

**CITY OF BALTIMORE
COUNCIL BILL 15-0596
(First Reader)**

Introduced by: The Council President
At the request of: The Administration (Department of Transportation)
Introduced and read first time: November 16, 2015
Assigned to: Housing and Community Development Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Planning Commission, Department of Housing and Community Development, Department of Transportation, Fire Department, Board of Estimates

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Franchise – Mobilitie**

3 FOR the purpose of granting a franchise to Mobilitie, LLC, a Nevada limited liability company
4 with business headquarters in California, to construct, install, maintain, repair, operate,
5 relocate, replace, and remove certain facilities relating to the provision of a Distributed
6 Antenna Systems services in and across certain streets and public ways, subject to certain
7 terms and conditions; and providing for a special effective date.

8 BY authority of
9 Article VIII - Franchises
10 Baltimore City Charter
11 (1996 Edition)

12 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE**, That a
13 franchise or right is granted to Mobilitie, LLC (the “Grantee”), to construct, install, maintain,
14 repair, operate, relocate, replace and remove certain facilities relating to the provision of
15 Distributed Antenna Systems services in and across certain streets and public ways, subject to the
16 terms and conditions of this Ordinance and the Franchise Agreement between the Mayor and
17 City Council of Baltimore and the Grantee, which is attached and made a part of this Ordinance.

18 **SECTION 2. AND BE IT FURTHER ORDAINED**, That for the franchise or right granted by this
19 Ordinance (the “Franchise”) to become effective, the Grantee must notify the Board of Estimates,
20 within 30 days of the effective date of this Ordinance, that the Grantee accepts the Franchise.
21 The Grantee’s failure to so notify the Board of Estimates constitutes a refusal to accept the
22 Franchise, and, in that event, this Ordinance and the Franchise granted by it will be abrogated and
23 of no further effect.

24 **SECTION 3. AND BE IT FURTHER ORDAINED**, That also for the Franchise to become effective,
25 the Franchise must be executed and enjoyed by the Grantee within 6 months after the effective
26 date of this Ordinance.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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1 **SECTION 4. AND BE IT FURTHER ORDAINED,** That the Mayor and City Council of Baltimore
2 expressly reserves the right at all times to exercise, in the interest of the public, full municipal
3 superintendence, regulation, and control over and in respect to all matters connected with the
4 franchise and not inconsistent with the terms of this Ordinance.

5 **SECTION 5. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect when it is
6 enacted.

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**BALTIMORE CITY DISTRIBUTED ANTENNA SYSTEM (DAS)
AND SMALL CELL FRANCHISE AGREEMENT**

This Franchise Agreement, (the "Agreement") is made this _____ day of _____, 2015, by and between the MAYOR AND CITY COUNCIL OF BALTIMORE, a Municipal Corporation of the State of Maryland ("City") and Mobilitie, LLC, a Nevada limited liability company with business headquarters in California ("Franchisee").

RECITALS

1. The City, pursuant to Article VIII of the City Charter, is authorized to grant and renew non-exclusive franchises for the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the public ways of the City.

2. Franchisee desires to obtain from City as permitted by law, and City as a municipal corporation desires to grant to Franchisee, a franchise for the right to construct, install, maintain, repair, operate, relocate, replace and remove Facilities relating to the provision of Distributed Antenna Systems ("DAS") services in the Public Way within the City (the "Facilities"), in a manner consistent with this Agreement.

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

1.0 Definitions

1.1 "Agreement" or "Franchise Agreement" means this Agreement, together with Appendices and Exhibits attached to this Agreement, if any, and any amendments or modifications.

1.2 "Applicable Law" or "Law" means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all Federal Communications Commission ("FCC") resolutions, orders, rules, and regulations, and the Baltimore City Charter, and the administrative and judicial decisions interpreting these sources of law.

1.3 "Authorizations" means the permissions Franchisee must have to deploy the Network and/or provide Services, which may include franchises; licenses; permits, zoning approvals; variances, exemptions; grants of authority to use private rights of way and/or easements or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

1.4 "City" means the Mayor and City Council of Baltimore, Maryland, or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission or department of, or any other entity of or acting on behalf of, the Baltimore city government or any officer, official,

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1 employees, or agent of the Baltimore City government, any designee of the
2 foregoing, or any successor thereto.

3 **1.5** “Conduit” means enclosed underground raceways capable of protecting fiber optic
4 and other communications cables, including associated individual ducts, inner
5 ducts, manholes, handholes, vaults, pull-boxes, and trenches.

6 **1.6** “Distributed Antenna System” or “DAS” means a network of multiple, spatially
7 separate antenna Nodes connected to a common source via a high capacity
8 transport medium (such as fiber optic cable), for the purpose of providing wireless
9 service within a geographic area.

10 **1.7** “Effective Date” means the date upon which this Agreement is adopted and
11 approved by the Mayor and City Council of the City.

12 **1.8** “Facilities” means any and all equipment and assets owned by or under the control
13 of Franchisee that are reasonably necessary and appropriate for the installation and
14 operation of a Network and the offering and provision of Services, including, but
15 not limited to: optical repeaters, converters, power amplifiers, radios,
16 multiplexers, remote radioheads, antennae, aboveground and underground fiber
17 optic and coaxial cable, conduit, wires, meters, pedestals, power switches,
18 electrical generation and transmission facilities, cabinets, enclosures, control
19 boxes, and accompanying support structures, whether referred to singly or
20 collectively.

21 **1.9** “Franchise” means the non-exclusive right granted, by ordinance and subject to
22 this Agreement, to Franchisee to construct, operate, repair, and maintain the
23 Network on, over, under, upon, across, and along the Public Ways.

24 **1.10** “Franchise Area” shall mean all the area within the boundaries of the City.

25 **1.11** “Gross Revenue” means all revenue, as determined in accordance with generally
26 accepted accounting principles, which is derived by the Franchisee from the
27 operation of the Network to provide Services. Gross Revenue shall also include
28 by way of example and without limitation: any revenue generated by the
29 Franchisee through any means which has the effect of avoiding the payment of
30 compensation that would otherwise be paid to the City for the Franchise granted
31 in this Agreement; late fees and administrative fees; revenue derived from
32 forfeited deposits; revenue derived from commissions; any actual bad debt that is
33 written off but subsequently collected (such bad debt shall be included as Gross
34 Revenue for the period in which it is collected); and other revenues that may be
35 posted in the general ledger as an offset to an expense account. Gross Revenue
36 shall not include: any compensation awarded to Franchisee based on City’s
37 condemnation of property of the Franchisee; and to the extent consistent with
38 generally accepted accounting principles, consistently applied, actual bad debt
39 write-offs taken in the ordinary course of business.

40 **1.12** “Network” means, collectively, each of the DAS or Small Cell networks operated
41 by Franchisee to provide Services within the corporate boundaries of the City,
42 which include Facilities located on or within streetlights, stand-alone poles, third

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1 party utility poles, conduit, ducts and other structures located on or within the
2 Public Way as permitted under this Agreement.

3 **1.13** “Node” means a component of a DAS network or Small Cell installation that
4 includes one or more radiofrequency transmitters or antennae, and which is
5 connected via a high capacity transport medium (commonly a fiber optic cable) to
6 a common source with other Nodes. A Node is often placed on or near the top of
7 utility and streetlight poles.

8 **1.14** “Person” means any natural person or any association, firm, partnership, joint
9 venture, corporation or other legally recognized entity, whether for-profit or not-
10 for-profit.

11 **1.15** “Public Way” means the surface of, and the space above and below, any public
12 street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way,
13 lane, public way, drive, circle or other public right-of-way, including, but not
14 limited to, public utility easements, dedicated utility strips, or rights-of-way
15 utilized for compatible uses. Public Way shall not include any City buildings,
16 structures or other improvements, regardless of whether they are situated in a
17 public right-of-way.

18 **1.16** “Services” means the wireless and wireline access, transmission and transport of
19 commercial mobile radio services and private mobile services, as those terms are
20 defined in 47 U.S. CODE § 332, provided by Franchisee’s customers using the
21 Network pursuant to one or more filed tariffs or on individual-case-basis
22 agreements with customers, as authorized by Franchisee’s tariffs or by state or
23 federal law.

24 **1.17** “Small Cell” means a wireless communications technology installation similar to
25 a DAS network, but normally including only a single Node.

26 **2.0 Grant of Franchise**

27 The City grants to Franchisee the nonexclusive right to construct, install, maintain, repair,
28 operate, replace and remove Network Facilities within the Public Way for the purpose of
29 providing Services, which shall be exercised at Franchisee’s sole cost and expense, and which
30 shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions,
31 encumbrances, and claims of title of record which may affect the Public Way. Nothing in this
32 Agreement shall be deemed to grant, convey, create or vest in Franchisee a real property interest
33 in land, including any fee, leasehold interest, or easement.

34 **2.1 Compliance With Law**

35 The Franchise granted under the terms and conditions of this Agreement shall be consistent with
36 the Baltimore City Charter, the laws, regulations and rules of the City, and other applicable
37 statutory requirements. In the event of conflict between this Agreement and the terms and
38 conditions on which the City can grant a franchise, the Charter, the laws, regulations and rules of
39 the City, and any such statutory requirements shall control; provided, however, that the terms and
40 conditions of this Agreement may not be affected by any law, regulation, or rule adopted after the
41 Effective Date of this Agreement unless: (1) the content of the law, regulation, or rule was not

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1 permitted to be enacted as of the Effective Date, or (2) the law, regulation, or rule is of general
2 applicability.

3 **2.2 No Waiver of Other Permits and Authorizations**

4 Nothing in this Agreement shall be construed as a waiver of any laws, regulations or rules of the
5 City or of the City's right to require the Franchisee to secure the appropriate permits or
6 authorizations, provided that the fees and charges imposed upon the Franchisee for any such
7 permit or authorization shall be the standard fees or charges generally applicable to all Persons
8 for such permits or authorizations, and any such standard fee or charge shall not be an offset
9 against the compensation or other payment the Franchisee or other person is required to pay the
10 City or any other entity pursuant to this Agreement.

11 **2.3 No Interference**

12 Franchisee, in the performance and exercise of its rights and obligations under this Agreement,
13 shall not interfere in any manner with the existence and operation of any and all public and
14 private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and
15 underground electrical and telephone wires, cable television, and other telecommunications,
16 utility, or municipal property, without the express written approval of the owner or owners of the
17 affected property or properties, except as permitted by applicable laws and this Agreement. The
18 City agrees to require the inclusion of the same or a similar prohibition on interference as that
19 stated above in all agreements and franchises the City may enter into after the Effective Date
20 with other similarly situated communications or information providers and carriers.

21 **2.4 Closing of Public Ways**

22 Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in
23 and to the Public Ways. In the event that all or part of the Public Ways within the Franchise
24 Area are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services comparable
25 to Services; or (2) vacated or if ownership of the land under the affected Public Ways is
26 otherwise transferred to another Person, all rights and privileges granted pursuant to this
27 Agreement with respect to such Public Ways, or any part of such Public Ways so closed, vacated,
28 or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and
29 Franchisee shall remove its Network from such Public Ways. If such closing, vacation, or
30 transfer of any Public Way is undertaken for the benefit of any private Person, the City shall, as
31 appropriate, condition its consent to such closing, vacation, or transfer of such Public Way on the
32 agreement of such private Person to: (i) grant the Franchisee the right to continue to occupy and
33 use such Public Way; or (ii) reimburse the Franchisee for its reasonable costs to relocate the
34 affected part of the Network. The City shall provide reasonable notice to Franchisee of any such
35 closing, vacation, or transfer to allow Franchisee to remove its Network where the right to
36 continue to occupy and use such Public Way is not reserved for Franchisee.

37 **2.5 Conditions Precedent**

38 The Franchise shall commence upon the Effective Date, provided that the Franchisee shall have
39 met each of the conditions precedent set forth below and otherwise in this Agreement (unless the
40 City agrees to waive any of the conditions precedent), at which time it shall become effective:

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- 1 1. Board and Council Action. All necessary approvals of this Agreement by the City
2 shall have been obtained.
- 3 2. Insurance. The Franchisee shall have secured its insurance policies as set forth in
4 Section 22 of this Agreement and delivered the certificate of insurance to the City
5 Solicitor, together with evidence that the premium for each of such policies has
6 been paid, that the policies will be in effect on or before the Effective Date, and
7 that the policies are in accordance with this Agreement.
- 8 3. Clean Hands Certification. The Franchisee shall have paid all amounts due and
9 owing to the City, including, but not limited to, taxes, fees, fines, penalties and
10 interest.

11 **3.0 Relation to Attachment Rights**

12 This Franchise does not confer upon Franchisee any right to place or attach Facilities directly
13 upon or to structures located in the Public Way that are owned by the City or by a third party,
14 including but not limited to City-owned streetlights and third party electric utility poles.
15 Franchisee shall secure and maintain any license, lease or other right as may be necessary for
16 such desired attachment by way of a separate attachment agreement or other similar instrument
17 executed with such entity.

18 **3.1 Preference for Attachment to City Facilities**

19 In any situation in which Franchisee has a choice in siting or attaching Facilities to City-owned
20 structures or to structures owned and/or controlled by a third party, Franchisee shall attach to
21 City-owned structures, provided attachment to such City-owned structures in that circumstance is
22 at least functionally equivalent, as a technical and operational matter, to such third-party facilities
23 for purposes of the operation of Franchisee's DAS network.

24 **4.0 Term**

25 This Franchise shall be for a period of ten (10) years from the date this Franchise is approved and
26 adopted by ordinance of the Mayor and City of Baltimore City.

27 This Franchise may be automatically renewed for three (3) additional five (5) year terms
28 provided Franchisee is not in default, is not in arrears with regard to, and does not dispute, any
29 amount of Franchise fees, and provided the City has not given notification of its desire to
30 terminate the Franchise at least one hundred twenty (120) days prior to the expiration of the then-
31 current term, and further provided that Franchisee has not given City notice of Franchisee's
32 intention not to renew, such notice to be given not less than one hundred twenty (120) days prior
33 to the expiration of the current Franchise term.

34 **5.0 Franchise Fee**

35 For the right to construct, install, maintain, repair, operate, replace and remove Network
36 Facilities in the Public Way, Franchisee shall pay to the City a Franchise Fee ("Franchise
37 Fee(s)") in the amount of one hundred dollars (\$100.00) per year. Payment shall be made no
38 later than thirty (30) days following the conclusion of each fiscal year.

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6.0 Use of Facilities

The authority granted by this Franchise extends to the use of Facilities for purposes related to the operation of one or more Networks and the offering of Services. Any non-incident use of such Facilities for a purpose other than a Network or Service, as described in this Agreement, or the installation of facilities unrelated to a Network or Service, may require additional Authorization from the City.

7.0 Installation Specifications

7.1 Conduit

For the deployment of new fiber optic cable in the Public Way for the Network, Franchisee shall use existing City-owned Conduit. In the event there is no available City-owned Conduit to meet Franchisee's requirements, Franchisee may in coordination with the City cause the construction of additional Conduit in the Public Way. If the Franchisee elects not to use or cause the construction of City-owned Conduit, the Franchisee agrees to pay an additional fee, as may be required for licenses, leases, or other agreements permitting the attachment of Facilities to City-owned streetlights and other structures. Any construction performed pursuant to this Section shall be consistent with City specification and include at least two additional spare ducts for future City use for fiber installation. Franchisee agrees that title in such property shall transfer to the City upon its substantial completion.

7.2 Installation Plan

The installation of Facilities shall be made in accordance with plans and specifications approved by the City, and after obtaining all necessary permits for all work in the Public Way. Franchisee shall submit to the Baltimore City Department of Transportation an initial installation plan, and any subsequent work plans concerning installations not addressed in the initial work plan, which shall include fully dimensioned site plans and specifications that are drawn to scale and show (1) the specific Facilities; (2) the specific proposed location of such Facilities (including specific identification of each attachment to a City-owned or third-party structure located in the Public Way); (3) the route of fiber optic cable utilized by the Network; (4) the proposed type of construction materials for all structures, and any other details that the City may reasonably request which are also applicable to other regulated utilities operating within the Public Way. Such installation plans may be submitted as part of Franchisee's annual construction report described in Section 14.

7.3 Approval by City

Franchisee shall not attach, install, maintain, or operate any Facilities in or on the Public Way until plans for such work have been approved by the City (which shall not be unreasonably withheld, delayed, conditioned or denied), and all necessary permits have been properly issued. Substantial modification to an installation plan (including, for example, a change of Node site) made in the course of construction shall require the written consent of the City, upon which the City shall act promptly, and may require modification of an existing or issuance of a new permit.

Approval of plans and specifications and the issuance of any permits by the City shall not release Franchisee from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. Franchisee shall be

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1 responsible for notifying the City and all other relevant parties immediately upon discovery of
2 such omissions and/or errors and shall be responsible for obtaining any amendments for
3 corrected City-approved permits, as may be necessary.

4 The City shall use its best efforts to promptly respond to a request for plan approval or
5 modification within sixty (60) days, and will cooperate with Franchisee to facilitate the prompt
6 processing and issuance of any required permits.

7 Franchisee is encouraged to submit installation plans and requests for approval as part of
8 Franchisee’s annual report described in Section 14.

9 **8.0 Construction**

10 **8.1 Compliance with Standards and Specifications**

11 All construction and maintenance shall be done in a workmanlike manner, and the Franchisee
12 shall meet or exceed all construction and service requirements required by this Agreement, the
13 Baltimore City Code, and Applicable Law. All work involved in the construction, installation,
14 operation, repair, and maintenance of the Network shall be performed in a safe, thorough, and
15 reliable manner using materials of good and durable quality. The Franchisee shall comply with
16 applicable codes and industry standards, including the specifications set forth in the most recently
17 published edition of the “City of Baltimore Department of Public Works Bureau of Highways
18 Manual of Design Procedure and Criteria (1972),” as amended from time to time and the “City of
19 Baltimore Department of Public Works Specifications for Materials, Highways, Bridges,
20 Utilities, and Incidental Structures (1979),” as amended from time to time (“Green Book”);
21 administrative orders of the City Department of Transportation, as amended from time to time;
22 the National Electrical Code, as adopted by the City from time to time; the National Electrical
23 Safety Code, as adopted by the City from time to time; and all rules, standards, practices, and
24 procedures of the FCC, as amended from time to time; and the requirements of other utilities
25 whose poles and conduits the Franchisee may use, as amended from time to time.

26 **8.2 Safety Precautions**

27 **8.2.1 Standard of Care**

28 The Franchisee shall employ ordinary care at all times and employ commonly accepted methods
29 and devices for the prevention of failures and accidents that are likely to cause damage, injury, or
30 nuisance to the public. In addition, the Franchisee shall, at its sole cost and expense, undertake
31 all necessary and appropriate efforts to prevent accidents at its work sites. The Franchisee shall
32 comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§ 651-78), as
33 amended, and all other Applicable Law.

34 **8.2.2 Protection of Construction Areas**

35 The Franchisee shall comply with the safety requirements of all permits, licenses, and other
36 forms of approval or authorization. In addition, Franchisee shall maintain reasonable barriers,
37 lights, signs, cones, and other similar warnings and protective devices required for the safety of
38 the public in compliance with this Agreement and Applicable Law. If the Franchisee places any
39 such device in any Public Way, the device shall be placed and maintained in a way that does not
40 interfere with the usual travel or other existing and anticipated uses of the Public Way.

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8.2.3 Emergency Notification

The Franchisee shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the Franchisee, not voice mail or a recording, can be contacted in the event of an emergency. The Franchisee shall respond within twenty-four (24) hours to address the reported emergency.

8.3 Identification

The Franchisee shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. The identification document shall include a telephone number that can be used for verification. In addition, the Franchisee shall clearly identify all personnel, vehicles, and other major equipment operating under its authority.

8.4 Antennas and Towers

Antenna supporting structures and towers shall be designed for the proper loading as specified in Electronic Industries Alliance R.S. 222-C Specifications. In addition, antenna supporting structures and towers shall be designed in accordance with the International Building Code, as amended and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Law.

8.5 Disruption, Interference and Damage

Franchisee shall use commercially reasonable efforts to coordinate construction, installation, and maintenance of the Facilities to minimize unnecessary disruption, including, as appropriate, coordination with applicable City agencies. Franchisee shall not interfere with the use or development of any property of the City or any other person, and promptly upon completion of construction, erection or installation of Facilities, Franchisee shall, at its own cost and expense, promptly repair any damage to property resulting from such activity to its original condition.

8.6 Materials and Claims

All materials furnished for any work done in the Franchise Area by Franchisee shall be at Franchisee's sole cost and expense. Franchisee agrees to protect the Franchise Area, and City, from all claims of contractors, laborers and material men, except in the case of claims which solely arise from the willful or grossly negligent acts of the City. Franchisee shall promptly pay all contractors and material men, so as to minimize the possibility of a lien attaching to the Facilities. Should any such lien be made or filed, Franchisee shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

8.7 One Call Notification System

For the Term of this Agreement, Franchisee shall become a full-time, private sector member of: (A) the Baltimore City Department of Transportation Utility Coordinating Committee; and (B) the one call notification center (otherwise known as "Miss Utility") and shall comply with all of the marking and location verification requirements of the one call notification system.

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1 **8.8 No Advertisement**

2 Franchisee shall not place any advertisement or other notice on or about the Facilities which
3 identifies the Franchisee in any way (except for emergency notification postings).

4 **8.9 Inspection by City**

5 The City shall have commercially reasonable access to inspect any work conducted by Franchisee
6 during the construction of Facilities. City shall provide Franchisee with (i) reasonable advance
7 written notice of such inspection and (ii) an opportunity to have a representative participate in the
8 inspection.

9 **9.0 Maintenance and Repair**

10 **9.1 Generally**

11 Franchisee shall, at its sole cost and expense, perform all maintenance and repairs reasonably
12 needed to maintain Facilities in good condition and neat and orderly appearance, and in
13 compliance with all applicable Laws. Franchisee shall keep the Facilities free of debris and
14 anything of a dangerous, noxious or offensive nature or which would create a hazard or undue
15 vibration, heat, noise or interference. If the City gives Franchisee written notice of a failure by
16 Franchisee to maintain the Facilities, Franchisee shall use its best efforts to remedy such failure
17 within forty-eight (48) hours after receipt of such written notice or if such maintenance or repair
18 requires more than forty-eight (48) hours to remedy, Franchisee shall commence remedial
19 operations within said forty-eight (48) hour period.

20 **9.2 Access to Facilities**

21 Franchisee shall be given reasonable access to each of the Facilities in the Public Way for the
22 purpose of routine maintenance, repair, or removal of Facilities. If any such maintenance
23 activities have the potential to result in an interruption of any City services at the Facilities,
24 Franchisee shall provide the City with a minimum of three (3) days prior written notice of such
25 maintenance activities. Such maintenance activities shall, to the extent feasible, be done with
26 minimal impairment, interruption, or interference to City services. In the event of emergency
27 maintenance or repair of the facilities, Franchisee shall provide City with as much notice as
28 possible before accessing the Facilities.

29 **9.3 Repair of Public Way**

30 Franchisee shall be responsible for any damage, ordinary wear and tear excepted, to street
31 pavement, existing facilities, and utilities, curbs, gutters, sidewalks, landscaping, and all other
32 public or private facilities, to the extent caused by Franchisee's construction, installation,
33 maintenance, access, use, repair, replacement, relocation, or removal of Facilities in the Public
34 Way. Franchisee shall promptly repair such damage and return the Public Way and any affected
35 adjacent property to a safe and satisfactory condition to the City in accordance with the City's
36 applicable street restoration standards or to the property owner if not the City. Franchisee's
37 obligations under this Section 9.3 shall survive for one (1) year past the completion of such
38 reparation and restoration work.

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9.4 Appearance

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

9.5 Graffiti

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

9.6 Performance Bond

City may at any time during the Term require Franchisee to provide a bond in an amount determined by the City to represent the estimated cost of Franchisee's obligations under this Section, which the City may require Franchisee to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of Franchisee's obligations under this Section.

10.0 Electricity Use

Franchisee shall be responsible for obtaining and paying for any and all electrical utility service that Franchisee requires for the use or maintenance of Facilities. City will reasonably cooperate with Franchisee in an effort by Franchisee to obtain electrical service from a location serving a City facility.

11.0 New Poles; Pole Replacement

11.1 New Poles

Franchisee shall not erect poles, conduits, or other Facilities in a Public Way without all necessary permits and authorizations and the express permission of the City. Franchisee acknowledges that the installation of new stand-alone or streetlight poles in the Public Way is not the City's preference and agrees to limit such requests as a last resort. In the event the construction of one or more new poles is necessary to execute Franchisee's planned installation of Facilities, Franchisee may request City approval to construct, at Franchisee's sole expense, such poles that will comply with all applicable building permits, applicable City, state and federal specifications and laws ("New Poles"). Any New Poles constructed by Franchisee shall comport with the character of existing poles in the area. City shall consider any request to construct a New Pole in a nondiscriminatory manner and shall accommodate Franchisee's request to the same or substantially similar extent as the City accommodates such requests from other providers of telecommunications services within the City.

1 **11.2 City Use of New Poles**

2 The City may use any New Poles for City purposes, including but not limited to streetlights and
3 other lighting so long as such use does not interfere with Franchisee’s use of its Network or
4 Facilities. Franchisee shall not be responsible for maintenance, repair or replacement of City-
5 owned lights, light bulbs and equipment or equipment owned by third parties authorized by the
6 City on the New Poles. At the City’s request, Franchisee shall deed any new pole to the City.

7 **12.0 Removal and Modification of Facilities During Term**

8 **12.1 Franchisee Right to Remove**

9 During the Term, Franchisee shall have the right to remove from the Public Way all or any
10 portion of Facilities from time to time, whether before or after a default under this Franchise
11 Agreement, in Franchisee’s sole discretion with prior notice to City. Franchisee, at its own cost
12 and expense, shall promptly dispose of any materials used and/or generated by any and all
13 removal activities, and shall promptly repair any damage to the Public Way caused by
14 Franchisee’s removal activities so that the Public Way returns to its condition prior to
15 construction and installation of such Facilities by Franchisee, reasonable wear and tear excepted.
16 Should the Franchisee wish to exercise its right of removal, the Franchisee is required, at its own
17 cost and expense, to leave in place the fiber strands provided for and dedicated to the use of the
18 City.

19 **12.2 Removal Due to Public Project**

20 Upon receipt of a written demand from the City pursuant to this Section 12.2, Franchisee, at its
21 sole cost and expense, shall remove and relocate any part of the Network or Facilities
22 constructed, installed, used and/or maintained by Franchisee whenever the City reasonably
23 determines that the removal is needed for any of the following purposes: (a) if required for the
24 construction, completion, repair, relocation, or maintenance of a City or other governmental
25 agency project including but not limited to, any change of grade, alignment or width of any street,
26 sidewalk or other public facility; installation of curbs, gutters or landscaping; and construction,
27 maintenance or operation of any underground or aboveground facilities such as sewers, water
28 mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television
29 lines, and tracks; (b) because the Facilities are reasonably considered to be interfering with or
30 adversely affecting proper operation of City-owned light poles, traffic signals, or other City
31 facilities; or (c) to protect or preserve the public health or safety. The City shall cooperate with
32 Franchisee in relocating any portion of the Network removed pursuant to this Section 12.2 in a
33 manner that allows Franchisee to continue providing Services to its customers, including, but not
34 limited to, expediting approval of any necessary permits required for the relocation of Facilities
35 corresponding to that portion of the Network relocated under this Section. No permitting or
36 other fees may be charged by the City for a removal occurring under this Section.

37 **12.3 Removal Due to Termination or Abandonment**

38 Following the termination of the Franchise for any reason, or in the event Franchisee ceases to
39 operate and abandons the Network, Franchisee shall, within one hundred twenty (120) days, at its
40 sole cost and expense, remove all Facilities from the Public Way and restore the area affected by
41 Facilities to its condition at the commencement of this Franchise, reasonable wear and tear
42 excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic

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1 improvements made by Franchisee to the Facility or the adjacent property, or as otherwise
2 required by the City. Within ninety (90) days of a written request from City, Franchisee will post
3 a payment bond in an amount up to \$500,000.00 to address the City's cost of removing any
4 Facilities not removed by Franchisee within one hundred twenty (120) days of termination, and
5 as compensation for any damage to the Public Way relating to the Facilities, reasonable wear and
6 tear excepted. Alternatively, the City may allow Franchisee, in the City's sole and absolute
7 discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

8 **13.0 Compliance With Laws**

9 **13.1 Generally**

10 This Agreement is subject to the terms and conditions of all federal, state and local Laws that are
11 in force on the Effective Date and as they may be enacted, issued or amended during the term of
12 this Agreement and the parties shall comply with any such Laws in the exercise of their rights
13 and performance of their obligations under this Agreement.

14 **13.2 Permits and Other Authorizations**

15 Franchisee shall apply for, at its sole cost and expense, and obtain all applicable federal, state,
16 county, and City permits and/or Authorizations required in order to construct, operate, or
17 otherwise implement and use Facilities in the Public Way, including, but not limited to, a conduit
18 permit and charge, a right of way construction permit, building permits, encroachment permits,
19 and any variance, conditional use permit, ministerial permit, or special exception required under
20 the Baltimore City Zoning Code. Franchisee shall pay, as they become due and payable, all fees,
21 charges, taxes and expenses, including conduit charges, associated with such permits and/or other
22 Authorizations. If Franchisee is unable to obtain any necessary permits or Authorizations as
23 required in this Section, Franchisee shall have the right, without obligation, to terminate this
24 Franchise immediately.

25 **14.0 Required Reports**

26 **14.1 Annual Construction Report**

27 Not later than the thirtieth (30th) day after the close of each calendar year in which any work was
28 performed in the Public Way by Franchisee, the Franchisee shall provide the Baltimore City
29 Department of Transportation with the following:

- 30 A. An updated "as-built" map clearly indicating each Node, pad-mounted Facility,
31 control box, and associated network route in the Public Way. Specific
32 identification of attachments to City-owned structures or structures owned by a
33 third party located in the Public Way. Specifying owner of underlying facility
34 (i.e., city, Baltimore Gas and Electric Company);
- 35 B. A construction plan specifically describing, through maps, illustrations, diagrams,
36 or written descriptions, construction or other significant work planned
37 (substantially in the form of an installation plan described in Section 7.2) relating
38 to Network Facilities for the current calendar year and the following calendar
39 year; and

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1 C. A cumulative written list of the permits that the Franchisee has received from the
2 city through the last day of the preceding calendar year. The report shall list the
3 type of permit, the location(s) of the work being performed under the permit, the
4 date the work started or is projected to start, and the date the work stopped or is
5 projected to stop. The Franchisee shall omit a permit from this list after such
6 permit has expired and has not been renewed for three (3) consecutive months.

7 Franchisee shall ensure that all drawings, maps, illustrations, or depictions required under this
8 Section are drawn to scale, show all existing utilities, and comply with Green Book standards.

9 **15.0 Default and Remedies**

10 Each of the following events shall constitute a default of this Franchise (“Default”):

- 11 (a) If either Party fails to perform or comply with any of the material conditions or covenants
12 of this Franchise Agreement and such failure continues for a period of thirty (30) calendar
13 days after written notice thereof, unless the performance cannot be reasonably completed
14 within the thirty (30) day period, and the Party has commenced good faith efforts to
15 perform and is diligently proceeding to complete performance to the satisfaction of the
16 other Party;
- 17 (b) If Franchisee fails to pay the Franchise Fee or other sums herein specified within fifteen
18 (15) calendar days after receipt of written notice of said default; or
- 19 (c) If Franchisee is adjudicated as bankrupt, or becomes insolvent.

20 **15.1 Default by Franchisee**

21 In the event of default by Franchisee, the City shall have the right, while any default continues,
22 beyond any applicable cure period, by giving thirty (30) calendar days written notice to
23 Franchisee, to terminate this Franchise Agreement and promptly remove or require Franchisee to
24 promptly remove Facilities from the Public Way, at Franchisee’s sole cost and expense, without
25 prejudice to any other remedy which the City might be entitled to pursue, including but not
26 limited to City’s rights under Section 17 to eliminate any interference caused by Facilities. No
27 portion of the Franchise Fee shall be refunded in the event of a termination on default by
28 Franchisee.

29 **15.1.1 Self-Help by City**

30 In the event of any default of this Franchise by Franchisee and upon the expiration of any
31 applicable cure period set forth in this Franchise Agreement, the City may at any time, after
32 notice, cure the default for the account of and at the expense of the Franchisee. If City is
33 compelled to pay or elects to pay any sum of money or to do any act which will require the
34 payment of any sum of money or is compelled to incur any expense, including reasonable
35 attorneys’ fees in instituting, prosecuting or defending any action to enforce the City’s rights
36 under this Franchise, the sums so paid by City, with all interest, costs and damages, shall be
37 deemed to be an additional Franchise Fee (“Additional Franchise Fee”) and shall be due from the
38 Franchisee to City on the first day of the month following the incurring of the respective
39 expenses. Upon request by Franchisee, City shall provide the necessary information for
40 Franchisee to verify all reasonable cost based charges incurred.

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15.2 Default by City

In the event of default by the City, Franchisee shall have the right to pursue any remedies available to it against the City under applicable law, including, but not limited to, the right to terminate this Agreement after thirty (30) days written notice and an opportunity to cure the default.

16.0 City Termination Right

In addition to the remedies set forth in this Section 16, the City shall have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the Public Way; or (ii) if Franchisee's licenses to operate the Network and/or provide Service are terminated, revoked, expired, or otherwise abandoned.

17.0 Radiofrequency Interference; MPE Evaluation

Radiofrequency Interference. Franchisee shall install and operate Facilities of a type and frequency that will not cause radiofrequency interference to any FCC-licensed devices or with respect to the City's existing operations. In the event of an emergency relating to interference, upon notification of such emergency by City, Franchisee shall disconnect its operations and Facilities from a remote location. If Franchisee does not promptly disconnect its operations and Facilities after being notified by the City due to an emergency, City shall be permitted to disconnect Franchisee's operations and Facilities immediately, whether such Facilities are located on a City-owned facility or a third-party facility within the public right of way. City may perform, or cause to be performed, upon notice to Franchisee, a technical evaluation to determine the cause of interference. If, after considering the results of the inspection and tests or any technical evaluation performed by City, City determines that Franchisee is directly causing interference to City's operations, City shall promptly notify Franchisee and Franchisee shall immediately cease interfering with City's operations. If Franchisee fails to cease its interference with City's operations within twelve (12) hours of such determination, City shall have the right to take any steps it deems necessary, in its reasonable judgment and discretion, to cause the interference to cease. Franchisee shall be responsible for all reasonable and actual payments and/or expenses relating to the City's actions to correct any interference problems caused by Franchisee.

For a period of thirty (30) calendar days after City determines that Franchisee's operations have caused interference, Franchisee may request, and, if its request is approved by the City, may perform intermittent testing of potential cures during specified hours. City's approval of a request to remain and conduct intermittent testing during specified hours shall not be unreasonably withheld, delayed or conditioned.

City's sole liability to Franchisee for action taken pursuant to this Section 17 shall consist of the value of any damage or repairs made necessary to affected Facilities by willful or grossly negligent acts of the City. In no event shall the City be liable for loss in value of Franchisee's Facilities, or any loss of revenue by Franchisee resulting from removal.

MPE Evaluation. Upon request from the City, Franchisee shall provide the City an up-to-date report on Maximum Permissible Exposure (MPE) regarding radio frequency emissions and maximum exposure for humans. A copy of any MPE reports submitted to the FCC shall be

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1 given to the City within thirty (30) days of FCC submission. Failure to provide the report or
2 failure to comply in a timely manner with FCC standards for limiting human exposure to radio
3 frequency emissions shall be an event of default. Within thirty (30) days after it receives an MPE
4 report from the Franchisee, the City shall make the report available for public review on the City
5 website.

6 **18.0 Annual Financial Statement**

7 On an annual basis, Franchisee shall provide to the City a financial statement describing services
8 provided within the City and Gross Revenues received from such services.

9 **19.0 Interest**

10 If Franchisee fails to make any payment under this Agreement when due, such amounts shall
11 accrue interest from the date such payment is due until paid, including accrued interest, at an
12 annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

13 **20.0 Taxes**

14 Franchisee agrees that it will be solely responsible for the payment of any and all applicable
15 taxes, fees and assessments levied on its ownership, use and maintenance of the Network and/or
16 Facilities.

17 **21.0 Liability and Indemnity**

18 **21.1 Indemnification**

19 Franchisee agrees to indemnify, defend and hold harmless City, its elected/appointed officials,
20 departments, employees, agents and representatives from any and all claims, demands, suits and
21 actions including attorneys' fees and court costs, connected therewith, brought against the City,
22 its elected/appointed officials, departments, employees, agents and representatives and arising as
23 a result of any direct willful, or negligent act or omission of Franchisee, its agents, officers or
24 employees EXCEPT for any and all claims, demands, suits and actions, including attorneys' fees
25 and court costs connected therewith, brought against City or City's elected/appointed officials,
26 departments, employees, agents and representatives, arising as a result of the sole willful, or any
27 negligent act or omission of City, its elected/appointed officials, departments, employees, agents
28 and representatives. This indemnification obligation shall survive the termination of this
29 Agreement.

30 **21.2 Waiver of Claims**

31 Franchisee waives any and all claims, demands, causes of action and rights it may assert against
32 the City on account of any loss, damage or injury to any Facilities or any loss or degradation of
33 the Services as a result of an event or occurrence which is beyond the reasonable control of the
34 City.

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21.3 Limitation of the City’s Liability

Except as provided for in this Section, the City shall be liable only for the cost of repair to damaged Facilities arising from the gross negligence or willful misconduct of the City, its council or board members, officers, elected trustees, employees, agents, or contractors.

22.0 Insurance

The Franchisee shall procure and maintain during the term of this Franchise the following required insurance coverages:

(a) Commercial General Liability Insurance at limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for claims arising out of bodily injuries or death, and property damages. With those policies with aggregate limits, a minimum limit of Three Million Dollars (\$3,000,000.00) is required. Such insurance shall include contractual liability insurance and environmental insurance.

(b) Business Automobile Liability at limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for all claims arising out of bodily injuries or death, and property damages. The insurance shall apply to any owned, non-owned, franchised, or hired automobiles used in the performance of this Franchise.

(c) Cyber Liability Insurance at limits of not less than One Million Dollars (\$1,000,000.00) per occurrence with those policies with aggregate limits, a minimum limit of Three Million Dollars (\$3,000,000.00) is required.

(d) Workers compensation coverages as required by the State of Maryland, as well as any similar coverage required for this work by applicable federal laws.

(e) The Mayor and City Council of Baltimore (in their official capacity) their elected/appointed officials, departments, employees, representatives and agents, shall be covered, by endorsement, as additional insureds with respect to liability arising out of activities performed by Franchisee, its employees, agents, representatives, contractors and subcontractors in connection with this Franchise. City shall be covered by endorsement as additional insured with respect to liability arising out or activities performed by Franchisee.

(f) The insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer’s liability.

(g) To the extent of the Franchisee’s negligence, the Franchisee’s insurance coverage shall be primary insurance as respects to the City, its elected/appointed officials, departments, employees, agents and representatives. Any insurance and/or self-insurance maintained by City, its elected/appointed officials, departments, employees, agents and representatives shall not contribute with the Franchisee’s insurance or benefit the Franchisee in any way where Franchisee is found negligent.

(h) Coverages shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days prior written notice has been given to the City. There will be an exception for non-payment of premium, which is ten (10) days notice of cancellation.

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1 (i) Insurance is to be placed with insurers with a Best’s rating of no less than A:VII, or if not
2 rated with Best’s with minimum surpluses the equivalent of Best’s surplus size VII and must be
3 franchised/approved to do business in the State of Maryland.

4 (j) The Franchisee shall furnish the City a “Certificate of Insurance” with a copy of the
5 additional insured endorsement as verification that coverage is in force. The City reserves the
6 right to require Franchisee to produce a letter from Franchisee’s insurance broker verifying that
7 the insurance coverage required herein is in effect.

8 (k) Failure to obtain insurance coverage as required or failure to furnish Certificates of
9 Insurance required may, after thirty (30) days written notice, opportunity to cure and failure to do
10 so, render this Franchise null and void; provided, however that no act or omission of the City
11 shall in any way limit, modify or affect the obligations of Franchisee under any provision of this
12 Franchise.

13 **23.0 Assignment and Subletting**

14 Franchisee may not assign, or otherwise transfer all or any part of its privilege in this Franchise
15 without the prior written consent of City; provided, however, that Franchisee may assign its
16 privilege to its parent company, any subsidiary or affiliate of it or its parent company or to any
17 successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets,
18 subject to the assignee assuming all of Franchisee’s obligations hereunder, and subject to any
19 financing entity’s interest, if any, in this Franchise. Notwithstanding anything to the contrary
20 contained in this Franchise, Franchisee may assign, mortgage, pledge, hypothecate or otherwise
21 transfer without consent its interest in Facilities or in this Franchise to any financing entity, or
22 agent on behalf of any financing entity to whom Franchisee (1) has obligations for borrowed
23 money or in respect of guaranties thereof, (2) has obligations evidenced by bonds, debentures,
24 notes or similar instruments, or (3) has obligations under or with respect to letters of credit,
25 bankers acceptances and similar facilities or in respect of guaranties thereof. Any such
26 assignment to a financing entity or its agent shall be subordinate to the terms of this Franchise
27 Agreement.

28 **24.0 Environmental**

29 (a) Except in strict accordance with all applicable laws and regulations, Franchisee shall not
30 at any time within the Public Way store, treat, transport or dispose of any hazardous substance,
31 hazardous waste or oil as defined by the Resource Conservation and Recovery Act of 1976
32 (“RCRA”), 42 U.S.C. §§ 6901 et seq., Comprehensive Environmental Response, Compensation,
33 and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601 et seq., Maryland Environment
34 Article Code Ann., Title 4, Sec. 4-401, et seq. and Maryland Environment Article Code Ann.,
35 Title 7, subtitle 2.

36 (b) “Environmental Conditions” as used in this Agreement shall mean discovered or
37 undiscovered contaminants, pollutants, or toxic substances affecting health or the environment,
38 in any way arising from or related to the subject matter of this Franchise which could, or do,
39 result in any damage, loss, cost or expense to, or liability, by City to any person including a
40 government agency or other entity.

41 (c) In addition to all other indemnifications contained herein, Franchisee specifically agrees
42 to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials,

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1 employees, agents and representatives (“Indemnified Parties”) from and against any and all
2 losses, costs, liabilities, including but not limited to liabilities, demands, obligations, claims,
3 suits, actions and expenses, attorneys’ fees, consultant fees and court costs connected therewith,
4 brought against the Indemnified Parties, or incurred by any of them, by reason of injury to
5 persons, including death, and damage to property arising out of Environmental Conditions or
6 resulting from any direct, or indirect, willful or negligent acts or omissions of Franchisee, its
7 contractors, agents, or employees arising from Environmental Conditions, unless solely caused
8 by the negligent act of City. Notwithstanding anything to the contrary herein, Franchisee agrees
9 to defend, indemnify and hold harmless the Indemnified Parties from and against all
10 administrative and judicial actions and rulings, claims, causes of action, demands and liability
11 including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses
12 judgments and reasonable attorney fees that the Indemnified Parties may suffer or incur due to
13 the existence of any hazardous substances on the Franchise Area and in the Public Way or
14 migration of any hazardous substance to other properties or the release of any hazardous
15 substance into the environment, that arise from the Franchisee’s and or its representatives
16 activities on the Franchise Area or the Public Way. The indemnifications in this section
17 specifically include, without limitation, costs incurred in connection with any investigation of
18 site conditions or any cleanup, remedial, removal or restoration work required by any
19 governmental authority. This provision shall be in addition to, and separate from, any remedies
20 available to City for breach by the Franchisee of its obligations under any of the provisions of
21 this Agreement and shall in no way limit any recourse that the City may have at the time against
22 Franchisee pursuant to any federal, state or local laws. The provisions of this section shall
23 survive the termination or expiration of this Agreement.

24 (d) City represents to the best of its knowledge, without having made inquiry that there is no
25 hazardous substance within the Public Way. Hazardous substance is any substance identified as
26 hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. City
27 shall not introduce or use any hazardous substance in the Public Way in violation of any
28 applicable law. City shall be responsible for, and shall promptly conduct any investigation into
29 and remediation of, as required by any applicable environmental laws, all spills or other releases
30 of any hazardous substance to the extent caused by the City, that have occurred or which may
31 occur in the Public Way. City agrees to defend, indemnify and hold harmless the Franchisee
32 from and against any and all administrative and judicial actions and rulings, claims, causes of
33 action, demands and liability (collectively, “Claims”) including, but not limited to, damages,
34 costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that
35 the Franchisee may suffer or incur due to the existence of any hazardous substances in the Public
36 Way or the migration of any hazardous substance to other properties or the release of any
37 hazardous substance into the environment (collectively, “Actions”), that arise from the City’s
38 activities on the Franchise Area to the extent allowable under subsection 5-303 (a), (b) and (c) of
39 the Courts and Proceedings Article of the Maryland Annotated Code. City agrees to defend,
40 indemnify and hold Franchisee harmless from Claims resulting from Actions in the Franchise
41 Area caused by City prior to and during the initial term and any and all renewal terms. The
42 indemnifications in this section specifically include, without limitation, costs incurred in
43 connection with any investigation of site conditions or any cleanup, remedial, removal or
44 restoration work required by any governmental authority. This Section shall survive the
45 termination or expiration of this Agreement.

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1 **25.0 Notices**

2 All notices, requests, demands, and other communications hereunder shall be in writing and shall
3 be deemed given if personally delivered or by certified mail, return receipt requested to the
4 following addresses:

5 City: The Mayor and City Council of Baltimore
6 Department of Transportation
7 Attn: Director
8 417 E. Fayette Street, Fifth Floor
9 Baltimore, Maryland 21202

10 *with a copy which shall not constitute legal notice to:*

11 Baltimore City Department of Real Estate
12 Room 304 City Hall
13 100 North Holliday Street
14 Baltimore, Maryland 21202
15 410-396-4768
16 410-528-1437 (fax)

17 All Franchise Fee payments to the City should be mailed to the following address and to the
18 attention of:

19 Director of Finance
20 Bureau of Treasury Management
21 Collections Division
22 200 N. Holliday Street
23 Baltimore, Maryland 21202

24 **Franchisee:**

25 Mobilitie, LLC
26 2220 University Drive
27 Newport Beach, CA 92660
28 Attn: Property Management

29 With a copy to:

30 Mobilitie, LLC
31 2220 University Drive
32 Newport Beach, CA 92660
33 Attn: Legal Department

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26.0 Franchisee Point of Contact Relating to Facilities

Appropriate Franchisee staff shall be available to the employees of any City department having jurisdiction over Franchisee’s activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of Facilities. The City may contact the network control center operator at 877-204-8155 and/or legal@mobilitie.com regarding such problems or complaints.

27.0 Miscellaneous

27.1 Incorporation of Prior Agreements

This Franchise contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Franchise, and no other agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Franchise may be amended or added to except by an agreement in writing signed by the parties hereto or respective successors in interest.

27.2 Non-Waiver

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

27.3 Taxes

(a) Franchisee, upon presentation of sufficient and proper documentation will pay, within thirty (30) days, an amount equal to its proportional share of any real estate taxes imposed upon any entity which is directly attributable to the improvements constructed by Franchisee, provided that Franchisee will be entitled to appeal any such increase payable by it.

(b) Franchisee shall indemnify City from any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against City in relation to the taxes owed or assessed on the Franchise Area.

27.4 Force Majeure

If either City or Franchisee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the

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1 unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as
2 soon as reasonably possible.

3 **27.5 Governing Law; Jurisdiction**

4 This Franchise Agreement shall be construed in accordance with the laws of the State of
5 Maryland, without reference to its conflicts of law principles. If suit is brought by a party to this
6 Agreement, the parties agree that trial of such action shall be vested exclusively in the state
7 courts of Maryland, or in the United States District Court for the District of Maryland.

8 **27.6 Change in Law and Severability**

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

14 If, as a result of a change in law by statute, rule, ruling or otherwise, the total compensation to the
15 City arising as a result of Franchisee's occupation of the Public Way (including attachments on
16 City-owned facilities therein) is materially reduced, the Parties agree to negotiate in good faith to
17 amend this Agreement to ensure that total compensation to the City remains substantially
18 comparable, to the extent permitted under applicable law.

19 **27.7 Representations**

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

23 **27.8 Amendment**

24 This Agreement may not be amended except pursuant to a written instrument evidencing
25 agreement by both parties.

26 **27.9 MBE/WBE Compliance**

27 (a) Franchisee to comply. Franchisee agrees to comply with the City's statutes, ordinances
28 and regulations regarding participation by minority business enterprises ("MBE's") and women's
29 business enterprises ("WBE's") as if it were a contractor receiving funding from the City,
30 provided that enforcement of this Section shall be exclusively by way of liquidated damages and
31 in no event shall the City seek to suspend or rescind the Franchise for any violation of this
32 Section. The Franchisee shall use reasonable, good faith efforts to meet a goal for participation
33 by MBE's and WBE's for purchase and construction contracts as established by the City's
34 Minority and Women's Business Opportunity Office ("MWBOO"). MWBOO shall administer
35 the provisions of this Section on behalf of the City, and Franchisee shall comply with MWBOO
36 rules and requirements.

37 (b) Documentation to the City on MBE/WBE participation. Six (6) months after the
38 Effective Date and every six (6) months thereafter while upgrade construction under this

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1 Agreement is in progress, and annually thereafter, the Franchisee shall submit to the City written
2 documentation, including executed contracts, service agreements and utilization commitment
3 forms, that shall identify the particular MBE's/WBE's that are (i) contracting directly with the
4 Franchisee; or (ii) subcontracting with prime contractors who contract directly with Franchisee.
5 The documentation submitted to the City shall specify the dollar value of the participation, type
6 of work to be performed, and such other information as the City may reasonably request.

7 (c) Waiver of MBE/WBE Goals. In the event that, after the use of reasonable, good faith
8 efforts to meet the goals for MBE and WBE participation established pursuant to this Section, the
9 Franchisee is able to demonstrate to the City's satisfaction that sufficient qualified and willing
10 MBE's and WBE's are unavailable, the Franchisee may request a waiver or reduction of the
11 MBE/WBE goals.

12 (d) Report on MBE/WBE Compliance. Six (6) months after the Effective Date and every six
13 (6) months thereafter, the Franchisee shall submit to MWBOO a report on its compliance with
14 this Section. Franchisee may satisfy this requirement by copying MWBOO on any such report
15 that it files with another City agency on a semiannual or more frequent basis.

Council Bill 15-0596

1 **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate on the
2 day and year first written above.

3 **ATTEST:** **MAYOR AND CITY COUNCIL OF BALTIMORE**

4 _____ **BY:** _____

5 **CUSTODIAN OF THE CITY SEAL** **WILLIAM M. JOHNSON, DIRECTOR**
6 **DEPARTMENT OF TRANSPORTATION**

7 **WITNESS/ATTEST:** **MOBILITIE, LLC**

8
9
10
11

12 _____ **BY :** _____ **(SEAL)**

13 **NAME:**

14 **TITLE:**

15 **APPROVED AS TO FORM AND LEGAL**
16 **SUFFICIENCY**

APPROVED BY THE BOARD OF
ESTIMATES

17 _____

18 **ASSISTANT CITY SOLICITOR**

CLERK

DATE