work shall be performed in accordance with the description and plan authorized under the permit.

Article 2.3. Compliance with Laws; Other Permission. Neither this Agreement nor any Permit issued hereunder, relieves the Company from its obligation to obtain other necessary approvals or from complying with all federal, state, or county laws and regulations which apply to the Company's work and operation, including any franchise, license or other required agreement, including, but not limited to, grading permit, traffic control plan approval, lane closure approval, and environmental approvals.

GC-7.06 CONSTRUCTION SAFETY AND HEALTH STANDARDS

- c) The Contractor further agrees to correct any violations found to exist during such inspection within a reasonable time after the issuance of any citation, unless it contests the validity thereof through the appropriate administrative and judicial process.

Article 8.4. Indemnity. The Company agrees to waive all right of recovery against save harmless and indemnify the County from any cost, loss or damage suffered or incurred by the County, the County's officials, agents, employees, contractors, invitees, licensees, successors and assigns, by reason of any injury to persons or damage to or loss of property resulting from the use of the County Right-of-Way by the Company, or by any agent, servant, employee or contractor of the Company. The foregoing shall apply, without limitation, to Losses of all types including destruction or degradation of the environment, including, without limitation, land, air, water, wildlife or vegetation, and all costs, fines, penalties, and other expenses related to the abatement of the destruction or degradation of the environment. The indemnity provided for in this paragraph shall not apply to any liability resulting or arising from the willful misconduct or negligence of the County or an indemnitee. This indemnification is not to be deemed as a waiver of any immunity that may exist in any action against County. In the event that the County seeks indemnification hereunder, it shall promptly notify the Company of the nature and amount of the claim and the method and means proposed by the County for defending or satisfying the claim. The County shall consult with the Company with respect to the defense and satisfaction of the claim, including the selection and direction of legal counsel. The County shall not pay or settle any claim for which it seeks indemnification without the prior written consent of the Company, which consent shall not be unreasonably withheld. This Section 8.4 shall continue to be in effect and enforceable for three years after the termination of this Agreement.

Select requirements of the Agreement for Use of Howard County Right-of-Way, Design Manual, and County Code are republished above for reference only. In the event of discrepancy with the source documents as amended, the source documents as amended govern. They are displayed here for quick reference only and do not limit the applicable requirements or scope of the requirements in any way.

'Sec', references Howard County, Maryland - Code of Ordinances

'Article', references the Agreement for Use of Howard County Right-of-Way

'GC', references Design Manual Volume IV General Conditions

EXHIBIT 3
Construction Notification Requirements and
Company's Construction Plan Accompanying Construction

Construction Notification Requirements

The Company shall notify the County of work on individual permits and utility construction work covered by the Annual Permit, other than emergency work. Notice shall be by email to the at rup@howardcountymd.gov before 7:00 a.m. on the morning of work, using the Daily Work Report Excel format provided by the County, including the applicable information listed in items below. Work not reported by 7:00 a.m. of the work day is not authorized. The Company shall obtain authorization from DPW before starting any work.

- 1) Date /Permit Request Date Received/Structure Release date of Restoration
- 2) ID/Permit Type/Permit #
- 3) Contact 1 Company (Utility)
- 4) Contact 1 Contact Person (Utility)
- 5) Contact 1 Phone # (Utility)
- 6) Street Address/Street Name/Zip Code
- 7) ADC Map Number and Grid
- 8) Comments, Type of Construction
- 9) Drop Distance in Public ROW (feet)
- 10) Construction Start Date
- 11) Project Close-out Date
- 12) Crossing 2 or more properties (Y/N)
- 13) Wire Center/Project #
- 14) Hub
- 15) Road Crossing (Y/N)
- 16) Existing Temporary Service (Y/N)
- 17) County Road (Y/N)
- 18) Contact 2 Company (Prime Contractor)
- 19) Contact 2 Contact Person (Prime Contractor)
- 20) Contact 2 Telephone Number (Prime Contractor)
- 21) Contact 3 Company (Sub Contractor)
- 22) Contact 3 Crew Leader (Sub Contractor)
- 23) Contact 3 Telephone Number (Sub Contractor)

AGREEMENT FOR USE OF PUBLIC STREET LIGHTS

This **AGREEMENT FOR USE OF PUBLIC STREET LIGHTS** (“Agreement”) is entered into as of the ____ day of ____ 20__ (“Effective Date”) by and between _____, a _____ corporation qualified to do business and in good standing with the State of Maryland (“Company”) and Howard County, Maryland, a body corporate and politic (“County”). Company and County are sometimes referred to herein individually as a “Party” or collectively as the “Parties.”

Background

WHEREAS, this Agreement is made in light of the following premises and circumstances, all of which are a part of this Agreement:

- A. Company, will be the owner of certain Equipment (as defined below) comprising a component of a small cell, distributed antenna system or other similar wireless facilities network (“Network”) that Company plans to install in, over and/or under certain Public Rights-of-Way within the geographic boundaries of County.
- B. County owns certain Public Street Lights which are, by agreement, maintained by BGE Energy, LLC (“BGE”), and its successors and assigns.
- C. Company pursuant to a complete application described in Exhibit A attached hereto and a part hereof, desires to enter into a contract with County under which Public Street Lights would be replaced with Replacement Street Lights that could hold the Wireless Facilities appurtenant to the Network.
- D. County is willing to consent to replacement of the Public Street Lights and to have them replaced with a design of County’s choosing, subject to the terms and conditions of this Agreement, which among other things are intended to ensure that the Replacement Street Light are of a design acceptable to BGE, under terms and conditions similar to those that apply to Public Street Lights, and without any additional one-time or ongoing cost to County.
- E. Company has entered into an Agreement for Use of Howard County Right-of-Way.

Agreement Terms and Conditions

NOW THEREFORE, in accordance with Section 18.206A of the Code, and in consideration of the payments by the Company to the County as set forth in Section 7 hereof, and the foregoing recitals hereby incorporated herein, and the mutual promises contained herein, Company and County hereby agree as follows:

1. Definitions.

For the purpose of this Agreement, the following terms when used herein shall have the following meanings:

(a) “Certified Design” means the design prepared and certified by the Company’s engineers for the Wireless Facility at each of the locations set forth in Exhibit B, and if applicable, the Replacement Street Light, which have been submitted to and reviewed and approved by the County, all of which are attached hereto as Exhibit C and are hereby incorporated herein.

(b) “Code” means the Howard County Code, as amended from time to time.

(c) “Company” means _____, a _____, formed under the laws of the state of _____, and duly authorized to conduct business in the state of Maryland and in good standing with the Maryland State Department of Assessments and Taxation, and its successors and assigns.

(d) “County” means Howard County, Maryland, a body corporate and politic and its successors and assigns.

(e) “Disconnect” refers to the point or points of interconnection of the Public or Replacement Street Light’s electrical wiring and the Wireless Facilities’ electrical wiring to the BGE network.

(f) “Equipment” means the antennas, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by Company within and upon the Replacement Street Lights and associated with the operation of a Wireless Facilities providing Services; but does not include the power supplies, wiring and metering equipment associated with the Wireless Facilities which are owned by BGE.

(g) “Financial Security” means the financial security in the form of either (i) cash, (ii) a bond issued by a national bonding company acceptable to the County and in the form acceptable by the County, or (iii) a letter of credit in the form acceptable to the County, for a sum equal to \$5,000 times the number of Public or Replacement Street Lights used or replaced by Company under this Agreement as determined by the Company and provided to the County to ensure the performance of the Company’s obligations under this Agreement.

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

(i) “Public Rights-of-Way” or “ROW” means the public roads classified as a collector or arterial standard in the Howard County Master Road Book,

(j) “Public Street Light(s)” has the meaning set forth in the Code: the existing structure owned by the County, primarily designed for lighting a Public Right-of-Way, including the supporting pole, luminaire, arms, leased electric power wire, foundations, internal dividers, hand holes, vaults, pedestals, and bases, A Public Street Light does not include (i) a lighting system attached to a utility pole, traffic signal pole, building, or similar structure, or (ii) any facility that is privately owned.

(k) “Replacement Street Light(s)” means a Public Street Light which will be owned by the County and which is installed to accommodate the Wireless Facilities pursuant to the terms of this Agreement.

(l) “Services” are those services Company provides to entities that sell commercial mobile radio services (“CMRS”) and which Company has been licensed by the Maryland Public Service Commission to offer. However, Services do not include cable or video services, and the Public Street Lights may not be used in the provision of the same under this Agreement.

(m) “Wireless Facility or Facilities” means the Equipment at the locations designated in Exhibit B, that wirelessly connect to mobile stations and which are connected via a high capacity transport medium to a core network, but also includes the metering and electrical wiring associated with that Wireless Facilities owned by BGE but not the Public Street Light.

(n) “Wireless Provider” means an entity that is authorized by the Federal Communications Commission to provide personal wireless services as defined at 47 U.S.C. Section 332(c)7.

2. Intent of Agreement

(a) Purpose. This Agreement is intended to permit Company to place Wireless Facilities within and upon specified Public Street Lights owned by Howard County and located in the Public Right-of-Way.

(b) Process. This Agreement is intended to establish a procedure for authorizing replacement of a Public Street Light or use of a Replacement Street Light; and to establish uniform conditions governing the placement and maintenance of Wireless Facilities within or on Public Street Lights. The County is only agreeing to the replacement or use of those Public Street Lights specified in Exhibit B, attached hereto and a part hereof.

(c) Not Exclusive Right. The Agreement is not exclusive, and does not give Company any interest in the Public Right-of-Way or precedence in replacing or using particular Public Street Lights; and does not prevent the County from permitting space within a particular Public Street Light to other entities that provide similar or different services.

3. Location and Design of Wireless Facilities.

(a) Locations. Company has requested and the County has agreed that the Company may replace the Public Street Lights listed in Exhibit B with the Replacement Street Light and attach the Wireless Facilities as shown in the Certified Designs in Exhibit C attached hereto and a part hereof.

(b) Certified Designs. The Certified Designs shown on Exhibit C include all the Wireless Facilities that will be installed in connection with the replacement of the identified Public Street Light or use of the Replacement Street Light, whether directly attached to or contained within the Replacement Street Lights, and whether owned by Company or not. By way of example, but not limitation, there will be no additional power supplies or back-up power supplies or any hazardous materials.

(c) Ownership. Title to the Public and Replacement Street Lights, as modified or replaced, shall solely be with and remain with the County. Title to the Equipment shall be with Company.

(d) No Liens Created. Company may not provide Services using the Equipment until it provides assurances acceptable to the County that each Public or Replacement Street Light, as modified or replaced, is not subject to any liens, mortgages, hypothecations or any claim that of any sort that would affect the County's title or enjoyment of the Public or Replacement Street Lights. If those assurances are not timely provided, in a form acceptable to the County, County may rescind its final approval; restore the Public Street Light to its prior condition; and charge Company for all costs associated with doing so.

(e) Certified Design. The County's final approval and issuance of the permit for the Certified Designs attached hereto is not (i) consent to replacement of the Public Street Lights or use of the Replacement Street Lights with any different design, (ii) consent to future modifications of the Certified Design by Company or any other person. Any replacements of the Public Street Lights or modifications of the Replacement Street Lights or a use by any person other than Company shall be subject to the application process described in this Section. The parties agree County's entry into this Agreement is strictly conditioned on use of the Certified Designs in Exhibit C at the prescribed locations in Exhibit B, which are designed to conceal the Equipment, ensure the safety of the ROW, and maintain a design the County is willing to accept. While County will consider changes to the approved design, the County shall have no obligation to approve changes to the design, and may require the Replacement or Public Street Lights to be removed and replaced by a design of its choosing if the design changes.

(f) County Determination. Notwithstanding any other provision of this Agreement, County may refuse to allow replacement or use of a Public Street Light or terminate this Agreement if County determines (a) it would increase the County's costs for street light maintenance; (b) if BGE is not willing to maintain the Public Street Lights as modified or replaced; or (c) it would alter the tariff under which the County purchases power for Public Street Lights from BGE.

(g) Emergency Response Plan and Costs. Prior to performing any work on any Public Street Light Company must have a County-approved emergency response plan and contracts with approved contractors who can respond in the event of an emergency involving Public or Replacement Street Lights that are being used or have been replaced by Company. The response plan must include (i) adequate response times and (ii) contact information for emergencies twenty-four hours a day and seven days a week. The County handles emergency responses for Public Street Lights now with equipment that has been designed to handle Public Street Lights of the size, weight and characteristics of the Public Street Lights now in place, and which may not be adequate for the Replacement Street Lights. It is therefore critical to this Agreement that Company have, and pay all costs associated with emergency responses to hazards involving the Replacement Street Light listed on Exhibit B, including any cost incurred by the County in emergency responses involving the Wireless Facilities.

(h) Inventory. Company shall maintain within or near the County, an inventory of Replacement Street Lights of the same design, size, and color as the Replacement Street Lights that have been installed pursuant to this Agreement to ensure that Replacement Street Lights may

be promptly replaced in the event of a failure of a Replacement Street Light whether caused by the Wireless Facilities or by any other event, including an Act of God. The inventory shall be the largest whole number of Replacement Street Lights equal to 10% times the number of Replacement Street Light listed on Exhibit B.

4. Permits.

Upon execution of this Agreement, Company will promptly apply for all permits and approvals required from applicable public agencies and private entities. All required permits shall be obtained by the Company within one hundred-eighty (180) days of Agreement execution. The Company shall pay 90% of the Permit Fee for Street Light Attachment upon application for Street Light Attachment Permit. A Public Street Light may not be modified or replaced until there has been a written final approval from the County for that Public Street Light. The permit shall specify that all construction will be completed within one hundred eighty (180) days from permit issuance. The County may define the testing and inspections that shall be conducted, if any, prior to completion of the Public Street Light modification or replacement. Failure of Company to complete all construction within one hundred eighty (180) days from permit issuance voids the permit. The County may use the Financial Security to restore the ROW to a safe and satisfactory condition.

5. Uniform Conditions.

(a) No Cost to County. All costs associated with the replacement or modification of the Public Street Lights and the installation of the Equipment and associated electrical facilities to permit use of the Public Street Lights by Company shall be borne by Company, including costs to the County for equipment to monitor or control the Public Street Lights as replaced or modified. Company is also required to bear costs of any necessary relocation or modification of facilities owned by entities other than the County and authorized and in place on the Public Street Lights prior to Company's use of the Public Street Lights. County will contract for maintenance of the Public and Replacement Street Lights exclusive of the Equipment. Company will maintain or contract for maintenance of the Wireless Facilities. All costs associated with maintenance of the Replacement Street Lights and Wireless Facilities shall be borne by Company. The recurring costs for powering the Luminaire shall be borne by the County, except that, if as a result of Company's use of a Public Street Light, County is no longer eligible for service at the lowest rate available to municipalities for street lighting, Company will pay the County's costs for electrical service to the Luminaire.

(b) Street Lighting. The main purpose of the Public Street Lights, including the Replacement Street Lights is to provide effective, efficient, safe street lighting, consistent with the plan for the County. County may cause or authorize the Public or Replacement Street Lights, or any part thereof to be modified, replaced or removed at any time and for any reason, but will work with Company so that Company's Equipment can continue to be accommodated within or upon the Public or Replacement Street Lights if reasonably feasible, or will work with Company in good faith to identify alternative locations for the Equipment if not feasible. The County (or such other governmental agency as may be responsible for work) shall not bear any costs associated with modifying, replacing or removing the Wireless Facilities even if those costs are caused by the County's actions, or the actions of another governmental agency. A modification of a Public or

Replacement Street Light would include, but not be limited to, the addition of cameras, sensors, traffic signs, banners, and communications equipment for use by any governmental agency for its own purposes or to provide services to the public.

(c) Maintenance Standards. The Company shall perform routine maintenance of the Wireless Facility, as needed. The Company acknowledges that it shall notify the County of the maintenance activity in accordance with the County's policies. The County may establish requirements for maintenance (including preventative maintenance) of the Wireless Facilities to maintain the appearance of the Replacement Street Light and any modified Public Street Lights and to protect the public health, safety and welfare.

(d) No Property Interest Conveyed. All rights expressly granted to Company under this Agreement, which will be exercised at Company's sole cost and expense, are subject to the prior and continuing right of the County under applicable laws to use all parts of the ROW exclusively or concurrently with any other person or entity. Use or replacement of the Public Street Lights is further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the ROW. Nothing in this Agreement may be deemed to grant, convey, create, or vest in Company a real property interest in land, including any fee, leasehold interest, or easement. No reference herein to a "ROW" shall be deemed to be a representation or warranty by County that its interest or other rights to control the use of the ROW is sufficient to permit its use for Company's purposes, and Company shall be deemed to gain only those rights to use as are proper in County, and as County may have the undisputed right and power to give.

(e) County Owns Public Street lights in ROW. Company acknowledges and agrees that County is entering into this Agreement in its capacity as a property owner of Public Street Lights in the ROW and not in its capacity as a regulatory agency. Nothing in this Agreement shall limit in any way Company's obligation to obtain any required regulatory approvals from any County department, board or commission or other governmental agency that has regulatory authority over the Company's proposed activities involving use of the Public Street Lights in the ROW. This includes, but is not limited to, the obligation to obtain and maintain an Agreement for use of Howard County Right-of-Way or an Underground Utility Construction Permit for use of the ROW. All work performed pursuant to the rights granted by this Agreement is subject to the prior review and approval of the County in accordance with its customary permitting procedures.

(f) Operation of Street Lighting Function. The Wireless Facilities shall not interfere with the operation of the Luminaire, or any facility of any government agency installed on or within the Public or Replacement Street Lights; or the facility of any private party installed prior to Company's use of a Public or Replacement Street Lights. If such interference should occur, Company shall discontinue using the Equipment, methodology or technology that causes the interference until Company takes corrective measures to eliminate such interference. In the event that such interference does not cease promptly, Company acknowledges that continuing interference may cause irreparable injury and harm, and therefore, in addition to any other remedies, and without limitation of any other remedy, County shall be entitled to seek temporary and permanent injunctions against the breach of this subsection.

(g) Disconnect. Unless inconsistent with the other requirements of this Agreement, Company shall install a Disconnect device at each Public Street Light, including each Replacement Street Light on which or within which it installs Equipment so that in case of emergency, the County may disconnect such Equipment from its power source and safely shut it down in an emergency.

(h) No Use of Luminaire Electrical Supply. At no time, shall Company utilize electricity designated to power the Luminaire to power the Wireless Facilities.

(i) Equipment Replacement. Company may replace its approved Equipment with like-kind or similar Equipment at a Replacement Street Light without obtaining a modification to this Agreement, and may remove Equipment, if it can be done without changing the visual appearance of the Replacement Street Light or Wireless Facilities and does not require a modification to the Replacement Street Light, or impose additional costs on the County or any other user of the Replacement Street Light. All other changes, including adding new Equipment, require application and prior approval of the County under section 3(e) of this Agreement. This section does not relieve Company of any obligation it may have to obtain other approvals or permits in connection with any planned work, or maintenance requirements. Similar equipment means equipment that serve s similar function and substantially similar or smaller in size, weight, and height.

(j) Relocation Request and Approval. If Company desires to relocate a Wireless Facilities from a Public or Replacement Street Light to another Public or Replacement Street Light, Company must so advise County by filing an application for the new location in accordance with this Agreement. If the County consents to the relocation of the Wireless Facilities, the Company and the County shall amend this Agreement and the Exhibit B.

6. Term. This Agreement will be effective from _____ (the “Effective Date”) through and including [ten years insert date], unless earlier terminated by either the County or the Company in accordance with the provisions of Section 12. No later than six months prior to the expiration of the term, the Parties will meet and confer with regard to a five-year renewal or extension of this Agreement, and the terms and conditions applicable to any such renewal or extension. Any holding over after the expiration of the term shall constitute a default by Company, notwithstanding that County may elect to accept one or more payments of fees from Company.

7. Compensation. Company is solely responsible for the payment of all fees in connection with Company’s performance under this Agreement, including those set forth below.

(a) Annual Pole Fee. Subject to subsection, 7(c), in order to compensate County for Company’s continuing use of the Public or Replacement Street Lights, Company will pay for each Public or Replacement Street Light approved for its use, Five Thousand Dollars (\$5,000.00) per annum, plus an additional Fifteen Hundred (\$1,500.00) per annum for each customer at the Wireless Facility.

(b) Method of Calculation of Pole Fee. The payment required by Section 7(b) shall be paid as follows: on the first day of month following approval of use or replacement of a Public or Replacement Street Light, Company shall pay the County \$5,000 x a percentage equal to the

number of remaining months in the year divided by 12 for that Public or Replacement Street Light. Thereafter, on the first business day of every year, it shall pay the County \$5,000 for each approved Public or Replacement Street Light listed on Exhibit B as rent for the year. In addition, for each customer Company shall pay the County from the date the customer's equipment for that customer is installed, \$1500 x a percentage equal to the number of remaining months in the year divided by 12 for that Public or Replacement Street Light. Thereafter, on the first business day of every year, it shall pay the County \$1500 per Public or Replacement Street Light for each customer associated with that Public or Replacement Street Light.

(c) Increase in Pole Fee. Commencing on the first anniversary of the Effective Date and continuing on each anniversary thereafter during the term and any renewal term, the Pole Fees set forth in Section 7b and 7c for the following calendar year will be adjusted by a percentage amount equal to the greater of (a) three percent (3%) or (b) the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Consumers, 1982 1984=100) that occurred during the previous one year period for the Washington Baltimore Metropolitan Statistical Area as measured from the month prior to the anniversary of the Effective Date.

(d) Other Permit Fees. The payment for use of the Public or Replacement Street Lights is not in lieu of any other tax, fee, or assessment, including but not limited to application fees, permit fees, personal property taxes and franchise fees.

(e) Late Payment. If Company fails to pay any amounts due to County under this Section 7 within thirty (30) days from the specified due date, Company must pay, in addition to the unpaid fees, a sum of money equal to two percent (2%) of the amount due for each month or fraction thereof during which the payment is due and unpaid.

(f) Term of Payment. Company shall continue to pay County for the use of a Public or Replacement Street Light until the date it has completed work associated with termination of its use of a Public or Replacement Street Light, as provided in Section 12.

(g) Survival. The Company's obligations hereunder shall survive the termination or expiration of this Agreement.

8. Construction/Removal/Relocation.

(a) Compliance with Laws and Regulations. Company must comply with all applicable federal, state, and County technical specifications and requirements and all applicable state and local codes related to the construction, installation, operation, maintenance, and control of Company's Equipment installed in or on Public or Replacement Street Lights in the County. Company shall keep the Equipment free and clear from any liens or encumbrances arising out of any work performed, material furnished or obligations incurred by or for Company.

(b) As-Built Drawings. Upon the completion of each installation, Company must promptly furnish to the County an "as-built" map that identifies the exact location of the Public or Replacement Street Light, and the location of all facilities associated with the Wireless Facility. The information must be provided in a format that is compatible with County's GIS system. The Company must also provide a schematic showing all the components of the Wireless Facilities as

constructed. The Company also must provide an as-built certification verifying that all aspects of the design are completely and correctly installed in accordance with this Agreement, the issued Permit(s) and applicable standards, including but not limited to: electric code, clearance distances, and structural loading.

(c) No Payment Upon Termination or Removal. Company shall have no right to receive any financial assistance or payment for any reason if the Public or Replacement Street Light must be relocated or removed for any reason, or upon termination of this Agreement.

(d) County Requests Relocation. If upon the request of the County, a Replacement Street Light listed on Exhibit B is to be relocated or removed, or modified in a manner that will require modification, relocation or removal of the Wireless Facility, Company shall promptly remove, relocate or modify the Wireless Facilities so as not to delay the relocation, removal or modification of the Replacement Street Light. The County shall give Company at least sixty (60) days advance notice of such a proposed relocation, removal, or modification. If Company fails to relocate, remove, or appropriately modify the Wireless Facilities within sixty (60) days, County may remove the Equipment and charge the cost thereof to the Company, without further notice to Company. Company shall pay County within thirty (30) days of an invoice therefore, and if the amount demanded is unpaid, may draw upon the Financial Security provided for in this Agreement. Provided that, in the event of an emergency, while County will make reasonable efforts under the circumstances to contact Company, County may remove or relocate a Public Street Light or any Equipment on the Public Street Light, including but not limited to the Replacement Street Lights, without notice to Company. Without limiting any other provision of this Agreement, County shall not be responsible for any loss or damage caused by its removal or relocation of the Wireless Facilities. Company shall bear all costs associated with removal and relocation of a Replacement Street Light and the Wireless Facilities, including costs associated with removing a foundation, and restoring the surrounding area to its prior condition.

(e) Damage to ROW. Whenever the removal or relocation of a Wireless Facility is required or permitted under this Agreement, and that removal or relocation causes the Public or Replacement Street Lights or ROW to be damaged, Company, at its sole cost and expense, must promptly repair and return the Public or Replacement Street Lights or ROW to a safe and satisfactory condition as directed by, and to the reasonable satisfaction of, the County. If Company does not repair the site as required above, then County will have the option, upon ten (10) days' prior written notice to Company, unless such damage is an emergency in which no notice is required, to perform or cause to be performed all reasonable and necessary work on behalf of Company. County may charge Company for the work performed. Shall pay County within thirty (30) days of an invoice therefore, and if the amount demanded is unpaid, may draw upon the Financial Security provided for in this Agreement.

(f) Equipment Removed from ROW. Company shall remove the Equipment within sixty (60) days after abandonment of a Wireless Facilities; County abandonment of a Public or Replacement Street Light; or termination of this Agreement, at Company's sole cost and expense, and take such steps as may be necessary to cause all other elements of the Wireless Facilities to be removed during that same period. If Company fails to remove the Equipment, or cause the Wireless Facilities to be removed, County is entitled to remove and dispose of the Equipment, and to cause other portions of the Wireless Facilities to be removed, at Company's sole cost and expense, upon

thirty (30) days written notice to Company. In lieu of removal at Company's sole cost and expense, any Equipment that is abandoned and not removed by Company within the time frames set forth in this Section may be declared by the County (by providing written notice to Company after expiration of the sixty (60) day period) to have become its sole and exclusive property, after which the County may utilize or dispose of the Equipment as it sees fit. County is entitled to act on the Financial Security to seek reimbursement for the costs of removal. Company shall execute documents as may be required to carry out the provisions of this Section.

(g) New Street Light. At County's option, upon abandonment of Wireless Facilities on a Replacement or Public Street Light or termination or expiration of this Agreement, Company shall bear all costs associated with removing the Wireless Facilities and replacing the Replacement Street Lights with new street lights satisfactory to the County and similar in design to other Public Street Lights in the same area. Should the County determine that it no longer wishes to use a particular Replacement Street Light, it may require Company to remove such Replacement Street Light. This obligation includes but is not limited to the obligation to remove any foundation installed as part of a Replacement Street Light, and to install an appropriate foundation, and restore the area surrounding a Replacement Street Light to its prior condition.

(h) Survival. Company's obligations under this Section and the limitations on its rights shall survive the expiration or termination of this Agreement.

9. Liability and Damages.

(a) Report Damage and Reimburse the County. Company, its personnel, agents and contractors shall exercise reasonable caution to avoid damaging the facilities, property, and ROW of County and shall make an immediate report to County of the occurrence of any such damage caused by its personnel, agents or contractors. Company agrees to reimburse County for all reasonable costs incurred by County for repair of such facilities, property and/or ROW damaged by Company, its personnel, agents and contractors.

(b) Indemnification. Company agrees to waive all right of recovery against, to indemnify, defend, protect, and hold harmless the County and BGE and their respective officers, and employees, agents and contractors from and against any and all claims (including third party claims), demands, losses, including Public or Replacement Street Lights' warranty invalidation, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") arising from, resulting from or caused by directly or proximately resulting from Company's activities undertaken pursuant to this Agreement, and its omissions regarding same, including activities or omissions by its customers, employees, officers, agents, and contractors. This indemnity would include, but not be limited to, claims arising from the placement of a Wireless Facilities on or within a Public or Replacement Street Light that cause the Public or Replacement Street Light to fail, whether installation was negligent or not; and whether permitted or not under this Agreement, and whether the Equipment was owned by Company or not and any Losses claimed during an emergency event involving a Public Street Light used by Company. This indemnification is not to be deemed a waiver of any immunity that may exist in any action against the County. In the event that the County seeks indemnification hereunder, it shall promptly notify Company of the nature and amount of the claim

and the method and means proposed by the County for defending or satisfying the claim. The County shall consult with the Company with respect to the defense and satisfaction of the claim, including the selection and direction of legal counsel. The County shall not pay or settle any claim for which it seeks indemnification without the prior written consent of Company, which consent shall not be unreasonably withheld.

(c) Risk of Loss of Equipment. Company bears all risks of loss or damage of the Equipment from any cause, and the County shall not be liable for any damages or loss associated with loss or damage of the Equipment or any part of the Wireless Facilities, including, without limitation, damage caused by the County's removal of the same. In no event shall County be liable for any consequential or special damages, including but not limited to loss of business damages.

(d) Survival. The obligations hereunder shall survive the termination or expiration of this Agreement for a period of three (3) years

10. Insurance.

(a) Required Insurance. Without limiting any obligations or liabilities of County under this Agreement, Company shall maintain for the duration of such interconnection, at its own expense, Commercial General Liability Insurance including Contractual Liability Coverage, covering liability assumed under this Agreement, Products/Completed Operations Coverage, Broad Form Property Liability Coverage, Personal Injury Coverage and coverages for explosion, collapse, underground hazards in the amount of \$5,000,000 combined single limit for Bodily Injury and Property Damage and a \$5,000,000 occurrence aggregate and Environmental premises Liability Insurance in the amount of \$5,000,000, which may be met by a combination of primary and excess or umbrella insurance.

(b) Additional Insured. Company's insurance policies required by this Agreement shall name County as an additional insured as follows: "Howard County, Maryland, its elected and appointed officials, officers, employees, and authorized volunteers." The policies must cover the entirety of the Wireless Facility, whether or not a particular component is owned by Company

(c) Certificates of Insurance. Certificates showing proof of such insurance shall be submitted to County upon the execution hereof and annually on the first day of July or at the time of policy renewal. Further, it shall be an affirmative obligation upon Company to notify County within two days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement. If any policies are written on claims made basis, the insurance shall continue in force for three (3) years after the termination of this Agreement.

11. Assignment; Third Party Beneficiaries.

(a) No Assignment. Without the prior written consent of the County, the Company may not assign, sub-license, or transfer in any manner, in whole or in part, its rights, duties or obligations under this Agreement. A change in control of Company shall be considered a transfer.

(b) Customers of Company. Notwithstanding Section 11(a), it is understood that part of the Equipment Company may install will be owned by Wireless Providers, customers for its

Service. Company may install that equipment under this Agreement so long as (1) the Equipment, including the equipment owned by the Wireless Provider must be wholly under the control and management of Company; and Company shall be liable for all acts or omissions, and all harms associated with the Wireless Facilities and all its components whether the same are its acts or omissions, or the acts or omissions of the owner of the Equipment; and (2) Company acknowledges and agrees that no rights of ownership by its customers shall permit any such customer to enter upon, or use the ROW, or to in any way access the Public or Replacement Street Lights or Wireless Facilities for any purpose, including to add to, or modify or install Equipment, which shall be Company's sole responsibility. Further, Company may not install Equipment it does not own as part of a Wireless Facility, unless the customer on whose behalf the Equipment has been installed acknowledges and agrees, in a form acceptable to the County, that the County has not granted it a franchise or consent to physically enter the ROW for any purpose through this Agreement; or any right to use or replace the Public or Replacement Street Light; that it shall have no rights or claims against the County of any sort related to the Wireless Facilities; and that County may treat any Equipment owned by such entity as if it were owned by Company for all purposes (including but not limited to removal and relocation); and that it is jointly and severally liable for damages caused by Equipment owned by such entity to the County, to persons or to property.

(c) No Third Party Beneficiary. Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

12. Termination.

(a) Termination by County. County may terminate this Agreement if:

(i) Company cannot ensure County retains free and clear title to Public or Replacement Street Lights as contemplated herein, or if Luminaire costs to the County would increase as a result of this Agreement; or if the Company fails to provide or maintain any Financial Security or contract required by this Agreement.

(ii) The Company's rights to occupy the ROW are terminated or expire; or its State authority to provide the Services is terminated or expires.

(iii) As to any Public or Replacement Street Light, if Company is not providing Services using that Public or Replacement Street Light, or if Company indicates it wishes to abandon that Public or Replacement Street Light.

(iv) If it is determined that Company has submitted false or misleading information to the County in connection with the replacement or modification of any Public or Replacement Street Light.

(v) If Company becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute; or becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority;

(vi) If Company engages in a pattern of acts or omissions that create a hazard to persons or properties.

(vii) If Company materially breaches this Agreement, and fails to cure the default within thirty (30) days of notice of the default. A failure to (a) pay the Pole Fees owed, (b) maintain the Financial Security, or (c) pay costs, fees and taxes it is required to bear under this Agreement is a material breach.

(viii) If Company takes any action that impairs the ability of the County to provide safe or adequate street lighting, and fails to cure the impairment within thirty (30) days' notice of the impairment.

(ix) If any federal, state, or county agency determine the Equipment or the Replacement Street Light has an adverse impact on public health or safety.

(b) Fee for Terminated Public or Replacement Street Light. Company shall have the right to terminate this Agreement in whole or as to any Public or Replacement Street Light at any time upon sixty (60) days' notice. Company shall have no further obligations for the payment of fees to County for Public or Replacement Street Lights affected by the termination upon completion of the acts required by Section 12(c).

(c) Responsibility for Restoring Public Street Light. Upon termination or expiration of this Agreement in its entirety or as to any Replacement Street Light, Company shall (1) remove Equipment from the Replacement Street Light; and/or (2) cause Equipment owned by others that are associated with the Wireless Facilities to be removed; and (3) cause affected property to be restored to its prior condition. Company shall remove and replace the terminated Replacement Street Lights as provided in Section 8(g)

(d) Continued Obligations. Company's obligations to indemnify, to maintain insurance, to the Financial Security and to take any action required upon termination or abandonment shall survive termination until such obligations are satisfied.

13. Financial Security.

In order to secure the performance of its obligations under this Agreement, Company will provide Financial Security to the County:

(a) Prerequisite. Prior to the commencement of any work under this Agreement, Company must provide the Financial Security. The Financial Security is conditioned upon the performance by Company of all the terms and conditions of this Agreement and upon the further condition that if Company fails to comply with any terms or conditions governing this Agreement, there shall be recoverable, jointly and severally, from the Company and the Financial Security any damage or loss suffered by the County as a result, including the full amount of any compensation, or costs of removal or abandonment of Company's property, plus costs and reasonable attorneys' fees. Company will keep the Financial Security in place during the term of this Agreement, and thereafter until all its obligations with respect to removal and restoration is satisfied.

(b) Demand by County. Upon Company's failure to pay the County any amount owing under this Agreement, the Financial Security may be assessed by the County for purposes including, but not limited to:

(i) Reimbursement of costs borne by the County to correct conditions in the ROW or Public or Replacement Street Lights not corrected by Company, pursuant to this Agreement.

(ii) To provide monetary remedies or to satisfy damages assessed against Company due to a material breach of this Agreement.

(c) Restoration of Financial Security. Company must restore the Financial Security to its full amount within thirty (30) days after written notice from the County that any amount has been recovered from the Financial Security. Failure to restore the Financial Security to its full amount within thirty (30) days will constitute a material breach of this Agreement. Company will be relieved of the foregoing requirement to replenish the Financial Security during the pendency of an appeal from the County's decision to draw on the Financial Security.

(d) County's Costs. If the Financial Security is drawn upon, all of County's costs of collection and enforcement of the provisions relating to the Financial Security that are specified in this Section, including reasonable attorneys' fees and costs, will be paid by Company.

(e) Form of Financial Security. The Financial Security shall be in a form acceptable to the County, and if it is a letter of credit it shall be irrevocable and with a bank doing business in Maryland.

(f) Rights Reserved. The rights reserved by the County with respect to the Financial Security are in addition to all other rights and remedies the County may have under this Agreement, the Agreement for Use of Howard County Right-of-Way or any other law.

14. General Provisions.

(a) Notices.

(i) All notices required or permitted to be given to either party by the other Party under any provisions of this Agreement shall be in writing. Notice shall be deemed served when delivered by hand or sent by a nationally recognized overnight courier service to the other Party's address set forth below during normal business hours. If a Notice is mailed, service is deemed complete upon the earlier of actual delivery or the close of business on the third business day following the date when the Notice is placed in a receptacle regularly maintained by the U.S. Postal Service addressed to the Party at the address set forth below with postage pre-paid.

(ii) Notices regarding submissions and approvals by the County shall be directed to:

Howard County, Maryland
Attn: Director of Department of Public Works
George Howard Building

3430 Court House Drive
Ellicott City, MD 21043
and
Construction Inspection Division
Right-of-Way Utility Permits (RUP) Supervisor
9250 Bendix Road
Columbia, MD 21045
RUP Help Desk Phone: (410) 313-4207
Email: rup@howardcountymd.gov

(iii) All Notices to the Company shall be sent to:

ATTN: _____

(b) Non-Waiver. Failure of either Party to take action to enforce compliance with any of the terms or conditions of this Agreement, or to give notice or declare this Agreement or any authorization granted hereunder terminated, or to exercise any right or privilege hereunder, shall not be construed as a continuing or future waiver of such term, condition, right or privilege, but the same shall be and remain at all times in full force and effect.

(c) Headings. All headings contained in this Agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.

(d) Venue. The Company agrees that any lawsuit initiated under this Agreement shall be filed in the Circuit Court of Maryland for Howard County.

(e) As is condition of Public Street Lights. Public Street Lights licensed to Company pursuant to this Agreement are licensed to and accepted by Company “as is” and with all faults. The County makes no representation or warranty of any kind as to the present or future condition of or suitability of the Public Street Lights, including the Replacement Street Lights for Company’s use and disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of the Replacement Street Lights or other Public Street Lights and the merchantability or fitness for a particular purpose. Company is solely responsible for investigation and determination of the condition and suitability of any Public or Replacement Street Lights for Company’s intended use.

(f) Amendment of Agreement. This Agreement may be amended only by a written instrument signed by both parties.

(g) Entire Agreement. This Agreement, the Agreement for Use of Howard County Right-of-Way and each Underground Utility Construction Permit contains the entire understanding between the Parties with respect to its subject matter. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to

the subject matter of this Agreement that are not fully expressed herein. In the event of conflict between this Agreement and any other agreement between the Parties, or the Code, the provisions most favorable to the County shall prevail.

(h) Governing Law. This Agreement and the rights and obligations contained in it shall be construed in accordance with, and governed by, the laws of the State of Maryland without regard to its choice of law provisions.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Company and the County have caused their duly authorized representatives to sign and seal this Agreement for Use of Public Street Lights as of the date hereof.

WITNESS/ATTEST:

COMPANY

Secretary

By: _____(SEAL)
President

STATE OF MARYLAND, _____ COUNTY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public of the State of Maryland, in and for County aforesaid, personally appeared _____, who acknowledged himself to be the President of _____, a Maryland corporation (the "Corporation"), and that he, as such officer being authorized so to do, executed the within Agreement for Use of Public Street Lights for the purposes therein contained by signing the name of the Corporation by himself as such officer.

AS WITNESS my Hand and Notarial Seal.

My Commission Expires: _____

Notary Public

[Signatures continued on following page.]

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____ (SEAL)
Allan H. Kittleman
County Executive

APPROVED for program sufficiency:

APPROVED for sufficiency of funds:

James M. Irvin, Director
Department of Public Works

Janet Irvin, Director
Department of Finance

APPROVED for form and legal sufficiency
this _____ day of _____, 20____.

Gary W. Kuc
County Solicitor

Reviewing Attorney:

STATE OF MARYLAND, COUNTY OF HOWARD, to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20____, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Allan H. Kittleman, County Executive of **HOWARD COUNTY, MARYLAND**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement for Use of Public Street Lights and acknowledged that he executed the same for the purposes therein contained and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: _____

Exhibit A

Initial Application for Agreement

County will review an application to allow this Agreement for Use of Public Street Lights, and determine whether it will enter into this Agreement. Without limiting the foregoing, it may require that a different design be used; may require replacement of a Public Street Light where it determines that attachment to a Public Street Light would not be appropriate; may require that the luminaire be replaced and designate the luminaire that must be installed whether or not replacement was proposed by Company; may establish different or additional requirements for placement and concealment of all the elements of the Wireless Facility, including meters; and may specify the lamps that must be installed as part of the replacement or use, cut-off angles and fixtures, and other factors that affect the quality of lighting and consistency with County requirements.

The application shall include all aspects of design, certification, routine maintenance and emergency response; this includes but is not limited to: the Equipment, replacement Public Street Light(s), metered separate connection to the BGE electrical system, and identity of the CMRS provider(s) with contract verification (No Public Street Light(s) may be replaced or modified speculatively; there must be a demonstrated CMRS). County may establish different or additional requirements for placement and concealment of all the elements of the Wireless Facility, including meters; and may specify the lamps that must be installed as part of the replacement or use, cut-off angles and fixtures, and other factors that affect the quality of lighting and consistency with County requirements. The Company shall pay 10% of the Permit Fee for Street Light Attachment upon application for this Agreement.

Exhibit B

Approved Locations for Replacement Street Lights

Exhibit C

Certified Design