

**CITY OF BALTIMORE
COUNCIL BILL 19-0406
(First Reader)**

Introduced by: The Council President
At the request of: The Administration (Department of Transportation)
Introduced and read first time: July 22, 2019
Assigned to: Housing and Urban Affairs Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Planning, Department of Housing and Community Development, Department of Transportation, Department of Finance, Board of Estimates, Baltimore City Information and Technology Department, Fire Department, Department of Recreation and Parks, Environmental Control Board, Department of Public Works, Department of Real Estate

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Franchise – Cellco Partnership, d/b/a Verizon Wireless**

3 FOR the purpose of granting a franchise to Cellco Partnership, d/b/a Verizon Wireless, a
4 Delaware general partnership, to construct, install, maintain, repair, operate, relocate, replace,
5 and remove certain Communications Facilities in and across certain streets and Public Ways
6 and Park Properties, subject to certain terms and conditions; and providing for a special
7 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 Cellco Partnership, d/b/a Verizon Wireless (the “Grantee”), to
14 construct, install, maintain, repair, operate, relocate, replace and remove certain facilities relating
15 to the provision of Wireless Services in and across certain streets and Public Ways and Park
16 Properties, subject to the terms and conditions of this Ordinance and the Franchise Agreement
17 between the Mayor and City Council of Baltimore and the Grantee, which is attached and made a
18 part of this Ordinance.

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

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

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

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

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

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BALTIMORE CITY COMMUNICATIONS FACILITIES FRANCHISE AGREEMENT

This Franchise Agreement, (the “Agreement”) is made this ___ day of _____, 2019, by and between the MAYOR AND CITY COUNCIL OF BALTIMORE, a Municipal Corporation of the State of Maryland (“City”) and Cellco Partnership, d/b/a Verizon Wireless, a Delaware general partnership (“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 and Park Properties 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 Communications Facilities relating to the provision of Wireless Service in the Public Way and on Park Properties within the City, 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 applicable federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all FCC resolutions, orders, rules, and regulations, this Agreement, the Baltimore City Charter, the aesthetic or design standards applicable to Communications Facilities established by the City, and the administrative and judicial decisions interpreting these sources of law.
- 1.3** “Authorizations” means the permissions Franchisee must have to deploy the Communications Facilities and/or provide Wireless 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

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1 Baltimore city government or any officer, official, employees, or agent of the
2 Baltimore City government, any designee of the 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 ducts,
5 manholes, handholes, vaults, pull-boxes, and trenches.

6 **1.6** “Effective Date” means the date upon which this Agreement is adopted and approved
7 by the Mayor and City Council of the City.

8 **1.7** “Communications Facilities” means any and all equipment and assets located on
9 Public Ways and Park Properties and owned by or under the control of Franchisee that
10 are reasonably necessary and appropriate for the offering and provision of Wireless
11 Services, including, but not limited to: optical repeaters, converters, power amplifiers,
12 radios, multiplexers, remote radioheads, antennae, aboveground and underground
13 fiber optic and coaxial cable, conduit, wires, meters, pedestals, power switches,
14 electrical generation and transmission facilities, cabinets, enclosures, control boxes,
15 and accompanying support structures, whether referred to singly or collectively. The
16 term does not include facilities attached to what are commonly known as macro
17 towers.

18 **1.8** “Franchise” means the non-exclusive right granted, by ordinance and subject to this
19 Agreement, to Franchisee to construct, operate, repair, and maintain Communications
20 Facilities on, over, under, upon, across, and along the Public Ways and Park
21 Properties.

22 **1.9** “Franchise Area” shall mean all the area within the boundaries of the City.

23 **1.10** “Park Properties” means the real property controlled by the Department of Recreation
24 and Parks pursuant to the provisions of Article VII of the City Charter, which includes
25 parks, zoos, squares, athletic and recreational facilities.

26 **1.11** “Person” means any natural person or any association, firm, partnership, joint venture,
27 corporation or other legally recognized entity, whether for-profit or not-for-profit.

28 **1.12** “Public Way” means the surface of, and the space above and below, any public street,
29 highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane,
30 public way, drive, circle or other public right-of-way, including, but not limited to,
31 public utility easements, dedicated utility strips, or rights-of-way utilized for
32 compatible uses. Public Way shall not include any City buildings, structures or other
33 improvements, regardless of whether they are situated in a public right-of-way.

34 **1.13** “Wireless Service(s)” or “Service(s)” means any services using licensed or
35 unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or
36 mobile, provided to the public.

37 **2.0 Grant of Franchise**

38 The City grants to Franchisee the nonexclusive right to construct, install, maintain, repair,
39 operate, replace and remove Communications Facilities within the Public Way and on Park

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1 Properties for the purpose of providing Wireless Services, which shall be exercised at
2 Franchisee's sole cost and expense, and which shall be subject to all deeds, easements,
3 dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record
4 which may affect the Public Way and Park Properties. Nothing in this Agreement shall be
5 deemed to grant, convey, create or vest in Franchisee a real property interest in land,
6 including any fee, leasehold interest, or easement.

7 **2.1 Compliance With Law**

8 The Franchise granted under the terms and conditions of this Agreement shall be
9 consistent with Applicable Law.

10 **2.2 No Waiver of Other Permits and Authorizations**

11 Nothing in this Agreement shall be construed as a waiver of any Applicable Laws
12 (including, without limitation) laws, regulations or rules of the City or of the City's
13 right to require the Franchisee to secure the appropriate permits or authorizations,
14 provided that the fees and charges imposed upon the Franchisee for any such permit
15 or authorization shall be the standard fees or charges generally applicable to all
16 Persons for such permits or authorizations, and any such standard fee or charge shall
17 not be an offset against the compensation or other payment the Franchisee or other
18 person is required to pay the City or any other entity pursuant to this Agreement.

19 **2.3 No Interference**

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

30 **2.4 Closing of Public Ways and Park Properties**

31 Nothing in this Agreement shall be construed as a waiver or release of the rights of
32 the City in and to the Public Ways and Park Properties. In the event that all or part of
33 the Public Ways or Park Properties within the Franchise Area are (1) closed to
34 pedestrian and/or vehicular traffic and/or utilities and services comparable to
35 Services; or (2) vacated or if ownership of the land under the affected Public Ways or
36 on Park Properties is otherwise transferred to another Person, all rights and privileges
37 granted pursuant to this Agreement with respect to such Public Ways or Park
38 Properties, or any part of such Public Ways or Park Properties so closed, vacated, or
39 transferred, shall cease upon the effective date of such closing, vacation, or transfer,
40 and Franchisee shall remove its Communications Facilities from such Public Ways or
41 Park Properties. If such closing, vacation, or transfer of any Public Way or Park
42 Properties is undertaken for the benefit of any private Person, the City shall, as

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1 appropriate, condition its consent to such closing, vacation, or transfer of such Public
2 Way or Park Properties on the agreement of such private Person to: (i) grant the
3 Franchisee the right to continue to occupy and use such Public Way or Park
4 Properties; or (ii) reimburse the Franchisee for its reasonable costs to relocate the
5 affected part of the Communications Facilities. The City shall provide reasonable
6 notice to Franchisee of any such closing, vacation, or transfer to allow Franchisee to
7 remove its Communications Facilities where the right to continue to occupy and use
8 such Public Way or Park Properties is not reserved for Franchisee.

9 **2.5 Conditions Precedent**

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

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

24 **3.0 Relation to Attachment Rights**

25 This Franchise does not confer upon Franchisee any right to place or attach Communications
26 Facilities directly upon or to structures located in the Public Way or on Park Properties that
27 are owned by the City or by a third party, including but not limited to City-owned streetlights
28 and third party electric utility poles. Franchisee shall secure and maintain any license, lease
29 or other right as may be necessary for such desired attachment by way of a separate
30 attachment agreement or other similar instrument executed with such entity; provided,
31 however, that the City acknowledges and agrees that Franchisee shall not be required to
32 obtain any additional franchise rights from the City in connection with the attachment of
33 Communications Facilities to the City's or third parties' structures in the Public Way and on
34 Park Properties, provided, further, however, that the foregoing is not intended to waive any
35 applicable requirements that Licensee obtain any customary City permits.

36 **4.0 Term**

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

39 This Franchise may be automatically renewed for three (3) additional five (5) year terms
40 provided Franchisee is not in default, is not in arrears with regard to, any amount of Franchise

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1 fees, and provided that Franchisee has not given City notice of Franchisee's intention not to
2 renew, such notice to be given not less than one hundred twenty (120) days prior to the
3 expiration of the current Franchise term.

4 **5.0 Franchise Fee**

5 For the right to construct, install, maintain, repair, operate, replace and remove its
6 Communications Facilities in the Public Way and on Park Properties, Franchisee shall pay to
7 the City a Franchise Fee in the amount of \$ _____ per year. Payment shall be made no
8 later than 30 days following the conclusion of each fiscal year.

9 **6.0 Use of Communications Facilities**

10 The authority granted by this Franchise extends to the use of Communications Facilities for
11 purposes of offering Wireless Services. Any non-incident use of such Communications
12 Facilities for a purpose other than Wireless Service, as described in this Agreement, or the
13 installation of facilities unrelated to a Wireless Service, may require additional Authorization
14 from the City.

15 **7.0 Installation Specifications**

16 **7.1 Installation Plan**

17 The installation of Communications Facilities in the Public Way and on Park
18 Properties shall be made in accordance with plans and specifications approved by the
19 City and after obtaining all necessary permits for all work in the Public Way or on
20 Park Properties. Franchisee shall submit to the Baltimore City Department of
21 Transportation and, when siting on Park Properties, the Department of Recreation and
22 Parks, an initial installation plan, and any subsequent work plans concerning
23 installations not addressed in the initial work plan, which shall include fully
24 dimensioned site plans and specifications that are drawn to scale and show (1) the
25 specific Communications Facilities; (2) the specific proposed location of such
26 Communications Facilities (including specific identification of each attachment to a
27 City-owned or third-party structure located in the Public Way and on Park Properties);
28 (3) the route of fiber optic cable installed and utilized by the Communications
29 Facilities only if such fiber optic cable will be installed and owned by the Franchisee
30 (as distinct from being installed and owned by one of the fiber optic service providers
31 that has its own franchise with the City, regardless of whether such service provider is
32 an affiliate of Franchisee; and (4) the proposed type of construction materials for all
33 structures, and any other details that the City may reasonably request which are also
34 applicable to other regulated utilities operating within the Public Way or on Park
35 Properties. Such installation plans may be submitted as part of Franchisee's annual
36 construction report described in Section 14.

37 **7.3 Approval by City**

38 Franchisee shall not attach, install, maintain, or operate any Communications
39 Facilities in or on the Public Way or Park Properties until plans for such work have
40 been approved by the City (which shall not be unreasonably withheld, delayed,
41 conditioned or denied), and all necessary permits have been properly issued.

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1 Substantial modification to an installation plan (including, for example, a change of
2 Communications Facilities site) made in the course of construction shall require the
3 written consent of the City, upon which the City shall act promptly, and may require
4 modification of an existing or issuance of a new permit.

5 Approval of plans and specifications and the issuance of any permits by the City shall
6 not release Franchisee from the responsibility for, or the correction of, any errors,
7 omissions or other mistakes that may be contained in the plans, specifications and/or
8 permits. Franchisee shall be responsible for notifying the City and all other relevant
9 parties immediately upon discovery of such omissions and/or errors and with
10 obtaining any amendments for corrected City-approved permits, as may be necessary.

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

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

16 **8.0 Construction**

17 **8.1 Compliance with Standards and Specifications**

18 All construction and maintenance shall be done in a workmanlike manner, and the
19 Franchisee shall meet or exceed all construction and service requirements required by
20 Applicable Law (including, without limitation, this Agreement and the Baltimore City
21 Code). All work involved in the construction, installation, operation, repair, and
22 maintenance of the Communications Facilities shall be performed in a safe, thorough,
23 and reliable manner using materials of good and durable quality. The Franchisee shall
24 comply with applicable codes and industry standards, including the specifications set
25 forth in the most recently published edition of the "City of Baltimore Department of
26 Public Works Specifications for Material, Highways, Bridges, Utilities, and Incidental
27 Structures (2006)," as amended from time to time ("Green Book"); administrative
28 orders of the City Department of Transportation, as amended from time to time; the
29 National Electrical Code, as adopted by the City from time to time; the National
30 Electrical Safety Code, as adopted by the City from time to time; all rules, standards,
31 practices, and procedures of the FCC, as amended from time to time; and the
32 requirements of other utilities whose poles and conduits the Franchisee may use, as
33 amended from time to time.

34 **8.2 Safety Precautions**

35 **8.2.1 Standard of Care**

36 The Franchisee shall employ ordinary care at all times and employ commonly
37 accepted methods and devices for the prevention of failures and accidents that
38 are likely to cause damage, injury, or nuisance to the public. In addition, the
39 Franchisee shall, at its sole cost and expense, undertake all necessary and
40 appropriate efforts to prevent accidents at its work sites. The Franchisee shall

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1 comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§
2 651-78), as amended, and all other Applicable Law.

3 **8.2.2 Protection of Construction Areas**

4 The Franchisee shall comply with the safety requirements of all permits,
5 licenses, and other forms of approval or authorization. In addition, Franchisee
6 shall maintain reasonable barriers, lights, signs, cones, and other similar
7 warnings and protective devices required for the safety of the public in
8 compliance with this Agreement and Applicable Law. If the Franchisee places
9 any such device in any Public Way or on Park Properties, the device shall be
10 placed and maintained in a way that does not interfere with the usual travel or
11 other existing and anticipated uses of the Public Way or Park Properties.

12 **8.2.3. Emergency Notification**

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

18 **8.3 Identification**

19 The Franchisee shall ensure that all employees, including employees of subcontractors
20 who will be in contact with the public, will have proper identification documentation
21 including a telephone number that can be used for verification. In addition, the
22 Franchisee shall clearly identify all personnel, vehicles, and other major equipment
23 operating under its authority.

24 **8.4 Antennas and Towers**

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

31 **8.5 Disruption, Interference and Damage**

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

1 **8.6 Materials and Claims**

2 All materials furnished for any work done on the property on which Franchisee’s
3 Communications Facilities are located (the “Franchised Premises”) by Franchisee
4 shall be at Franchisee’s sole cost and expense. Franchisee agrees to protect the
5 Franchised Premises, and City, from all claims of contractors, laborers and material
6 men claiming by or through the actions or activities of Franchisee. Franchisee shall
7 promptly pay all contractors and material men. Should any such lien be made or filed,
8 Franchisee shall cause the same to be discharged and released of record by bond or
9 otherwise within thirty (30) days after written request by City.

10 **8.7 One Call Notification System**

11 For the Term of this Agreement, Franchisee shall become a full-time, private sector
12 member of: (A) the DPW Utility Coordinating Committee; and (B) if Franchisee has
13 installed fiber optic cable to be owned by Franchisee (as distinct from having fiber
14 optic cabling installed and owned by one of the local fiber optic service providers that
15 has its own franchise with the City, regardless of whether such service provider is an
16 affiliate of Franchisee), the One Call Notification System (otherwise known as “Miss
17 Utility”) and shall comply with all of the marking and location verification
18 requirements of the One Call Notification System.

19 **8.8 No Advertisement**

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

23 **8.9 Inspection by City**

24 The City shall have commercially reasonable access to inspect any work conducted by
25 Franchisee during the construction of Communications Facilities.

26 **9.0 Maintenance and Repair**

27 **9.1 Generally**

28 Franchisee shall, at its sole cost and expense, perform all maintenance and repairs
29 reasonably needed to maintain Communications Facilities in good condition and neat
30 and orderly appearance, and in compliance with all applicable Laws. Franchisee shall
31 keep the Communications Facilities free of debris and anything of a dangerous,
32 noxious or offensive nature or which would create a hazard or undue vibration, heat,
33 noise or interference. If the City gives Franchisee written notice of a failure by
34 Franchisee to maintain the Communications Facilities, Franchisee shall use its best
35 efforts to remedy such failure within forty-eight (48) hours after receipt of such
36 written notice.

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9.2 Access to Communications Facilities

Franchisee shall be given access to each of the Communications Facilities in the Public Way or on Park Properties for the purpose of routine maintenance, repair, or removal of Communications Facilities . If any such maintenance activities have the potential to result in an interruption of any City services at the Facility or bodily harm or property damage, Franchisee shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities, which notice for such maintenance activities may be sent via to the offices or persons identified in the permits issued to the Franchisee. In the event of an emergency (e.g., the potential for bodily harm or property damage or material disruption to the operation of the Wireless Services), such 3-day notice requirement shall be waived and Franchisee shall provide the City as much prior notice as reasonably possible under the circumstances. Such maintenance activities shall, to the extent reasonably feasible, be done with minimal impairment, interruption, or interference to City services.

9.3 Repair of Public Way and Park Properties

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

9.4 Appearance

Franchisee shall obtain design and location approvals from the Planning Department and the Department of Transportation for all attachments that are subject to this Agreement, which approvals shall be granted or denied on a non-discriminatory basis. Franchisee shall follow all legally binding Applicable Laws with respect to aesthetics and appearance for the duration of the Franchise.

9.5 Graffiti

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

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9.6 Performance Bond

At its sole and absolute discretion, 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 Communications 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 Communications Facilities in a Public Way and on Park Properties without all necessary permits, authorizations and express permission of the City, which may include the execution of a separate agreement between the City and Franchisee when new poles are sought to be installed in the Public Way or on Park Properties. Franchisee acknowledges that the installation of new stand-alone or streetlight poles in the Public Way or on Park Properties is not the City's preference and that such applications for installations on Public Ways or Park Properties may be denied. In the event the application for the installation and construction of a new pole is approved, the installation and construction of the new pole shall be at Franchisee's sole expense and shall comply with all Applicable Laws ("New Poles"). Any New Poles constructed by Franchisee shall comport with the character of existing poles in the area and otherwise comply with the City's established aesthetic or design standards applicable to Communications Facilities. City shall consider any request to construct a New Pole in a nondiscriminatory manner and in compliance with Applicable Laws.

11.2 City Use of New Poles

The City may use any New Poles for City purposes, including but not limited to streetlights, other types of lighting and cameras so long as such use does not interfere with Franchisee's use of its Communications Facilities. Franchisee shall not be responsible for maintenance, repair or replacement of City-owned cameras, lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles. Franchisee shall deed New Poles to the City.

1 **12.0 Removal and Modification of Communications Facilities During Term**

2 **12.1 Franchisee Right to Remove**

3 During the Term, Franchisee shall have the right to remove from the Public Way and
4 Park Properties all or any portion of Communications Facilities from time to time,
5 whether before or after a default under this Franchise, in Franchisee's sole discretion
6 with prior notice to City. Franchisee, at its own cost and expense, shall promptly
7 dispose of any materials used and/or generated by any and all removal activities, and
8 shall promptly repair any damage to the Public Way and Park Properties to their
9 condition prior to construction and installation of such Communications Facilities by
10 Franchisee, reasonable wear and tear excepted.

11 **12.2 Removal Due to Public Project**

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

32 **12.3 Removal Due to Termination or Abandonment**

33 Following the termination of the Franchise for any reason, or in the event Franchisee
34 ceases to operate and abandons the Communications Facilities, Franchisee shall,
35 within one hundred twenty (120) days, at its sole cost and expense, remove all
36 Communications Facilities from the Public Way and Park Properties and restore the
37 area affected by Communications Facilities to its condition prior to the attachment of
38 the Franchisee's Communications Facilities, reasonable wear and tear excepted, and
39 further excepting landscaping and related irrigation equipment, or other aesthetic or
40 design improvements made by Franchisee to the Facility or the adjacent property, or
41 as otherwise required by the City. Within 90 days of a written request from City,
42 Franchisee will post a payment bond in the amount of \$500,000.00 to address the
43 City's cost of removing any Facilities not removed by Franchisee within one hundred
44 twenty (120) days of termination, and as compensation for any damage to the Public

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1 Way and Park Properties relating to the Communication Facilities, reasonable wear
2 and tear excepted. Alternatively, upon the request of Franchisee, the City may allow
3 Franchisee, in the City’s sole and absolute discretion, to abandon the
4 Communications Facilities, or any part thereof, in place and convey it to the City.

5 **13.0 Compliance with Laws**

6 **13.1 Generally**

7 This Agreement is subject to the terms and conditions of all Applicable Laws.

8 **13.2 Permits and Other Authorizations**

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

21 **14.0 Required Reports**

22 **14.1 Annual Construction Report**

23 Not later than the sixtieth (60th) day after the close of each calendar year in which any
24 work was performed in the Public Way or on Park Properties by Franchisee, the
25 Franchisee shall provide the Baltimore City Department of Transportation and, in
26 regard to installations on Park Properties, the Department of Recreation and Parks
27 with the following information:

- 28 A. An updated “as-built” map clearly indicating each Communications Facility,
29 control box, and associated network route installed by Franchisee or its
30 contractors in the Public Way or on Park Properties. Specific identification of
31 attachments to City-owned structures or structures owned by a third party
32 located in the Public Way or on Park Properties. Specifying owner of
33 underlying facility (i.e., city, BGE); and

- 34 B. A cumulative written list of the permits that the Franchisee has received from
35 the City through the last day of the preceding calendar year. The report shall
36 list the type of permit, the location(s) of the work being performed under the
37 permit, the date the work started or is projected to start, and the date the work
38 stopped or is projected to stop. The Franchisee shall omit a permit from this
39 list after such permit has expired and has not been renewed for three (3)
40 consecutive months.

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

4 Additionally, within sixty (60) days after completion of the installation of any
5 Communications Facility in the Public Way or on Park Properties, Franchisee shall
6 provide the Baltimore Department of Transportation and, in regard to installations on
7 Park Properties, the Department of Recreation and Parks an “as built” survey of the
8 Communications Facility.

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 conditions or covenants
12 of this Franchise Agreement and such failure continues for a period of thirty (30)
13 calendar days after written notice thereof, unless the performance cannot be
14 reasonably completed within the thirty (30) day period, and the Party has
15 commenced good faith efforts to perform and is diligently proceeding to complete
16 performance to the satisfaction of the other Party;
- 17 (b) If Franchisee fails to pay the Franchise Fee or other sums herein specified within
18 thirty (30) 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
22 continues, beyond any applicable cure period, by giving thirty (30) calendar days
23 written notice to Franchisee, to terminate this Franchise Agreement and promptly
24 remove or require Franchisee to promptly remove Communications Facilities from
25 the Public Way and Park Properties, at Franchisee’s sole cost and expense, without
26 prejudice to any other remedy which the City might be entitled to pursue, including
27 but not limited to City’s rights under Section 17 to eliminate any interference caused
28 by Communications Facilities. No portion of the Franchise Fee shall be refunded in
29 the event of a termination on default.

30 **15.1.1 Self-Help by City**

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

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1 incurring of the respective expenses. Upon request by Franchisee, City shall
2 provide the necessary information for Franchisee to verify all reasonable cost-
3 based charges incurred.

4 **15.2 Default by City**

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

9 **16.0 City Termination Right**

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

16 **17.0 Radiofrequency Interference**

17 Radiofrequency Interference. Franchisee shall install and operate Communications
18 Facilities of a type and frequency that will not cause radiofrequency interference to any
19 FCC-licensed devices or with respect to the City’s existing operations. In the event of an
20 emergency relating to interference, upon notification of such emergency by City,
21 Franchisee shall disconnect its operations and Communications Facilities from a remote
22 location. If Franchisee does not promptly disconnect its operations and Communications
23 Facilities after being notified by the City due to an emergency, City shall be permitted to
24 disconnect Franchisee’s operations and Communications Facilities immediately, whether
25 such Communications Facilities are located on a City-owned facility or a third-party
26 facility within the Public Ways or Park Properties. City may perform, or cause to be
27 performed, upon notice to Franchisee, a technical evaluation to determine the cause of
28 interference. If, after considering the results of the inspection and tests or any technical
29 evaluation performed by City, City determines that Franchisee is directly causing
30 interference to City’s operations, City shall promptly notify Franchisee (which notice
31 shall be made to Franchisee’s Network Operations Center at (800) 621-2622) and
32 Franchisee shall immediately cease interfering with City’s operations. If Franchisee fails
33 to cease its interference with City’s operations within twelve (12) hours of such notice,
34 City shall have the right to take any steps it deems necessary, in its reasonable judgment
35 and discretion, to cause the interference to cease. Franchisee shall be responsible for all
36 reasonable and actual payments and/or expenses relating to the City’s actions to correct
37 any interference problems caused by Franchisee.

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

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

6 **18.0 MPE Evaluation**

7 Upon installation, Franchisee shall provide the City an up-to-date report on Maximum
8 Permissible Exposure (MPE) regarding radio frequency emissions and maximum
9 exposure for humans for each type of Communications Facility installed on Public Ways
10 and on Parks Properties. The parties agree that the requirement for Franchisee to provide
11 the reports in the previous sentence complies with all Applicable Laws. In the event of
12 any violation of Applicable Laws related to radio frequency emissions, Franchisee shall
13 take immediate corrective actions and, if notice of the violation has been provided by the
14 City, provide the City with an updated MPE study from a licensed engineer confirming
15 compliance and corrective actions with respect to the frequency emissions associated with
16 its Communications Facilities. Within thirty (30) days after it receives an MPE report
17 from the Franchisee, the City shall make the report available for public review on the City
18 website.

19 **19.0 Interest**

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

24 **20.0 Taxes**

25 Franchisee agrees that it will be solely responsible for the payment of any and all
26 applicable taxes, fees and assessments levied on its ownership, use and maintenance of
27 the Communications Facilities.

28 **21.0 Liability and Indemnity**

29 **21.1 Indemnification**

30 Franchisee agrees to indemnify, defend and hold harmless City, its elected/appointed
31 officials, departments, employees, agents and representatives from any and all claims,
32 demands, suits and actions including attorneys' fees and court costs, connected
33 therewith, brought against the City, its elected/appointed officials, departments,
34 employees, agents and representatives arising as a result of any direct willful, or
35 negligent act or omission of Franchisee, its agents, officers or employees in
36 connection with the exercise of Franchisee's rights under this Agreement EXCEPT
37 for any and all claims, demands, suits and actions, including attorneys' fees and court
38 costs connected therewith, brought against City or City's elected/appointed officials,
39 departments, employees, agents and representatives, arising as a result of the sole,
40 willful, or grossly negligent act or omission of City, its elected/appointed officials,
41 departments, employees, agents and representatives. This indemnification obligation

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1 shall survive the termination of this Agreement with respect to claims, demands, suits
2 and actions that arose or accrued during the term of this Agreement.

3 **21.2 Waiver of Claims**

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

8 **21.3 Limitation of the City’s Liability**

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

13 **22.0 Insurance**

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

16 **(a) Workers’ Compensation and Employers’ Liability Insurance.**

17 Statutory workers’ compensation benefits with a limit of liability no less than that
18 required by Maryland law at the time of the application of this provision for each
19 accident. Employers’ liability insurance with a limit of \$1,000,000 each
20 accident/disease/policy limit. This policy shall include a waiver of subrogation in
21 favor of City. Franchisee shall require contractors not covered under Licensee’s
22 insurance to obtain and maintain such insurance.

23 **(b) Commercial General Liability Insurance.**

24 Commercial General Liability Insurance at limits of Two Million Dollars
25 (\$2,000,000.00) per occurrence for claims arising out of bodily injuries or death,
26 and property damages and Three Million (\$3,000,000) general aggregate including
27 contractual liability coverage.

28 **(c) Automobile Liability Insurance.**

29 Commercial Automobile Liability with a combined limit of Two Million Dollars
30 (\$2,000,000.00) each accident for bodily injury and property damages. The
31 insurance shall cover any owned, non-owned, franchised, or hired automobiles
32 used in the performance of this Agreement.

33 **(d) Telecommunications, Media & Technology Errors & Omissions Insurance.**

34 Telecommunications, Media & Technology Errors & Omissions including Cyber
35 Liability Insurance with a limit of Two Million Dollars (\$2,000,000.00) each
36 claim and aggregate.

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1 (e) Umbrella/Excess Liability Insurance.

2 Coverage is to be in excess of the sum of employers' liability, commercial general
3 liability and automobile liability insurance required above. Limits of liability
4 \$4,000,000 each occurrence, \$4,000,000 aggregate.

5 (f) Environmental Impairment Liability/Pollution Liability.

6 Coverage with a limit of \$2,000,000 per claim and aggregate covering the
7 negligent acts and/or omissions of contractor resulting in damage to the
8 environment from the performance of activities conducted in connection with this
9 Agreement, including sudden and accidental as well as slow and gradual pollution
10 releases associated with day to day operations and damage to the environment.

11 (g) Coverage.

12 The City, Mayor and City Council of Baltimore (in their official capacities) their
13 elected/appointed officials, departments, and employees, shall be covered, by
14 blanket additional insured endorsement, as additional insureds as their interests
15 may appear under this Agreement with respect to liability arising out of activities
16 performed by Licensee or its employees in connection with this Agreement.
17 Insurance shall apply separately to each insured against whom claim is made
18 and/or lawsuit is brought, except with respect to the limits of the insurer's
19 liability. To the extent of the Franchisee's negligence, the Franchisee's insurance
20 coverage shall be primary insurance as respects to the City, its elected/appointed
21 officials, departments, and employees. Any insurance and/or self-insurance
22 maintained by City, its elected/appointed officials, departments, and employees
23 shall not contribute with the Franchisee's insurance or benefit the Franchisee's in
24 any way to the extent Franchisee is found negligent. Upon receipt of notice from
25 its insurer(s) Franchisee shall provide the City with forty-five (45) days prior
26 written notice of cancellation of any coverage required herein. Insurance is to be
27 placed with insurers with a Best's rating of no less than A:VII, or if not rated with
28 Best's with minimum surpluses the equivalent of Best's surplus size VII and must
29 be licensed or approved to do business in the State of Maryland.

30 (h) Certificate of Insurance; Other Requirements.

31 Prior to the execution of this Agreement and within ten (10) days of each
32 insurance policy expiration date during the term of this Agreement, Franchisee
33 will furnish City with a certificate of insurance ("Certificate"). The Certificate
34 shall reference this Agreement and insurance waivers of subrogation required by
35 this Agreement. City shall be given forty-five (45) calendar days advance notice
36 of cancellation or non-renewal of insurance during the term of this Agreement.

37 (i) Limits.

38 The limits of liability set out in this Article 22.0 may be increased or decreased by
39 mutual consent of the parties, which consent will not be unreasonably withheld by
40 either party, in the event of any factors or occurrences, including substantial
41 increases in the level of jury verdicts or judgments or the passage of state, federal,

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1 or other governmental compensation plans, or laws that would materially increase
2 or decrease Franchisee's exposure to risk.

3 (j) Failure to Maintain Insurance.

4 Failure of Franchisee to maintain the proper insurance required under this Article
5 22.0 shall result in termination of this Franchise if the breach is not cured upon
6 the expiration of any applicable cure period set forth in this Franchise.

7 **23.0 Assignment and Subletting**

8 Franchisee may not assign, or otherwise transfer all or any part of its privilege in this
9 Franchise without the prior written consent of City which consent shall not be
10 unreasonably withheld, conditioned or delayed; provided, however, that Franchisee may
11 assign its privilege to its parent company, any subsidiary or affiliate of it or its parent
12 company or partners or to any successor-in-interest or entity acquiring fifty-one percent
13 (51%) or more of its equitable interests or assets in the market defined by the FCC in
14 which the City of Baltimore is located, subject to the assignee assuming all of
15 Franchisee's obligations hereunder, and subject to any financing entity's interest, if any,
16 in this Franchise. Notwithstanding anything to the contrary contained in this Franchise,
17 Franchisee may assign, mortgage, pledge, hypothecate or otherwise transfer without
18 consent its interest in Communications Facilities or in this Franchise to any financing
19 entity, or agent on behalf of any financing entity to whom Franchisee (1) has obligations
20 for borrowed money or in respect of guaranties thereof, (2) has obligations evidenced by
21 bonds, debentures, notes or similar instruments, or (3) has obligations under or with
22 respect to letters of credit, bankers acceptances and similar facilities or in respect of
23 guaranties thereof. Any such assignment to a financing entity or its agent shall be
24 subordinate to the terms of this Franchise Agreement.

25 **24.0 Environmental**

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

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

39 (c) In addition to all other indemnifications contained herein, Franchisee specifically agrees
40 to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials,
41 employees, agents and representatives ("Indemnified Parties") from and against any and
42 all losses, costs, liabilities, including but not limited to liabilities, demands, obligations,

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1 claims, suits, actions and expenses, attorneys' fees, consultant fees and court costs
2 connected therewith, brought against the Indemnified Parties, or incurred by any of them,
3 by reason of injury to persons, including death, and damage to property arising out of
4 Environmental Conditions or resulting from any direct, or indirect, willful, or negligent
5 acts or omissions of Franchisee, its contractors, agents, or employees arising from
6 Environmental Conditions, unless solely caused by the negligent act of City.
7 Notwithstanding anything to the contrary herein, Franchisee agrees to defend, indemnify
8 and hold harmless the Indemnified Parties from and against all administrative and judicial
9 actions and rulings, claims, causes of action, demands and liability including, but not
10 limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and
11 reasonable attorney fees that the Indemnified Parties may suffer or incur due to the
12 existence of any Hazardous Substances on the Franchised Premises, the Public Way or
13 Park Properties or migration of any Hazardous Substance to other properties or the
14 release of any Hazardous Substance into the environment, that arise from the Franchisee's
15 and or its representatives activities on the Franchised Premises, the Public Way or Park
16 Properties. The indemnifications in this section specifically include, without limitation,
17 costs incurred in connection with any investigation of site conditions or any cleanup,
18 remedial, removal or restoration work required by any governmental authority. This
19 provision shall be in addition to, and separate from, any remedies available to City for
20 breach by the Franchisee of its obligations under any of the provisions of this Agreement
21 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. Notwithstanding the foregoing or
23 any other provision in this Agreement, Franchisee shall not be liable or responsible for
24 any Environmental Condition, including the release of hazardous substances, that existed
25 before the execution of this Agreement, or that otherwise does not result from the
26 activities of Franchisee. The provisions of this Paragraph shall survive the termination or
27 expiration of this Agreement.

- 28 (d) City represents to best of its knowledge, without having made inquiry that there is no
29 Hazardous Substance within the Public Way or Park Properties. Hazardous Substance is
30 any substance identified as hazardous, toxic or dangerous in any applicable federal, state
31 or local law or regulation. City shall not introduce or use any Hazardous Substance in the
32 Public Way or on Park Properties in violation of any applicable law. City shall be
33 responsible for, and shall promptly conduct any investigation and remediation as required
34 by any applicable environmental laws, all spills or other releases of any Hazardous
35 Substance to the extent caused by the City, that have occurred or which may occur in the
36 Public Way or on Park Properties. City agrees to defend, indemnify and hold harmless
37 the Franchisee from and against any and all administrative and judicial actions and
38 rulings, claims, causes of action, demands and liability (collectively, "Claims") including,
39 but not limited to, damages, costs, expenses, assessments, penalties, fines, losses,
40 judgments and reasonable attorney fees that the Franchisee may suffer or incur due to the
41 existence of any Hazardous Substances in the Public Way or the migration of any
42 Hazardous Substance to other properties or the release of any Hazardous Substance into
43 the environment (collectively, "Actions"), arise from the City's activities on the
44 Franchised Premises to the extent allowable under subsection 5-303 (a), (b) and (c) of the
45 Courts and Proceedings Article of the Maryland Annotated Code. City agrees to defend,
46 indemnify and hold Franchisee harmless from Claims resulting from Actions on the
47 Franchised Premises Property caused by City prior to and during the Initial Term and any
48 Renewal Term. The indemnifications in this section specifically include, without
49 limitation, costs incurred in connection with any investigation of site conditions or any

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1 cleanup, remedial, removal or restoration work required by any governmental authority.
2 This Section shall survive the termination or expiration of this Agreement.

3 **25.0 Notices**

4 All notices, requests, demands, and other communications hereunder shall be in writing and
5 shall be deemed given if personally delivered or by certified mail, return receipt requested, or
6 when delivered by commercial courier, provided the courier's regular business is delivery
7 service and provided further that it guarantees delivery to the addressee by the end of the next
8 business day following the courier's receipt from the sender, to the following addresses:

9 City: The Mayor and City Council of Baltimore
10 Department of Transportation
11 Attn: Director
12 417 E. Fayette Street, Fifth Floor
13 Baltimore, Maryland 21202

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

15 Baltimore City Department of Real Estate
16 Room 304 City Hall
17 100 North Holliday Street
18 Baltimore, Maryland 21202
19 410-396-4768
20 410-528-1437 (fax)

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

23 Director of Finance
24 Bureau of Treasury Management
25 Collections Division
26 200 N. Holliday Street
27 Baltimore, Maryland 21202

28 **Franchisee:**

29 Cellco Partnership d/b/a Verizon Wireless
30 180 Washington Valley Road
31 Bedminster, New Jersey 07921
32 Attention: Network Real Estate

33 **26.0 Franchisee Point of Contact Relating to Facilities**

34 Appropriate Franchisee staff shall be available to the employees of any City department
35 having jurisdiction over Franchisee's activities twenty-four (24) hours a day, seven (7) days a
36 week, regarding problems or complaints resulting from the attachment, installation,
37 operation, maintenance, or removal of Communications Facilities.

1 **27.0 Miscellaneous**

2 **27.1 Incorporation of Prior Agreements**

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

8 **27.2 Non-Waiver**

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

16 **27.3 Taxes**

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

22 (b) Franchisee shall indemnify City from any and all liability, obligation, damages,
23 penalties, claims, liens, costs, charges, losses and expenses (including without
24 limitation, reasonable fees and expenses of attorneys, expert witnesses and
25 consultants), which may be imposed upon, incurred by or be asserted against City
26 in relation to the taxes owed or assessed on the Franchised Premises as a result of
27 Franchisee's use thereof or the installation or maintenance of Franchisee's
28 Communications Equipment thereon.

29 **27.4 Force Majeure**

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

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1 **27.5 Governing Law; Jurisdiction**

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

7 **27.6 Change in Law and Severability**

8 If any provision or portion thereof of this Agreement is or becomes invalid under any
9 applicable statute or rule of law, and such invalidity does not materially alter the
10 essence of this Agreement to either party, such provision shall not render
11 unenforceable this entire Agreement. Rather, the parties intend that the remaining
12 provisions shall be administered as if the Agreement did not include the invalid
13 provision. If, as a result of a change in law by statute, rule, ruling or otherwise, the
14 total compensation to the City arising as a result of Franchisee's occupation of the
15 Public Way or Park Properties (including attachments on City-owned facilities
16 therein) is materially reduced, the Parties agree to negotiate in good faith to amend
17 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,
21 power, legal capacity, and authority to enter into and perform the Parties' respective
22 obligations 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
25 evidencing agreement by both Parties.

26 **27.9 MBE/WBE Compliance**

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

38 (b) Documentation to the City on MBE/WBE Participation. Six (6) months after the
39 Effective Date and every six (6) months thereafter while upgrade construction
40 under this Agreement is in progress, and annually thereafter, the Franchisee shall

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

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

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

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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** **STEVE SHARKEY**
6 **DIRECTOR**

7 **DEPARTMENT OF TRANSPORTATION**

8 **BY:** _____
9 **REGINALD MOORE, DIRECTOR**

10 **DEPARTMENT OF RECREATION AND**
11 **PARKS**
12

13 **WITNESS/ATTEST:** **CELLCO PARTNERSHIP d/b/a VERIZON**
14 **WIRELESS**

15 _____ **BY:** _____ (SEAL)

16 **NAME:**

17 **TITLE:**

18 **APPROVED AS TO FORM AND LEGAL**
19 **SUFFICIENCY**

APPROVED BY THE BOARD OF
ESTIMATES

20 _____

21 **CHIEF SOLICITOR**

CLERK

DATE