

WIRELESS FACILITIES RIGHTS-OF-WAY ACCESS AGREEMENT

between

The City of ALBANY

and

**WIRELESS FACILITIES
RIGHTS-OF-WAY ACCESS AGREEMENT**

The City of Albany, NY ("City"), and _____, a corporation, organized and existing under the laws of _____ ("_____"), hereby enter into this Wireless Facilities Rights-of-Way Access Agreement ("Agreement") effective as of _____, 201_ (the "Effective Date").

WHEREAS _____ possesses a Certificate of Public Convenience and Necessity to operate in New York State as a facilities-based provider and reseller of telephone service with authority to operate throughout the State of New York to provide telecommunications services and seeks to deploy Wireless Facilities, as defined herein, in the City and within the City rights-of-way; and

WHEREAS the jurisdictional boundaries of City include public rights-of-way and facilities that are contemplated to be used by, and useful to, telecommunications providers for deployment of Wireless Facilities, as defined herein; and

WHEREAS City is authorized by federal and State statutes, regulations and orders to recover just and reasonable costs and expenses for permitting and administering telecommunications providers' access to the public rights-of-way within the City.

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the City and _____, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Definitions

Except as the context may otherwise require, each capitalized word or phrase in this Agreement shall have the meaning specified herein. All other terms in this Agreement shall be interpreted in accord with common usage in the telecommunications industry. Without limiting the generality of the foregoing, for purposes of this Agreement, the terms listed below are defined as follows:

- 1.1. "Attachment" means the placement, attachment or installation of one or more items of Equipment on, over, under or within any City ROW or to any City Facility or Utility Infrastructure.
- 1.2. "Attached Facilities" are any Facilities affixed to a Structure except optical fiber, wires, coaxial cable and the mounting hardware used to attach optical fiber, wires, coaxial cable. Examples of "Attached Facilities" include but are not limited to antennas, telephone boxes, power boxes, and other equipment boxes and cabinets on Structures.
- 1.3. "Aesthetic Standards" means such standards promulgated by the City and governing the deployment of wireless facilities within the City of Albany rights-of-way.

- 1.2. “Commission” or “PSC” means the State of New York Department of Public Service Commission.
- 1.3. “Decorative Poles” means a pole, arch, or structure other than a street light pole placed in the right of way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following (a) electric lighting; (b) specially designed informational or directional signage; (c) temporary holiday or special event attachments.
- 1.4. “Equipment” means any and all radios, amplifiers, optical converters, multiplexers, antennae, cables, wires, conduits, innerducts, pedestals, boxes, cabinets, primary and auxiliary power supplies, power meters, , mounting hardware, and all related or ancillary devices which may be owned by _____ or _____ customers which shall be installed, maintained, operated or used by _____ to provide Service for the purpose of deploying Wireless Facilities. Equipment is not a pole.
- 1.5. “_____” is a corporation organized under the laws of the State of _____ and to which the Commission has issued a certificate of public convenience and need to operate as a provider of telecommunications services within the State of New York.
- 1.6. “Fee” means any one-time or recurring amount to be paid by _____ pursuant to this Agreement in connection with Wireless Facilities deployment. Such fees are set forth in Exhibit ____.
- 1.7. “Facility” or “Facilities” means any existing City-owned or leased structure upon or within which it is technically feasible to place Equipment in connection with deployment of Wireless Facilities, including, but not limited to any City -owned light poles or fixtures, or conduit in City ROW, if any. Facilities shall not include traffic signal poles.
- 1.8. “Node Poles” means those existing Utility Infrastructure or Facilities to which _____ proposes to attach items of Equipment for the deployment of Wireless Facilities, other than wires and fiber optic cabling.
- 1.9. “Pole Placement” means the placement of a new wooden, metal or concrete pole or other vertical structure in City ROW by _____ when required for _____'s provision of Service in connection with Wireless Facilities deployment and subject to obtaining all permits and approvals from the City prior to installation by _____. “Pole Placement” includes replacement of existing Utility Infrastructure poles, but does not authorize any height increase for the replacement pole. Any increase in height shall require approval of the City.
- 1.10. “Restore” means returning a City Facility or ROW to the condition it was in prior to Attachment or Pole Placement, as required by the City.

- 1.11. "Streets" or "Right(s)-of-Way" means the surface of, and the space above and below, any public street, road, alley or highway, within the City, used or intended to be used by the general public for travel, to the extent the City has the right to allow _____ to use them for Wireless Facilities deployment.
- 1.12. "Wireless Facility" means the same as the definition as set forth in 47 CFR § 1.6002 Definitions. Antenna(s) and associated equipment used to transmit and/or receive audio, video, data and other information using radio frequency energy and other electronic or electromagnetic systems. The Antenna(s) and Equipment of each wireless carrier, including small cell and Distributed Antenna Systems, shall be separately considered a wireless facility.
- 1.13. "Structure" means any Utility Infrastructure or Facilities, guy or support pole, utility pole extension, light standard or other similar pole in the Streets that is suitable for the installation of Wireless Facilities.
- 1.14. "Service" means the transport, transmission and reception of signals carrying voice and data communications, including but not limited to format and/or protocol conversion and point-to-point transport of signals over fiber optic cables and other wireline connections as _____ provides as authorized by the PSC or Federal Communications Commission.
- 1.15. "State" means the State of New York.
- 1.16. "Street Furniture" means equipment that is allowed when placed in the ROW in conjunction with a new stealth pole and concealed in a ground mounted cabinet of stealth design consistent with the City's Aesthetic Standards.
- 1.17. "Utility Infrastructure" means existing poles and/or conduits owned or controlled by public or private utility companies, other than City-owned utility companies that are located in the ROW.

2. Grant of Access and Occupancy Rights

2.1 NATURE AND TERM OF GRANT

2.1.1 Grant of Authority.

The City does hereby grant _____, qualified to do business in the State of New York, pursuant to a certificate of public convenience and need, and its successors and assigns, as approved by the City, the non-exclusive privilege and authority to access Structures located in the City Streets to construct, repair, replace, maintain and operate Equipment to provide Services in, under and over the surface of City Streets for the limited purpose of Wireless Facilities deployment within the City. _____ intends to use its Services to provide mobile telecommunications services.

_____ represents that it has applied for and received all necessary regulatory authority to provide mobile telecommunication services in the State of New York from the PSC and any other applicable State regulatory.

2.1.2 Equipment Attachment to Facilities.

City hereby grants to _____ the nonexclusive right, privilege, and license to enter and occupy City's Rights-of-Way for the purpose of Wireless Facilities deployment. Such right to enter and occupy shall be for purposes of, and/or in connection with, Attachments of Equipment, and shall be subject to applicable rules, regulations or statutes setting forth non-discriminatory and reasonable controls in which City's ROW are accessed and occupied for the benefit of the residents of the City and in order to protect the health, safety and welfare of the public.

1. Nothing in this Agreement shall preclude _____ from entering into a contract for the use of any portion of its Services with any other entity for any services, provided that said entity is first authorized or said entity has assumed responsibility for obtaining any required authority from the City.

2. Agreement Not Exclusive. This Agreement is not exclusive. The City expressly reserves the right to grant rights to other entities, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed _____ hereunder, by lease, franchise, permit, agreement or otherwise.

3. Mutual Reservation of Rights. Nothing in this Agreement shall be deemed a waiver by _____ or the City of the rights of _____ or City under applicable law. By entering into this Agreement, _____ is not waiving its rights to seek judicial or administrative review of the provisions in this Agreement under applicable Federal, state or local law. The City reserves and in no way waives any right to enforce the requirements in this Agreement during the term of this Agreement and _____ agrees to such reservation and non-waiver by the City. _____ also reserves and in no way waives any right to challenge the enforcement of the requirements in this Agreement and the City agrees to such reservation and non-waiver by _____.

2.2 _____'s Attachment to Utility Infrastructure. Subject to obtaining a utility easement or other suitable form of written permission of the owner(s) of Utility Infrastructure within the ROW and receipt of all required municipal approvals and permits, the City hereby authorizes and permits _____ to enter upon the ROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Equipment in or on Utility Infrastructure or other structures lawfully owned and operated by public utility companies or other property owners and

located within the Rights-of-Way to deploy Wireless Facilities. _____ shall furnish to the City documentation in a form reasonably acceptable to the City of such permission from the individual utility prior to deployment of Wireless Facilities on Utility Infrastructure or property owner. City shall provide a response to _____ in accordance with all applicable laws, rules, requirements and regulations.

2.3 Approval of Equipment Design, Configurations and Attachments. _____ will submit to City all required and complete applications with a proposed design for any Equipment that _____ proposes to use in City ROW either on City Facilities or Utility Infrastructure. Such applications shall include, but not be limited to, a map or annotated aerial photograph identifying which Utility Infrastructure or Facilities _____ seeks to use for Attachments, as more fully detailed on the various application forms. Based on the complete applications, the City will verify that the Equipment proposed in the design complies with the configurations and the Equipment specifications set forth in Exhibit A, and evaluate compliance with the provisions of the City Code and the City's Aesthetic Standards, as may be amended from time to time, and completion of SEQRA. If the City determines compliance has been achieved, the City will approve or conditionally approve the application, provided all other approvals, if any, have been granted, all required fees are paid and the application is complete and in compliance with all laws, rules and regulations. If the application is denied, the City will provide its basis for such denial in writing. _____ may then appeal or apply for a variance to the City of Albany Board of Zoning Appeals.

2.3.1 Change in Equipment. If _____ applies to the City for an Attachment or installation of Equipment that, as determined by the City, differs in a material way from the configurations and Equipment specifications attached hereto as Exhibit A, on Utility Infrastructure and/or City Facilities for the deployment of Wireless Facilities, then _____ shall not be authorized to deploy any such Equipment in the City ROW. The City will review such application for compliance with the City Code, Aesthetic Standards, as may be amended from time to time, and all information provided in the various applications for deployment of such Equipment, including SEQRA review, and determine whether a permit may be issued.

2.4 Pole Placements. As set forth in the City's Aesthetic Standards, Pole Placements are to be generally discouraged within the City rights-of-way. In the event that an _____ application for a permit or approval for Wireless Facilities deployment for an Attachment is denied by City due to lack of existing Facilities or Utility Infrastructure, or structural infeasibility, or any other lawful basis, the parties agree that either _____ shall be granted the right for Pole Placement in the ROW in another suitable location, such suitability to be determined by the City, and subject to receipt of all required permits and approvals, including but not

limited to compliance with Aesthetic Standards promulgated by the City or _____ may withdraw its application for Attachment. All Pole Placement are subject to compliance with the City Code and regulations as may be amended from time to time, including but not limited to the City's Zoning law, currently Chapter 375 of the Code of the City of Albany, Aesthetic Standards, state and federal law and compliance with SEQRA. _____ shall apply to the BZA for variances or appeal as may be required for any Equipment and/or Pole Placements in the ROW as may be required. Time limitations set forth in Chapter 375 shall not apply.

2.4.1 _____ shall bear the entire cost and expense of all placement, installation, construction, and maintenance of Pole Placement.

2.5 Structural Integrity of Facility or Utility Infrastructure. If _____ selects a Facility or Utility Infrastructure for deployment of Wireless Facilities that is structurally inadequate to accommodate Equipment, _____ may at its sole cost and expense replace the Facility or Utility Infrastructure with one that is acceptable to and approved by the City utilizing the same process and procedure for Pole Placement as set forth in section 2.4 and receipt of all required approvals from the City. _____ may seek to dedicate any such new facility to the City, subject to the approval by the Common Council. Under no circumstances is the Common Council required to accept dedication of such facilities.

2.6 Assignment of Cost. _____ shall bear the entire cost and expense of all placement, installation, construction, maintenance, and operation of Equipment and/or Attachments and Pole Placements by _____ in the Rights-of-Way, and shall hold City harmless from any such costs or expense.

2.7 Power for Equipment and Facilities. _____ will be solely responsible for establishing electrical power services for all of its Equipment and for the payment of all electrical utility charges to the applicable utility company. Drawings for power supply routing shall be provided to the City before approval, and all necessary permits therefore shall be obtained. _____ shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Equipment's usage of electricity and applicable tariffs. Electrical powering of any of _____'s Equipment and/or Attachments shall be separate from the electrical service powering the City Facilities.

2.8 Aesthetic Considerations

2.8.1 Aesthetic considerations are of primary importance to the City. In connection with completion of all required applications, _____ shall provide reasonable alternatives that may be considered by the City, including camouflage techniques in connection with _____'s deployment of Wireless Facilities. In all instances Wireless Facilities antennae shall be of a consistent pattern, color texture so as to blend in to the surrounding

environment to the maximum extent possible to cause the least visual intrusions and potential negative impacts, and comply with the City's Aesthetic Standards.

- 2.8.2 In addition, ____ agrees to provide the location of other Wireless Facilities antennae deployed within ____ feet of each new Equipment or new Pole Placement and all other wireless facilities so that the City may examine potential adverse aesthetic impacts both individually and cumulatively.
- 2.8.3 _____ shall comply with the Aesthetic Standards as promulgated by the City and as may be amended from time to time.
- 2.8.4. In the event that the antenna or Pole Placement do not meet the cubic feet requirements to be classified as a "Small Wireless Facility" pursuant to 47 CFR § 1.6002, or if there are changes in the law that impact this agreement, _____ recognizes and agrees that there may be additional City approvals and different fee rates that may apply to deployment of such infrastructure. In such event, or if the application does not comply with the Aesthetic Standards, or if a variance or appeal is taken to the City Board of Zoning Appeals, the City may require the provision of escrow of fees to assist in review of such application.
- 2.8.5 If the installation of a Wireless Facility results in the creation of a double pole, ____ agrees that it will cooperate in good faith with the City in efforts to get the utilities and other companies having attachments on the original pole to relocate the attachments to the new pole so that a double pole can be eliminated as soon as practicable.

2.9 The placement of antenna shall not change the primary purpose of any Facility or Utility Infrastructure which shall remain the purpose for which the City or utility originally installed the pole, or cause the Facility or Utility Infrastructure to be a wireless tower or base station within the meaning of §6409(a) of the Spectrum Act, 42 USC §1455, or extend the jurisdiction of any Agency over such Facility or Utility Infrastructure which did not have jurisdiction prior to the attachment of a wireless facility to the Facility or Utility Infrastructure.

2.10 _____ has provided to the City the anticipated locations throughout the City that _____ currently proposes to deploy Wireless Facilities and Pole Placements. See Exhibit B. In the event that _____ seeks to increase the locations shown on Exhibit B by adding new or different areas of the City, ____ shall seek an amendment of this Agreement to authorize such changes.

3. Term

The term of this Agreement shall commence on the Effective Date and continue thereafter for an initial period of three (3) years (the "Initial Term") unless terminated sooner or renewed. _____ shall have the right to extend this Agreement for up to two renewal terms of three

(3) years each. This Agreement shall not be renewed if _____ has violated any provision in this Agreement, or is otherwise in violation or breach of this Agreement, or in violation of any law, rule or regulation. Within sixty (60) days of the end of the Initial Term or renewal period, _____ shall send a notice to City of its desire to either renew this Agreement or renegotiate its terms, or both.

4. Compensation

4.1. Amount.

As compensation for the benefits and privileges under this Agreement, and in consideration of permission to use the Streets of the City for deployment of Wireless Facilities, _____ shall pay the following fees to the City through the duration of the Agreement, and for any possible hold over period, for the right to install Attachments on Structures or Pole Placements in the Streets:

4.1.1 ROW Fees. In order to compensate the City for the reasonable costs of administering _____'s entry upon and deployment of Wireless Facility Equipment within, over or under the ROW _____ shall pay ROW Fees as set forth in Exhibit __. Any future Attachments shall be based upon either the ROW Fees set forth in Exhibit __, or at the City's option, may be subject to disposition with public notice at public auction to the highest bidder, and subsequent approval by resolution of the City's Board of Estimate and Apportionment, and shall be based only on the number of Attachments in use by _____ within the geographic boundaries of City during the relevant period. Subject to Section 7, _____ may remove any Equipment or Attachments in the ROW at any time, provided all permits are first obtained from the City, and the corresponding ROW Fees shall cease upon removal.

Prior to removal of any Equipment or Attachments, or replacement of any Equipment or Attachments, _____ shall complete and file with the City an application on forms provided by the City for such purposes. No Equipment shall be removed until the application for removal has been approved by the City.

4.2. Other Fees and Compensation. The foregoing Fees are in addition to and not in lieu of any other non-discriminatory administrative fees and charges, imposed by City in connection with the issuance of construction permits, provision of copies of records, etc. Such fees shall be computed on the basis of rates in Exhibit ____.

4.3. Payment Terms. All annual ROW Fees payable pursuant to this Section 4 shall be paid in advance no later than January 31st of each year, and shall be based on the total Fees due for all Equipment, Attachments, Pole Placements and/or Node Poles occupying City ROW and/or Facilities or Utility Infrastructure as of

December 31' of the previous year. Initial application Fees for all new Equipment, Attachments, Pole Placements and/or Node Poles placed on City ROW and/or Facilities shall be paid in advance and due upon application therefor. There shall be no proration of Fees.

- 4.4 In the event that the FCC's Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment - Declaratory Ruling and Third Report and Order WT Docket No. 17-79; WC Docket No. 17-84 is annulled or overturned, either partially (relating to fees) or in full, by a court, or any other change in the law, or issuance of an order impacting this agreement, then this Section 4 shall be annulled and of no effect and _____ shall be subject to payment of fees in accordance with typical application fees and fees for use of the City's rights-of-way.

5. Construction

- 5.1 CONSTRUCTION. _____ shall comply with all applicable federal, State and City specifications and requirements and all applicable state and local codes related to the construction, installation, operation, maintenance, and control of Equipment for Wireless Facilities deployment installed in the ROW in furtherance of Wireless Facilities deployment. _____ shall not attach, install, repair, replace, maintain and operate any Equipment in or on the ROW and/ or on City Facilities without the prior written approval of the City for each location.

A. Permits. _____ shall apply for and obtain all permits necessary for the construction, installation and maintenance of its Wireless Facilities and Equipment in the Streets. _____ shall pay all applicable fees due for City construction permits. All construction and maintenance of any and all _____'s facilities within the Streets incident to _____ deployment of Wireless Facilities, regardless of who performs installation and/or construction, be and remain the responsibility of _____.

B. Installation of Equipment. _____'s Equipment, Node Poles and Pole Placements shall be installed and maintained in accordance with federal law, the laws of the State of New York and the ordinances and standards of the City, as may be amended from time to time, regulating such construction, including, but not limited to, the USDO and noise ordinance. In addition to all requirements of the City Code, and this Agreement, _____ shall construct and provide its Services in accordance with all applicable reasonable current and future City regulations, ordinances, and local laws.

C. _____ acknowledges that the Streets have a finite capacity for containing Structures, including Pole Placements and other Facilities and Utility Infrastructure. Therefore, _____ agrees that whenever _____ and any other entity determine that collocation of such entities' Equipment is safe, practical and

will not result in signal or other interference, _____ shall allow such collocation on its Structures, including Pole Placements, subject to the review and approval of the City, in accordance with this Agreement, and the negotiation of a mutually acceptable collocation agreement between ____ and _____.

_____ shall comply with the City's competitively neutral guidelines for all Pole Placements, as follows:

Note: A "City Pole" is defined as City-owned poles such as street light poles or traffic light poles and street furniture owned by the City and located *in the public ROW*. "City Property Pole" is defined as City-owned poles such as street light poles or traffic light poles and street furniture owned by the City and located *outside the public ROW*, on property that is owned, or is otherwise controlled through an easement or lease, by the City.

The purpose of this process is to ensure that, while wireless telecommunications providers may seek approval of Wireless Facilities on City Poles, City Property Poles or other City-owned infrastructure on a neutral, non-discriminatory basis, no individual wireless telecommunication provider that already has a Wireless Facility on a City Pole, City Property Pole, or other City-owned infrastructure has the right to install Wireless Facilities on *additional* City Poles, City Property Poles, or other City-owned infrastructure within a radius of 500 feet, unless and until all other wireless telecommunications providers have been given a fair opportunity to make use of any other available City Poles, City Property Poles, or City-owned infrastructure in that radius.

1. If a wireless telecommunications provider (PROVIDER 1) intends to apply for approval of a Wireless Facility at a location (a "Preferred Location") that is within 500 feet of another City Pole, City Property Pole or City-owned infrastructure that already has been approved by the Commissioner as the location of a Wireless Facility of that PROVIDER 1 (the "Pre-existing Location"), PROVIDER 1 shall first determine whether any other telecommunications provider that is has a Right-of-Way Use Agreement for wireless attachments in effect with the City ("OTHER FIRM") has a present interest in using that City Pole, City Property Pole or City-owned infrastructure as a location for its own Wireless Facility. PROVIDER 1 shall establish whether such an interest exists as follows:
 - a. PROVIDER 1 must send out a notice ("Preferred Location Notice") to all OTHER FIRMS. Notices should be sent at least 30 Days before PROVIDER 1 plans to apply to the Commissioner for approval of its proposed Wireless Facility on that City Pole, City Property Pole, or City-owned infrastructure.
 - b. Such Preferred Location Notice must disclose the street location and any identifying number, name or description sufficient to specify the City Pole, City Property Pole or other City-owned infrastructure that is PROVIDER 1's Preferred Location. Such notice may also identify other City Poles, City Property Pole, or City-owned infrastructure that may serve as an alternative to the Preferred

Location. [For example, if the Preferred Location is a streetlight pole, the Preferred Location Notice might also identify another streetlight pole, a traffic signal and a bridge abutment that are all near the Preferred Location].

- c. Such notice must be sent via certified mail with return receipt requested, however, PROVIDER 1 may, by agreement with one or more other wireless or telecommunications providers entitled to notice, establish standing arrangements whereby such notice is provided in a manner other than by certified mail, for example through email notice with confirmed receipt or using some other process in which receipt of notification can be documented.
- d. An OTHER FIRM will have ten (10) business Days from its receipt of the Preferred Location Notice to inform the Commissioner whether it has a present interest in attaching a Wireless Facility to the Preferred Location.
- e. An OTHER FIRM may assert such an interest only if it: (1) does not have its own Wireless Facility installed on any City Pole, City Property Pole or City-owned structure within 500 feet of the Preferred Location or an application for a Wireless Facility on any City Pole, City Property Pole or City-owned structure within that distance under review by the City; and (2) reasonably intends in good faith to apply, within six months of receipt of the notice, for such approval to install its own Wireless Facility at the Preferred Location. If an OTHER FIRM timely states such an interest, the OTHER FIRM shall have the first right to make such application for the Preferred Location within that period, unless the LICENSEE negotiates another arrangement with the OTHER FIRM. Such OTHER FIRM, having asserted such interest, may not assert a present interest in any other City Pole, City Property Pole or City-owned structure within 500 feet of the Preferred Location during such six-month period.
- f. If there are multiple OTHER FIRMS that timely express an interest in a Preferred Location, the OTHER FIRMS and PROVIDER 1 shall jointly work together, within 30 Days to devise a plan to allocate available nearby City Poles, City Property Poles, and City-owned structures between them so as not to interfere with each other, and two or more of them may jointly propose to install equipment on shared structures. PROVIDER 1 shall be responsible for initiating these discussions.
- g. The appropriate City personnel, including Office of Planning staff, will be reasonably available to participate and advise in these coordination discussions.
- h. If PROVIDER 1 and one or more OTHER FIRMS propose to jointly replace a City Pole and/or install equipment on a shared structure, they shall jointly determine what process they will follow to solicit construction bids. In the absence of such agreement, the PROVIDER 1 shall solicit at least three quotes, two of which shall come from contractors that are not affiliates of PROVIDER 1.

In the absence of an agreement as to cost-sharing, the parties shall evenly share construction costs and each party shall be responsible for the cost of installing its own equipment.

- 5.2. Attachment to Municipal Facilities. Subject to receipt of all required municipal approvals and permits, the City hereby authorizes and permits _____ to enter upon the ROW and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on City Facilities for the purposes of operating and providing Services associated with Wireless Facilities deployment. _____ is required to conform equipment where possible to the color and surface of the existing or original pole and existing facilities prior to installation and in accordance with all laws, rules and regulations.
- 5.3. Attachment to Utility Infrastructure. Subject to receipt of all required municipal approvals and permits, the City hereby authorizes and permits _____ to enter upon the ROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Equipment in or on existing Utility Infrastructure, poles or other structures owned by public utility companies or other property owners located within the ROW, subject to _____ obtaining an utility easement or other suitable form of written permission from the public utility company or property owner, as the case may be. _____ shall furnish to the City documentation in a form reasonably acceptable to the City of such permission from the individual utility or property owner responsible. Only if Utility Infrastructure or a Municipal Facility, or other reasonable alternative either within or outside the ROW, is not reasonably available for attachment of Equipment may _____ install its own Pole Placement for Wireless Facility deployment in the ROW, subject to the terms of this Agreement and compliance with all laws, rules and regulations.
- 5.4. City Approval. Prior to commencing construction and deployment of Wireless Facilities, including any necessary street furniture, _____ shall apply to the Planning Department, Department of General Services and Department of Water and Water Supply, Building Department and any appropriate City Department, or appropriate successor City Department, on forms provided and identify Facilities and Utility Infrastructure within those portions of City's Rights-of-Way that it seeks to access and/or occupy to attach Equipment. Further, with any such Application _____ shall provide a map or annotated aerial photograph identifying which Facilities and Utility Infrastructure _____ seeks to use for Attachments of Equipment, and otherwise comply with the City's application requirements. _____ shall timely provide all reasonable documentation requested by the City in connection with such applications. _____ acknowledges and agrees that failure to timely provide information requested by the City may result in an application being denied and reapplication may be required. Once the City verifies that the Equipment proposed in the application complies with the

configurations and the Equipment specifications set forth in Exhibit ____, and otherwise complies with all laws, rules and regulations, including the Aesthetic Standards, as may be amended from time to time, the City will identify, approve or conditionally approve in writing, such Facilities and Utility Infrastructure to which _____ can attach its Equipment, or deny. If the application is denied, _____ may appeal or apply for a variance to the City of Albany Board of Zoning Appeals.

- 5.5. Avoidance of Interference. _____ agrees that the placement, installation, construction, maintenance, operation and removal of Equipment installed in City ROW and its Attachments to City Facilities or Utility Infrastructure shall be carried out in such locations and in such manner so as not to interfere with water, gas, sewer pipe, traffic signal, street light and other utilities and conduits already existing, absent express written approval by the City.
- 5.6. Permits. _____ further agrees to obtain all necessary permits and approvals, including but not limited to building, electrical, excavation, sidewalk, street opening, revocable sidewalk permit, tree trimming, water/sewer or encroachment permits and variances, if needed, prior to commencing construction required for Equipment Attachment on Facilities or Utility Infrastructure or Pole Placement in City's ROW.
- 5.7. Street Furniture Cabinets. In its deployment of Wireless Facilities, if a portion of _____'s Equipment, not including antennas, cannot be accommodated on City's Facilities or Utility Infrastructure, the parties agree that, upon receipt of all approvals for such street furniture set forth in Section 5.4, _____ may place such equipment in above-ground street furniture and equipment cabinets located in the Rights-of-Way. In no instance shall the installation of any of _____'s Equipment in street furniture or equipment cabinets block pedestrian walkways in the ROW, interfere with City owned or operated traffic control equipment, or result in violation of the Americans with Disabilities Act, or any other law, rule or regulation. If there is any such interference as determined by the City, _____ agrees to examine alternative designs and locations and that such placement may be denied. If _____ cannot obtain necessary permits, approvals or other authorizations to place street furniture or equipment cabinets in the ROW, parties agree that _____ may place Equipment in below-ground vaults, and that City shall authorize such vaults pursuant to applicable City Code, zoning and undergrounding provisions (such as set forth in the City's Aesthetic Standards, as approved by the City. _____ shall be responsible for all costs associated with such below-ground vaults, including without limitation relocation costs, if any, of any public improvements or public utilities facilities as may be approved by the City and the public utility.
- 5.8. Compliance with Law. When placing, installing, constructing, maintaining, operating, removing or relocating Equipment or Pole Placement in City Rights-of-Way, or making Attachments to City Facilities or Utility Infrastructure, _____

shall comply with all applicable federal and State statutes, regulations and orders, including but not limited to any relevant state regulatory or legislative construction standards, the National Electric Code (NEC), and/or the National Electric Safety Code (NESC), and/or any applicable RF emission standards. _____ shall also comply with all City local laws and ordinances, as may be amended from time to time, including, but not limited to zoning, technical specifications and requirements, Aesthetic Standards, and all applicable national, federal, State and local building, electrical and safety codes.

- 5.9. Restoration. If the placement, installation, construction, maintenance, operation, removal or relocation of Equipment or poles by _____ disturbs or alters City Rights-of-Way, Streets, or Facilities, _____, at its own expense shall restore such City Rights-of-Way, Streets, or City Facilities to their original condition, normal wear and tear excepted.
- 5.10. Contemporaneous with filing any applications for deployment of Wireless Facilities, including pole placements in any residential neighborhood of the City, _____ shall conduct reasonable neighborhood notification to inform the residents and businesses in the neighborhood of its plans to locate and install such facilities in that neighborhood and shall coordinate such neighborhood outreach with the City Department of Planning. Such notice shall be given to property owners within 250 of any proposed Equipment or Pole Placement, or as may be required as part of the application process.
- 5.11. No Real Property Interest Created. Neither _____'s use of the public rights-of-way, Streets or other City-owned property, nor anything else in this agreement, shall be deemed to grant, convey, create or vest in _____ a real property interest in any portion of the public rights-of-way or any other City property, including but not limited to, any fee, leasehold or easement interest in any land. _____, on behalf of itself and any permitted successor, lessee, or assign, recognizes and understands that this agreement may, subject to applicable laws, create an interest subject to taxation and that _____, its successor, lessee or assign may be subject to the payment of such taxes.

6. Maintenance

- 6.1. Proper Maintenance. _____ shall maintain its Equipment and poles for Wireless Facilities located in City Rights-of-Way and its Attachments in such condition that they shall not constitute a danger to the health, safety and welfare of the public.
- 6.2. Right of Entry. _____ may enter upon City Rights-of-Way and City Facilities to perform regular maintenance or repair of Equipment or poles from time to time following issuance of a permit from the applicable City Department. In the event of an emergency, _____ may enter upon City Rights-of-Way and City Facilities to perform such emergency work. Upon completion of such emergency work,

shall file an application with City DGS and Building Department covering the work performed.

- 6.3. Removal or Replacement of Equipment. _____ may remove or replace any items of Equipment as reasonably required in connection with the ongoing provision of Services subject to prior approval of City DGS, Building Department and Planning Department. Removal of Equipment from any ROW or Attachment shall not constitute termination of this Agreement.
- 6.4. Permits. In the event maintenance or repair activities will disturb or block pedestrian or vehicular traffic in City Rights-of-Way, _____ shall obtain all permits required by City prior to commencing such maintenance or repair.

7. Relocation of Equipment

- 7.1. Removal or Relocation of Wireless Facilities or Pole Placement at City's Request. _____ understands and acknowledges that the City, at any time and from time to time, may require _____ to remove or relocate all or a portion of a Wireless Facility located on a City Facility or Utility Infrastructure, or a Pole Placement, at _____ expense, on ninety (90) Days' notice upon a written request from the City, if the City determines, in its reasonable discretion, that the removal or relocation is needed to facilitate or accommodate the construction, completion, repair; or relocation or maintenance of a City project or City facility; or because the particular Wireless Facility interferes with or adversely affects proper operation of the light poles, traffic signals, or City-owned communications systems in existence at the time the Wireless Facility is first installed; or because there is damage to the City Facility or Utility Infrastructure on which the Wireless Facility is located; or because of a sale or vacation of the right of way; or a change in the City's use of the right of way that affects all licensees, the construction, completion, repair, relocation, or maintenance of a City project; the Equipment is interfering with or adversely affecting proper operation of City-owned light poles, traffic signals, or other Municipal Facilities; or for other good cause to preserve and protect public health and safety, provided, however, that the City may provide shorter advance notice if circumstances reasonably require expedited or emergency removal or relocation of a particular Wireless Facility. The City shall work with _____ to accommodate the Wireless Facility or Pole Placement at another reasonably equivalent location or locations on the same or another City Facility or Utility Infrastructure nearby within the Public Rights-of-Way, Street or on City-owned Property. _____ shall at its own cost and expense remove and relocate the Wireless Facility, or any part thereof, to such other location or locations in such manner, as appropriate, as may be designated or approved, in writing and in advance, by the Commissioner of Planning. Such removal and relocation shall be completed within the time prescribed by the Commissioner of Planning in his or her written request and in accordance with the terms of this Agreement, provided

that such time shall be extended by the time needed to obtain any other regulatory approval required to relocate the Wireless Facility.

- 7.2. Timeframe. Should _____ fail to remove or relocate any such Facilities by the date established by the City, the City may cause and/or effect such removal or relocation, and the expense thereof shall be paid by _____, including all expenses incurred by the City due to _____'s delay. If the City requires _____ to relocate its Equipment or Pole Placement located within the City's Streets, the City will make a reasonable effort to provide _____ with an alternate location for its Equipment or Pole Placement within the City's Streets. The City shall not be responsible to _____ if there are no other alternate locations for the placement of Equipment or Pole Placement within the City's Streets.
- 7.3. Relocations at _____'s Request. In the event _____ desires to relocate any Equipment from one Municipal Facility to another or to Utility Infrastructure, or from one Utility Infrastructure to another Utility Infrastructure or to Municipal Facility, _____ shall so advise the City in writing. The City shall not be required to locate for _____ an equivalent Municipal Facility for use in place of the original location. All relocations shall be effected in accordance with Section _ of this Agreement.
- 7.4. Damage to Public Way. Whenever the removal or relocation of Equipment or Pole Placement is required or permitted under this Agreement, and such removal or relocation shall cause the ROW to be damaged, _____, at its sole cost and expense, shall promptly repair and return the ROW in which the Equipment is located to a safe and reasonably satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If _____ does not repair the site as just described, then the City shall have the option, upon ten (10) days' prior written notice to _____, or sooner if same is required to protect or preserve public health or safety to perform or cause to be performed such reasonable and necessary work on behalf of _____ and to charge _____ for the proposed costs to be incurred or the actual costs incurred by the City at the City's standard rates. Upon receipt of a demand for payment by the City, _____ shall promptly reimburse the City for such costs. Failure of _____ to make such reimbursement shall constitute a breach of this Agreement.
- 7.5. Nothing in the Agreement shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any street; laying or, repairing or removing water mains; or constructing or establishing any other public works or improvements or utilizing City Facilities for City purposes. All work shall be done, as practicable, so as not to injure or prevent the unrestricted use and operation of _____'s provision of Services under this Agreement. However, if any portion of _____'s network interferes with the construction repair of any street or public improvement, including construction, repair or

removal of a sewer or water main, the City may direct _____ to relocate at its sole cost and expense.

8. Indemnification

- 8.1. General Indemnification. _____ hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents, boards, commissions, Common Council, and employees, harmless from any and all claims for injury, damage, loss, claim, demand, judgment, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation, installation, placement, maintenance, removal, or any other act done under this Agreement, by or for _____, its agents or employees, or by reason of any neglect or omission of _____ to keep its facilities within the City's ROW in a safe condition, but not if arising out of or by reason of negligence or willful misconduct by the City, its officers, agents or employees.
- 8.2. Relocation Indemnification. _____ also hereby agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from _____'s failure to remove, adjust or relocate any of its facilities, Equipment and/or Pole Placements in the City Streets in a timely manner in accordance with Section ____, unless _____'s failure or such loss and damages arises directly from the City's negligence or willful misconduct, including its boards, commissions, departments, officers and agents.
- 8.3. Hazardous Substances Indemnification. _____ agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of the release or threat of release of Hazardous Substances caused by _____'s ownership or operation of facilities, Equipment and/or Pole Placements in the Streets.
- 8.4. The obligations of the _____ pursuant to Section 8 hereof shall not be limited by reason of enumeration of any insurance coverage provided under this Agreement.
- 8.5. Nothing in this Section 8 or elsewhere in this Agreement shall create or give to third parties any claim or right of action against _____ beyond that which legally exist regardless of the provisions of this Agreement.
- 8.6. _____'s indemnification obligation hereunder shall survive the expiration or termination of this Agreement.
- 8.7. Limitation of Liability. The City shall not be liable to the _____, or any of its respective officers, agents, representatives, contractors or employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption

or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. No elective or appointive board, commission, member, officer or other agent of the City shall be personally liable to _____, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to _____, its successors and assigns, or for any obligation of the City under this agreement.

- 8.8. Breach of Agreement. In the event that any claim, complaint or litigation is brought by either party to this Agreement against the other for breach of this Agreement, or for an interpretation of this Agreement, each party shall bear its own costs, including legal fees and expenses.
- 8.9 No Liability for Damage, Death or Bodily Injury. Neither the City nor any board, commission, member, departments officers or other agents or employees shall be liable for any damage to the property of _____, its officers, agents, employees, contractors, or subcontractors or their employees, or for any bodily injury or death such persons, resulting or arising from the Wireless Facilities or activities authorized by this Agreement, the condition of any City property subject to this Agreement or _____'s use of any City property, except to the extent caused by the City's gross negligence of willful misconduct.
- 8.10 Waiver of Claims regarding Fitness of Pole Located on Public Ways. _____ acknowledges that the City has made no warranties or representations regarding the fitness, availability or suitability of any poles or City Infrastructure for the installation of Wireless Facilities, or for any other activities permitted under this Agreement, and that except as expressly provided in this Agreement, any performance of work or costs incurred by _____, or provision of services contemplated under this agreement by _____ is at _____'s sole risk. Except as otherwise expressly provided in this Agreement, _____ on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, the City and its agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the poles located on public rights-of-way, any City property affected by the Agreement, or any law or regulation applicable thereto. The City agrees: i) to allow _____ to investigate the location of City Facilities and Utility Infrastructure (provided permission from the utility is first obtained), and ii) to work cooperatively with _____ to facilitate the investigation of City Facilities, under consideration for attachment of a Wireless Facility, for the possible presence of lead based paint, asbestos, or other hazardous substances (as that term may be defined under applicable laws), and the City shall facilitate such investigation as necessary.

- 8.11 Waiver of All Claims. _____ acknowledges that the City may terminate this Agreement under certain limited circumstances, and in view of such fact _____ expressly assumes the risk of making any expenditures in connection with this Agreement, even if such expenditures are substantial, and _____ expressly assumes the risk of selling its Services which may be affected by the termination of this Agreement. Without limiting any indemnification obligations of _____ or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, _____ fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the City, its departments, commissions, officers, Commissioners and employees, and all persons acting by, through or under each of them, under any present or future laws, including, but not limited to, any claim for inverse condemnation or the payment or just compensation under the law of eminent domain, or otherwise at equity, in the event that the City lawfully and justifiably exercises its right to terminate this Agreement for cause, in accordance with its terms. Notwithstanding anything to the contrary contained in this Agreement, _____ does not intend to waive, and hereby specifically reserves, all rights at law or in equity to contest any termination by the City.
- 8.12. No Liability for Consequential or Incidental Damages. _____ and the City each expressly acknowledges and agrees that neither of them will be liable for any consequential or incidental damages incurred by the other, including, but not limited to, lost profits and loss of good will, arising out of a lawful and justifiable termination of this Agreement in accordance with its terms, or the construction or operation of, or disruption to, one or more Wireless Facilities, or any other activities contemplated under this Agreement. Neither party would be willing to enter into this Agreement in the absence of such waiver. Accordingly, without limiting any indemnification obligations of _____ or other waivers contained in this Agreement, and as a material part of the consideration for this Agreement, _____ and the City each fully RELEASES, WAIVERS AND DISCHARGES the other forever from any and all claims, demands, rights and causes of action for consequential and incidental damages (including without limitation, lost profits and loss of good will), and covenants not to sue the other party or persons acting by, through or under that party, for consequential or incidental damages arising out of this Agreement or the work and activities authorized hereunder regardless of the cause, and whether or not due to negligence or gross negligence of the other party or its agents.

9. Insurance

- 9.1. General Liability Insurance. _____ shall maintain and keep in effect during the Term of this Agreement, commercial general liability insurance with a combined single limit with respect to each occurrence of not less than \$1,000,000, insuring _____ (and naming City as an additional insured) against loss, damage, cost, expense or liability for any damage to any property or injury, illness or death of any person occurring or arising as a result of the negligence of _____ in

connection with the placement, installation, construction, maintenance, operation and removal of Equipment in City's Rights-of-Way or in connection with any Attachment on City Facilities and/or Utility Infrastructure.

- 9.2. Other Insurance. _____ shall maintain and keep in effect during the Term of this Agreement, worker's compensation insurance as required by law.
- 9.3. Proof of Insurance. _____ shall provide insurance certificates or other reasonable evidence of all insurance coverage required under this Agreement to City upon full execution of this Agreement.

10. Security

- 10.1. Upon the effective date of this Agreement, _____ shall furnish proof of the posting of a faithful performance bond or letter of credit as determined by the City, running to the City, with good and sufficient surety approved by the City, in the penal sum of ten thousand dollars (\$10,000), conditioned that _____ shall well and truly observe, fulfill, and perform each term and condition of this Agreement. _____ shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this Agreement, including, if necessary, the time required for removal of all of _____'s facilities, Equipment and/or Pole Placements installed in the City's Streets. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the Corporation Counsel. The bond shall be subject to the approval as to form by the Corporation Counsel.
- 10.2. During the term of this Agreement, _____ shall file with the Corporation Counsel a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under Section 10 if a bona fide, good faith dispute exists between the City and _____.
- 10.3. **Construction Bond.** At all times during which _____ is constructing, repairing, replacing or maintaining its facilities, Equipment and/or pole Placements in the Streets, _____ shall comply with the requirements for right-of-way permits established by applicable Albany City Code and implementing regulations in effect as of the date of this Agreement, along with any revisions implemented by the City during the term of this Agreement, for providing construction bonds or other forms of financial guarantee satisfactory to the City

11. Assignment

- 11.1 In accordance with New York General Municipal Law section 109, _____ is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the same, or _____'s right, title or interest herein, to any other person or corporation without the previous consent in writing of the City.

Notwithstanding anything to the contrary, Equipment installed as part of _____ Facilities, including any third-party customer owned equipment, or _____ customer contracts for Service, shall not constitute a sublease or sublicense or transfer, assignment, conveyance or disposition requiring the prior consent of the City.

- 11.2 Financing Arrangements. City acknowledges that _____ may enter into financing arrangements including promissory notes and financial and security agreements for the financing of the Equipment and Pole Placements (the "Collateral") with third party financing entities. In connection therewith, City (i) consents to the installation of the Collateral consistent with the other terms of this Agreement; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any rent due or to become due and that such Collateral may be removed at any time consistent with the other terms of this Agreement without recourse to legal proceedings.

12. Termination

- 12.1 Termination by _____. _____ may terminate this Agreement, at its election and without cause, by providing written notice of termination to City at least ninety (90) days prior to the effective date of such termination.
- 12.2 Termination by City. The City may terminate this Agreement for a material breach by the other party. The party asserting a breach shall provide written notice of the existence of a material breach to the breaching party. Such notice shall state the grounds for termination in reasonable detail. The party receiving notice of termination shall have thirty (30) days to cure, or commence and vigorously pursue good faith efforts to cure the alleged material breach if such breach cannot reasonably be cured within 30 days. Failure to cure within said 30 day time frame extinguishes and terminates this Agreement. Failure to obtain all required permits prior to deployment of Antenna, Equipment and Pole Placement is a non-curable, material breach of this Agreement.
- 12.3 In the event that _____ terminates this Agreement, the City may require removal of _____'s Equipment and Pole Placements within the City ROW. If _____ continues to provide Services after _____ terminates this Agreement, _____ shall remain obligated to make annual payments to the City. Failure to obtain all required permits prior to deployment of Antenna, Equipment and Pole Placement is a non-curable, material breach of this Agreement.
- 12.4 Removal Upon Termination. Except as otherwise provided in this Agreement, upon one hundred and eighty (180) days' written notice by the City after the expiration of this Agreement or its earlier termination for cause, _____ shall promptly, safely and carefully remove its Wireless Facilities, including, but not limited to street furniture, installed pursuant to this Agreement from all City

Facilities and Utility Infrastructure located on Public Rights-of-Way or other City-owned Property, except to the extent that _____ has other legal authorization, from the City, to maintain one or more such Wireless Facilities for a longer time. Such obligation of _____ shall survive the expiration or earlier termination of this Agreement. If _____ fails to complete this removal work on or before one hundred eighty (180) Days subsequent to the issuance of notice pursuant to this Agreement, then the City, upon written notice to _____, shall have the right at the City's sole election, but not the obligation, to perform this removal work using qualified contractors and reasonable care in the removal and handling of the _____ equipment, and charge _____ for the actual costs and expenses, including, without limitation, reasonable administrative costs, provided that _____ shall be allowed to continue its removal work beyond 180 days as long as it is diligently pursuing such removal. _____ shall pay to the City the reasonable costs and expenses incurred by the City in performing any removal work and any storage of _____ property after removal, within thirty (30) Business Days of the date of a written demand for this payment from the City. The City may, in its discretion, obtain reimbursement for the above by making a claim under _____ performance bond or letter of credit. After the City receives the reimbursement payment from _____ for the removal work performed by the City, the City shall promptly return to _____ the property belonging to _____ and removed by the City pursuant to this Section, at no liability to the City. If the City does not receive the reimbursement payment from _____ within such thirty (30) Business Days, or if the City does not elect to remove such items at the City's cost after _____ fails to do so prior to one hundred eighty (180) Days subsequent to the issuance of notice pursuant to this Section, any _____ property installed pursuant to this Agreement remaining on or about the public rights-of-way or stored by the City after the City's removal thereof may, at the City's option, be deemed abandoned and the City may dispose of such property in any manner allowed by law. Alternatively, the City may elect to take title to abandoned property, provided that _____ shall submit to the City an instrument satisfactory to the City transferring to the City the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

- 12.5 Risk of Loss or Damage. _____ acknowledges and agrees that the City shall not be liable for any cost of repair to _____ equipment and materials installed in the public rights-of-way or Streets pursuant to this Agreement, including, without limitation, damage caused by the City's removal of such pursuant to Section 12.4, except to the extent that such loss or damage was caused by the negligence, gross negligence, or willful misconduct of the City, including without limitation, each of its commissions, departments, officers, agents, employees and contractors.

13. Notices

13.1 Service of Notice. 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 by a private delivery 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.

13.2 Notice shall be given to the following:

City: Office of the Corporation Counsel
City Hall – Room 106
Albany, New York 12207

With a copy to:

Commissioner of the Department of General Services
1 Richard J Conners Boulevard
Albany, NY 12204

_____:

Name:

Title:

Address:

14. Validity and Construction of Agreement

14.1 Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, all of which together shall constitute the same instrument. Execution and delivery may be accomplished by facsimile or other electronic means.

14.2 Severability. If one or more of the provisions in this Agreement are held by an agency or court of competent jurisdiction, in a final, non-appealable order, to be invalid, void, voidable, unenforceable or illegal, such provision shall be deemed severable from the remaining provisions of this Agreement. Such invalid, void, voidable, unenforceable or illegal provision shall not affect the remaining provisions of this Agreement so long as the material purposes of this Agreement can be determined and effected.

14.3 Entire Agreement. This Agreement states the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written,

between the parties with respect to the subject matter hereof, and may not be amended or modified except by a written instrument executed by the parties hereto. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. No waiver of any right or remedy hereunder shall be effective unless and until set forth in a writing delivered to the other party, and a waiver, forbearance or other failure to enforce any right or remedy on any given occasion or under any specified circumstance shall not be construed as, or have the effect of, a waiver of such rights or remedies on any other occasion or under any other circumstances.

14.4 Amendment. This Agreement may be amended only by the Parties hereto by an entrustment in writing signed by or on behalf of each of the parties hereto.

14.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws principles.

15. Force Majeure

No failure by a party to perform its obligations in accordance with this Agreement shall be deemed a material breach or grounds for termination if such failure to perform occurred as a result of circumstances beyond such party's reasonable control as described below. Further, the time for performance of any duties or obligation of City or _____ shall be extended for the period during which performance was delayed or impeded due to causes beyond such party's control, including but not limited to strikes, lockouts, labor disputes, supply shortages, utility outages, cable dig-up by third party, civil disorders, actions of governmental authorities, actions of civil or military authority, national emergency, insurrection, riots, war, acts or threats of terrorism, acts of God, fire, floods, epidemics, freight embargoes or other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for a period equal to the period of the preventing circumstance or delay. If _____ or City claims the existence of a circumstance preventing performance, upon written demand for performance, the party claiming the delay shall notify the other party in writing of that fact within thirty (30) days after the beginning of any such circumstance. Economic hardship, misfeasance, or malfeasance of a party's directors, officers, employees, council, officials or agents shall not be considered as a condition beyond the fault or control of the defaulting party.

16. Confidentiality

Non-public information provided by either party to this Agreement, including network deployment plans and technical and operational details, shall to the extent allowed by law be kept confidential and used only for purposes related to the performance of this Agreement. Both City and _____ shall take reasonable steps to protect confidential information obtained from the other in connection with performance of this Agreement from public disclosure or unauthorized use.

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

CITY OF ALBANY

By: _____
Kathy Sheehan, Mayor

By: _____
Name

Date:

Date

Approved as to form and correctness:

Corporation Counsel

By: _____
Its

Date:

EXHIBIT A

INSERT ELEVATIONS/DIAGRAMS FOR WIRELESS FACILITIES ANTENNA

NOTICE: CITY COMMISSIONER OF PLANNING & DEVELOPMENT SHALL BE AUTHORIZED, FOLLOWING SUBMISSION OF A COMPLETE APPLICATION, TO ISSUE A REVOCABLE SIDEWALK PRIVILEGE WIRELESS FACILITIES ANTENNA CONTAINED HEREIN, PROVIDED ALL OTHER CITY APPROVALS IDENTIFIED IN THE CITY CODE FOR USE OF THE CITY ROW HAVE BEEN OBTAINED. SUCH PERMITS AND APPROVALS INCLUDE, BUT MAY NOT BE LIMITED TO:

- A. Complete DGS Street and Sidewalk opening application;
- B. Completed Planning Department Master Application and Revocable Sidewalk Privilege application;
- C. Complete Building Department Building Permit application;
- D. Complete Building Department Electrical Permit application;
- E. Complete ROW Tree trimming application of DGS Forestry Department, if applicable; and
- F. Any appeal or variance required for the wireless facilities deployment

EXHIBIT B

MAP OF ANTENNA AND POLE PLACEMENT LOCATIONS

EXHIBIT C - FEES

1. Unless otherwise provided, applications for placement of Equipment on City Facilities and/or existing Utility Infrastructure:

\$100.00 per Wireless Facility

2. Unless otherwise provided, application fees for a new pole (i.e., not a collocation) intended to support one or more Wireless Facilities:

\$1,000.00 per new pole

3. Unless otherwise provided, annual ROW access fee or fee for attachment to municipally-owned structures in the ROW.

In order to compensate the City for the reasonable costs of administering _____'s entry upon and deployment of Equipment within, over or under the ROW, _____ shall pay to the City the sum of Two Hundred Seventy and 00/100 Dollars (\$270.00) per Wireless Facility installed in the ROW (the "ROW" Fee"), payable annually within forty-five (45) days of each anniversary of the term of this Agreement. In the event that a Wireless Facility is installed upon a Municipal Facility, the ROW Fee for such Node shall be Four Hundred and 00/100 (\$400.00) payable annually within forty-five (45) days of each anniversary of the term of this Agreement. The ROW Fee shall be computed by multiplying the applicable ROW Fees by the number of Wireless Facilities installed by _____ within the geographic boundaries of the City within all or any part of the twelve (12) month period prior to each anniversary of the Commencement Date. Subject to Section 7, _____ may remove any Equipment or Attachments in the ROW at any time and the corresponding ROW Fees shall cease upon removal. Prior to removal of any Equipment or Attachments, or replacement of any Equipment or Attachments, _____ shall complete and file with the City an application on forms provided by the City for such purposes.

4. Other Fees and Compensation. The foregoing fees are in addition to and not in lieu of any other non-discriminatory administrative fees and charges, imposed by the City in connection with the issuance of construction permits, provision of copies of records, etc.
5. Consultant fees. The City recognizes that it is allowed to charge fees that recover a reasonable approximation of the state or local governments' actual and reasonable costs; and that those costs themselves are reasonable, and are non-discriminatory. Under limited circumstances, the City may require payment of reasonable costs in connection with

consultant services to assist the City with review of applications. The City shall notify applicant within 30 days of receipt of an application that consultant services shall be required and the reasonable costs associated with said service.

6. Electricity Charges. Contractor shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Equipment's usage of electricity and applicable tariffs. Electrical powering of any of Contractor's Equipment and/or Attachments shall be separate from the electrical service powering the Municipal Facilities.