



CITY OF FAIRFAX, VIRGINIA
FAIRFAX CITY HALL, DEPARTMENT OF PUBLIC WORKS
ROOM 200, 10455 ARMSTRONG STREET
FAIRFAX, VA 22030
(703) 385-7875

RIGHT-OF-WAY LICENSE AGREEMENT APPLICATION SUBMISSION PACKAGE

Enclosed are the submission instructions and forms required to enter into a license agreement that is the prerequisite to requesting placement of utility facilities within the Rights-Of-Way within the boundaries of the City of Fairfax.

COMPLETED "INTENT-TO-SUBMIT" FORMS MUST BE SUBMITTED TO:

- **IN PERSON:** DEPARTMENT OF PUBLIC WORKS, 10455 ARMSTRONG STREET, ROOM 200A, FAIRFAX, VA 22030 OR **VIA EMAIL:** ROW-License@fairfaxva.gov

COMPLETED SUBMISSION PACKAGES MUST BE DELIVERED TO:

- DEPARTMENT OF PUBLIC WORKS, 10455 ARMSTRONG STREET, ROOM 200A, FAIRFAX, VA 22030

ALL SUBMITTED MATERIALS AND INFORMATION WILL BE CONSIDERED "NON-CONFIDENTIAL" WITH RESPECT TO INFORMATION CONTENT AND HANDLING PROCESSES, REGARDLESS OF ANY WRITTEN INDICATIONS SHOWN ON THE MATERIALS.

CITY OF FAIRFAX, VIRGINIA
Department of Public Works

David Summers
David.Summers@fairfaxva.gov
Director

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PART ONE:

SUBMISSION REQUIREMENTS AND THE APPROVAL PROCESS

1. BACKGROUND AND PROCESS SUMMARY

The City of Fairfax currently maintains active franchise and license agreements with both regulated and unregulated utility companies within the borders of the City proper. Franchise agreements are in-place with the regulated, incumbent companies that currently or formerly maintained monopolistic service delivery positions in the marketplace. This required deployment of distribution infrastructure in the City's rights-of-way (ROW) to enable delivery to all properties in the community for electric, gas, water, sewer, and communication services. The majority of the overhead utility pole and cable infrastructure in-place today was originally deployed, and is currently maintained, in the ROW under a regulated, monopolistic environment governed by franchise agreements.

The competitive environment for communication services over the recent past has created the request for multiple service providers (both regulated and unregulated) to place cables and equipment within the City's ROW. These companies have negotiated license agreements and solicited City Council approval to do so on a case-by-case basis given the limited number of cases. The emerging demand for new, technology-driven services in certain utility sectors is once again stimulating requests for the placement of cables and equipment in the ROW.

The City has formalized the process for entities seeking authorization to place their cables and equipment in the ROW. ***Companies that have approved franchise or license agreements*** will be allowed to seek permits to work in the ROW under the terms of those existing agreements. Renewal or expansion of the approved scope of work of an existing agreement will be subject to a revised ROW license application submission to enable the Work Permit process flow for any newly submitted work sites.

Submission of a completed license application package will initiate a review dialog with the applicant firm to acknowledge receipt of the package and confirm points of contact. The details of the application process flow and information submission requirements are covered in subsequent sections of this document. In brief, once the completed application is reviewed internally and confirmed complete by the City Staff, a review session will be scheduled with the applicant. This meeting will entail a design review of the submitted site drawings, status of the review of the City License Agreement, and the steps for presentation of the license package to the City Council for review and approval. Council approval will allow for execution of the ROW license agreement for the submitted deployment scope. The executed license, accompanied by the design scope contained in the application submission package, will allow for the issuance of subsequent ROW Work Permits.

2. APPLICATION SUBMISSION RESPONSE COMPONENTS

A completed submission package will consist of the following items:

- a) Application Type Declaration (New/Amendment)
- b) Licensee Company "Intent-to-Submit" Information Form
- c) System Deployment Definition and Scope
- d) Technical and Construction details
- e) Individual Site Design Package for each future work location that will request ROW permits
- f) DRAFT License Agreement comments

3. QUESTIONS AND CORRESPONDENCE

All questions relating to this license application shall be submitted via email to **Ms. Ann Feeherry** in the Public Work Department, at Ann.Feeherry@fairfaxva.gov. For a question to be answered promptly, the subject line of the e-mail must state the following: **ROW Application License Questions**. Questions should be succinct and must include the Applicant's name, title, company name, company address, and telephone number.

PART TWO: APPLICATION COMPONENTS DESCRIPTION

1. APPLICATION TYPE DECLARATION (NEW/AMENDMENT)

An Applicant that DOES NOT have an existing ROW License Agreement with the City will check the box as a NEW APPLICANT on the “INTENT-TO-SUBMIT” FORM described below. An existing Licensee wanting to place equipment in the ROW at a location not currently covered by the approved License Agreement Package will submit for a LICENSE AMENDMENT on the “INTENT-TO-SUBMIT” FORM.

2. LICENSEE APPLICANT “INTENT-TO-SUBMIT” INFORMATION FORM

This form (See SECTION 8) must be submitted by the Applicant (or their authorized representative) in advance of the actual submission. This makes the City Staff aware of the intent of the existing or new Licensee, and initiates the City’s workflow and scheduling for the review and approval process.

3. SYSTEM DEPLOYMENT DEFINITION AND SCOPE

The City recognizes the expanding scope associated with the delivery and management of public and private utility services, most notably in the area of communication services. This will drive the need for more equipment and connectivity facilities to be placed in or adjacent to the public rights-of-way (ROW). A critical component of the ROW License Application Submission is a system-level map and connectivity drawing showing where the Applicant plans to deploy equipment within the ROW boundary of the City and how these sites will communicate with each other and via what connectivity means. The City will work with the Applicant to utilize the deployment site GIS maps and site reference data provided to enter the corresponding work-sites into the City’s GIS mapping system

4. TECHNICAL AND CONSTRUCTION DETAILS

SECTION 7 of this Application Submission Package provides a detailed checklist for the information that will be looked for as part of the “submission complete” notification step, leading into the review and approval process.

5. SITE-SPECIFIC DESIGN SUBMITTAL FOR ABOVE-GROUND INSTALLATIONS

This form (See SECTION 8) must be completed and be the first sheet for each above-ground worksite submitted for review and approval. This cover sheet provides a uniform information input for City Staff tracking. Behind this cover sheet will follow all the TECHNICAL AND CONSTRUCTION DETAILS described above in item 4.

6. DRAFT LICENSE AGREEMENT COMMENTS

The APPROVED ROW LICENSE AGREEMENT PACKAGE will consist of two components:

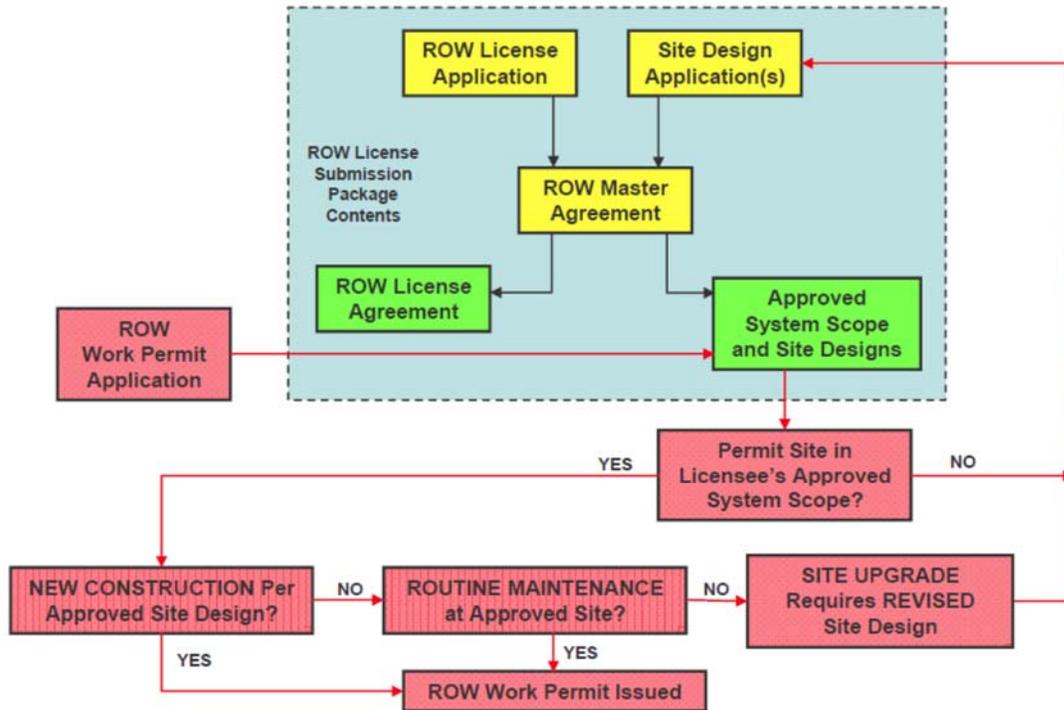
- A) The approved technical and design information for each of the submitted work locations.
(Future ROW Permits will be reviewed and approved ONLY for these approved sites.)
- B) The executed ROW License Agreement between the City of Fairfax and the Licensee.

SECTION 9 of this application package contains the City’s ROW License Agreement for the Applicant’s review and comment. The license agreement approval process will transpire in parallel with the site design review process.

**PART THREE:
ROW LICENSE APPROVAL PROCESS STEPS**

- 1. POTENTIAL APPLICANT DOWNLOADS APPLICATION PACKAGE FROM CITY WEBSITE**
- 2. APPLICANT SUBMITS “INTENT TO SUBMIT” FORM PROVIDING INITIAL INFORMATION**
- 3. CITY ACKNOWLEDGES RECEIPT OF “INTENT” FORM AND RESPONDS TO REQUESTED APPLICATION SUBMISSION DATE REQUESTED BY APPLICANT**
- 4. APPLICATION PACKAGE SUBMITTED TO CITY ON STATED SUBMISSION DATE**
- 5. CITY ACKNOWLEDGEMENT VIA EMAIL OF RECEIPT OF APPLICATION SUBMISSION PACKAGE**
- 6. CITY REVIEW OF APPLICATION PACKAGE FOR COMPLETENESS (TIMING DEPENDENT ON SUBMISSION SIZE AND SCOPE)**
- 7. CITY RESPONSE TO APPLICANT IF APPLICATION OMISSIONS IDENTIFIED (BACK TO STEP 4.)**
- 8. CITY FORMAL ACKNOWLEDGEMENT OF COMPLETE APPLICATION**
- 9. CITY COMMENTS TO APPLICANT (TIMING DEPENDENT ON SUBMISSION SIZE AND SCOPE)**
- 10. REVIEW SESSION SCHEDULED TO DISCUSS CITY COMMENTS AND APPLICATION STATUS**
- 11. LICENSE AGREEMENT NEGOTIATED AND EXECUTED BY BOTH PARTIES**
- 12. SYSTEM SCOPE AND SITE DESIGN SUBMISSIONS APPROVED BY CITY STAFF**
- 13. ROW LICENSE APPLICATION PRESENTED TO TOWN COUNCIL FOR REVIEW AND APPROVAL**
- 14. ROW LICENSE MASTER AGREEMENT BINDER APPROVED FOR ROW PERMIT ISSUANCE**

PART FOUR: ROW WORK PERMIT APPROVAL - OVERALL PROCESS FLOWCHART



Process Flow Color Legend

YELLOW: These process boxes represent the ROW application components to be submitted by the Applicant to the City as part of the review and approval process.

GREEN: These process boxes represent the components of the APPROVED ROW License Agreement Package consisting of the Terms and Conditions of the executed ROW License Agreement AND the APPROVED Technical Design Information for the submitted ROW worksites.

RED: These process boxes represent the ROW Permit Application and Approval process flow for the ROW worksites contained in the APPROVED ROW License Agreement Package. ROW Permit Applications must reference the APPROVED ROW License Agreement Number. The permit worksite will be verified against the agreement package approved site list. The scope of work specified on the permit will then be verified against the approved site design prior to ROW Permit approval. Any ROW Permit Application submitted for a site that is NOT on the approved list, must go through the License Amendment process. (See SECTION 2, Item 1.)

PART FIVE: ZONING/PLACEMENT AND POLE ATTACHMENT REQUIREMENTS

The City's first choice for new utility facilities in the ROW is to have them placed underground. All new service cables need to be designed underground. Antennae and equipment attachment to poles will be evaluated with the following guidance:

- **Industrial Zoning** – Attachment to existing utility and/or new poles permissible with site design approvals.
- **Residential/Commercial Zoning** – No new poles. Existing utility poles permissible following strict height impact requirements, required make-ready work, and equipment attachments detailed in site design application.
- **Historic District** – No new utility poles. Private property attachment design preferred. Integrated “smart” streetlight pole would be evaluated if proposed.

Exceptions will follow strict administrative guidelines and may be submitted for Council approval when dictated by extraordinary circumstances.

- b. Facilities Placement Map (Scale map of City that identifies all locations within City boundaries where facilities will be placed, both underground and overhead)
- c. Overhead Deployment Components Description (Equipment drawings, cables, structures)
- d. Overhead Deployment Methods Details (Existing utility poles, existing streetlights, proposed structures)
- e. Underground Deployment Components Description (Conduits, manholes, vaults, cables)
- f. Underground Deployment Methods Details (Lease existing conduits, place new conduits, placement methods)
- g. Power Connection Requirements (Service load, service type, provider, proposed sources, connectivity method)
- h. Communication Connection Requirements (Services required, provider, sources, connectivity method)

4) **Individual Site-Specific Design Plan Submission Requirements (Separate tab for each site in binder):**

- a. System Map:
 - o Scale map of City showing proposed equipment location of the site described
 - o Associated centralized communication hub site (if applicable),
 - o Proposed paths for interconnection between sites (and hub, if applicable)
- b. Detailed Overhead Site Plan (Separate plan per above-ground site):
 - o Completed "Site Design Summary" form as first sheet in design section tab for each site
 - o Site Plan set of sheets that include the following information:
 1. Vicinity map
 2. City zoning classification
 3. Scale plan sheet for all existing conditions showing (at a minimum) the target pole location, property-lines, ROW boundary, and all ROW existing infrastructure
 4. Required equipment drawings and cut sheets
 5. Pole owner
 6. Pole number
 7. Pole existing conditions drawing
 8. Pole final attachment configuration detailed drawing (Includes all required changes to existing utility attachments)
 9. Pole owner attachment agreement (Include pole owner point of contact information for license agreement)
 10. Dominion Energy service connection source point/path
 11. Communication provider and service source point/path
 12. Details of pole reconfiguration work ("make-work") required for all existing providers attached
 13. Include a structural load bearing study that determines whether the pole requires reinforcement or replacement in order to accommodate attachment of your additional facilities
- c. Detailed Underground Facilities Deployment Plans (If applicable):
 - o Scale drawing sheets showing planned facility routes
 - o Spec sheets for proposed manholes and/or vaults
 - o Conduit sizes and quantities
 - o Detailed drawings for any above-ground equipment proposed
 - o Power requirements/sources
 - o Communication requirements/sources
- d. 3rd Party Power Provider Details (Dominion Energy (DE)):
 - o Work Request number for project
 - o DE Point of contact
 - o Electric service delivery design details
 - o Adjacent pole impacts

- e. 3rd Party Communication Provider Details (If applicable):
 - o Provider name and point of contact
 - o Comm service type requirements
 - o Comm service source
 - o Connectivity requirements

PART EIGHT:



RIGHT-OF-WAY LICENSE AGREEMENT
APPLICANT "INTENT-TO-SUBMIT" INFORMATION SHEET

- I. THE FULL LEGAL NAME OF THE FIRM OR ENTITY INTENDING TO SUBMIT A ROW LICENSE APPLICATION (OR APPLICATION AMENDMENT) MUST BE WRITTEN IN THE SPACE PROVIDED BELOW.
- II. THIS INFORMATION FORM, MUST BE FULLY AND ACCURATELY COMPLETED AND SIGNED BY A PERSON AUTHORIZED TO LEGALLY AND CONTRACTUALLY BIND THE POTENTIAL APPLICANT.
- III. THIS FORM SHALL INDICATE A COMMITMENT OF "INTENT TO SUBMIT" BY THE DATE INDICATED BELOW ON THE PART OF THE ENTITY SUBMITTING.
- IV. IF THE COMPLETED APPLICATION SUBMISSION PACKAGE IS NOT RECEIVED ON THE DATE PROVIDED, A NEW "INTENT" FORM MUST BE SUBMITTED WITH A SUBMISSION DATE NO EARLIER THAN TWO WEEKS FROM THE CURRENT DATE.

Check One:	
<input type="checkbox"/> NEW LICENSE APPLICATION	<input type="checkbox"/> EXISTING LICENSE AMENDMENT
LICENSE APPLICANT NAME: (Legal Name Of Entity)	SUBMITTED BY: (If different than Applicant)
FORMER NAMES: (Insert all other names that the Applicant has been known by in the past twenty (20) years)	
REQUESTED APPLICATION SUBMISSION DATE:	
NUMBER OF ABOVE-GROUND ROW WORK-SITES TO BE SUBMITTED:	
PRINCIPAL ADDRESS OF APPLICANT:	
MAIN TELEPHONE NO.	FAX NO.
CORPORATE WEBSITE	
DUNS NUMBER:	
FORM OF OWNERSHIP: _____ CORPORATION; _____ GENERAL PARTNERSHIP; _____ UNINCORPORATED ASSOCIATION; _____ LIMITED LIABILITY COMPANY; _____ LIMITED PARTNERSHIP; _____ SOLE PROPRIETORSHIP	
WHERE THE ENTITY WAS FORMED: (INSERT NAME OF STATE): _____	
IDENTIFICATION NO. ISSUED TO THE FIRM BY SCC: If entity is exempt from the SCC authorization requirement, then it shall include a statement on the entity's letterhead with this form, certifying their exemption from this requirement.	
CONTACT PERSON AND MAILING ADDRESS FOR DELIVERY OF NOTICES: Provide the contact information of the person designated by the Applicant to receive notices and other communications (Refer to the Sample Agreement for further details): Name: _____ Mailing Address: _____ Phone Number: _____ Email: _____	
THE UNDERSIGNED SWEARS OR AFFIRMS UNDER THE PENALTY OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE INFORMATION PROVIDED ABOVE ARE TRUE AND CORRECT. NAME AND TITLE OF APPLICANT'S REPRESENTATIVE: _____ SIGNATURE OF APPLICANT'S REPRESENTATIVE: _____	

**PART NINE:
SAMPLE LICENSE AGREEMENT**

FOLLOWING THIS PAGE IS THE DRAFT GENERAL AGREEMENT THAT WILL BE ENTERED INTO BETWEEN THE CITY AND THE APPLICANT. THE AGREEMENT IS INCLUDED WITH THIS APPLICATION FOR APPLICANT REVIEW AND COMMENT. THIS AGREEMENT IS SUBJECT TO FINAL LANGUAGE CONSENSUS BY THE CITY ATTORNEY AND APPLICANT. AGREED UPON LANGUAGE WILL BE SUBMITTED TO THE CITY COUNCIL FOR REVIEW AND APPROVAL. PRIOR TO EXECUTION BETWEEN THE CITY AND APPLICANT



**LICENSE AGREEMENT FOR PLACEMENT OF WIRELESS
COMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

THIS LICENSE AGREEMENT (“**License**”) is made and entered into this ____ day of _____, 2019, by and between the **CITY OF FAIRFAX, VIRGINIA**, a Virginia municipal corporation (the “**City**”) and _____, a _____ (“**Licensee**”) (collectively, the City and Licensee may hereafter be referred to as the “**Parties**”).

WHEREAS, Licensee has requested use of certain locations within the Public Rights-of-Way of the City to install, maintain and construct communications facilities as specified in this License; and

WHEREAS, the City has the authority and statutory obligation to regulate the use of the Public Rights-of-Way within its territorial boundaries and is willing to permit such use subject to the terms and conditions of this License; and

WHEREAS, Article 7, Section 9 of the Constitution of the Commonwealth of Virginia provides that no franchise, lease or right of any kind to use any public property or any other public easement shall be granted for a term of more than forty (40) years and then only after advertisement and receipt of bids therefore; and

WHEREAS, this License is granted subject to any and all applicable laws and regulations.

NOW, THEREFORE, for and consideration of the premises, the Parties agree as follows:

Section 1. DEFINITIONS

For purposes of this License the following terms shall have the same meanings herein. When not inconsistent with the context, words in the plural number include the singular number, and words in the singular include the plural.

(a) “License Fee” means the application fee described in Section 2 of this License.

(b) “City Representative” means the City Director of Public Works or his/her designee.

(c) “Communication Facility” or “Communication Facilities” means Wireless Communication Equipment.

(d) “Backhaul Equipment” or “Facilities” means broadband backhaul transmission facilities, whether provided by landline communications infrastructure (including, without limitation, fiber, conduit and related equipment and improvements) (“Landline Backhaul Equipment”) and/or wireless communications infrastructure (including, without limitation, wireless microware and related cables, wires, equipment and improvements) (“Wireless Backhaul Equipment) that interconnects the Wireless Communications Equipment at the Point-of-Demarcation and is for the purposes of providing Backhaul Service.

(e) “Backhaul Service” means communication transport service, whether provided by Landline Backhaul Equipment or Wireless Backhaul Equipment that interconnects with the Wireless Communications Equipment at the Point-of-Demarcation.

(f) “Communication Service” means Wireless Communication Service and/or Backhaul Service.

(g) “Communication Site” means a location in the Public Rights-of-Way selected for the Communication Facility.

(h) “Communication Site Application” means a document, substantially following the form attached as **Exhibit A “Above-Ground Site Design Summary Cover Sheet”** from Licensor’s ROW license application submission package, which shall identify the location of the proposed Communication Site, describe the characteristics of the proposed Communication Facility installation, and be accompanied by relevant documents to support approval of the proposed installation.

(i) “Communication Sites Inventory” means an accurate and current

inventory of all Communication Sites approved by Licensor pursuant to this License.

(j) “Effective Date” shall have the meaning ascribed in Section 13 herein.

(k) “Point of Demarcation” means the point of where the Wireless Communication Equipment terminate and interconnect with Backhaul Equipment.

(l) “Rights-of-Way” or “Public Rights-of-Way” means the surface of, and the space above and below, any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter-held by the City or over which the City exercises any lawful rights of management control.

(m) “Rights-of-Way Regulations” means all portions of City ordinances that concern the regulation or management of Public Rights-of-Way, which are applicable to all utilities, and others as applicable, operating within the Public Rights-of-Way.

(n) “Rights-of-Way Manager” means the City Director of Public Works, or his/her designee.

(o) “Transmission Media” means radios, antennas, transmitters, wires, fiber optic cables, and other wireless transmission devices which are part of the Wireless Communication Equipment.

(p) “Unauthorized Communication Site” means use of Public Rights-of-Way for the installation of Communication Facility on City poles or poles owned by another party, or for the installation of Licensee poles or any other facilities, for which Licensee did not receive approval under this License.

(q) “Unauthorized Installation Charge” means the license fee payable by Licensee to Licensor under this License for an Unauthorized Communication Site.

(r) “Wireless Communication Service” means wireless, Wi-Fi, voice, data, messaging, or similar type of wireless service now or in the future offered to the public in general using spectrum radio frequencies, whether or not licensed by the Federal Communication Commission (“**FCC**”) or any successor agency.

(s) “Wireless Communication Equipment” means the Transmission Media attached, mounted, or installed on a pole located in Public Rights-of-Way, in addition to control boxes, cables, conduit, power sources, and other equipment, structures, plant, and appurtenances between the Transmission Media and the Point-of-Demarcation for the purpose of providing Wireless Communication Service.

Section 2. LICENSE FEE AND TERM OF LICENSE

In consideration of the terms hereof and the payment of required right- of-way user fees by Licensee to the City, Licensee shall pay to the City an annual fee (“**License Fee**”) based upon the quantities and calculations defined in Exhibit B. Such License to use the City’s rights-of-way is awarded by the City to Licensee, its successors and assigns, for a period of five (5) years from and after the Effective Date, subject at all times to the conditions and limitations described herein. The License shall be nonexclusive, and permit Licensee to use the rights-of-way of the City as defined by the “Communication Sites Inventory” attached as Exhibit C (as the same may hereafter be modified subject to City review and approval) . This list is a summary of all currently approved Communication Sites and connectivity facilities. Licensee shall have the right to place Licensee’s Wireless Communication Equipment, wires, cables and appurtenances thereto to provide Wireless Communications Services in the City. Licensee will place all required and specified utility services and service delivery facilities underground unless it is not technically feasible to do so as agreed to by the City. Where appropriate and with the written consent of the owner of any aboveground poles or structures in the Rights-of-Way, Licensee is authorized to attach Communications Facilities to existing aboveground poles in the Rights-of-Way.

Section 3. FACILITIES LOCATION AND INSTALLATION

All facilities, under or along streets, alleys, Rights-of-Way, and public places of the City authorized by this License to be placed and constructed, shall be located only on poles in the locations as defined by Exhibit C, attached and incorporated by reference. Prior to construction and/or attachment on any poles, in and under the streets, alleys, Rights-of-Way, and public places of the City, Licensee shall obtain approval from the City of Licensee’s

plans, showing the location of the proposed facilities. The installation of Communication Facilities on any poles shall also be predicated on the submission and approval of a right-of-way work permit application to the City for such installation and the payment of applicable right-of-way permit fees in accordance with City Ordinances and Va. Code §56-484.29 (as amended). Licensee shall also pay any and all other permit and other fees legally assessed by the City. If such facilities by the Licensee are already in existence, Licensee is authorized to use those facilities. When such plans have been approved, the plans, and any subsequent modifications to them agreed to by the City, shall be effective and binding to the same extent as if they were set out fully in this License.

The installation of Licensee's Equipment and Facilities shall be performed in a workmanlike manner with minimal disruption to the general public, the City, City facilities, City property, existing tenants and adjoining property owners.

Section 4. RELOCATION AND REMOVAL OF FACILITIES

Licensee agrees to relocate, at its own expense, within ninety (90) days of written notification from the City, all facilities which, in the reasonable discretion of the City using recognized engineering standards, interfere, disturb or conflict with the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, Rights-of-Way, public grounds, storm drainage systems, sewer systems, water mains or other public facilities.

Licensee shall relocate the facilities using like construction, or better, if technological advances warrant such, to mutually acceptable locations. The City shall use reasonable good faith efforts to identify mutually acceptable locations for any relocated facilities that will permit Licensee to continue to serve its existing customers and that otherwise

technologically and functionally meet Licensee's needs. Any City permits needed as a result of a relocation request by the City, however, shall be at no cost to Licensee. All facilities and equipment that can be feasibly located underground shall be so located.

At the termination of this License, within ninety (90) days all facilities and equipment shall be removed and the Rights-of-Way restored to their original condition.

Section 5. DAMAGE TO PUBLIC FACILITIES

If Licensee shall, in the construction, operation, replacement, maintenance, removal or repair of its facilities, damage any pavement, street, alley, trees, sidewalk, sewer, water or other pipe or other public property (collectively "**Public Facilities**") belonging to the City, Licensee shall promptly repair the same at its own cost and expense.

Licensee shall immediately notify the City Director of Public Works and any applicable public safety department of any damage or injury to any Public Facilities caused by work authorized pursuant to the License. Without limiting the obligations of Licensee under this License, if Licensee's repair causes the City to incur costs, Licensee shall pay to the City upon demand all costs reasonably incurred by the City during the repair of such damage or injury.

If Licensee shall default in this obligation, the City may cure such default and shall charge the reasonable costs of any such work to the Licensee in accordance with the City's then current standard rates for such work. However, prior to performing any such work the City will give Licensee written notice of the default and a period of thirty (30) days after receipt of such notice within which to cure the default. The City shall extend the thirty-day period for a reasonable time if such default cannot reasonably be cured within such period and Licensee has commenced and is diligently pursuing such cure. If Licensee does not so

cure the default, the City will provide Licensee with a written notice advising Licensee of the expiration date of the cure period and stating the date (which date shall be no less than ten (10) business days after Licensee's receipt of such notice) on which the City intends to commence the work on Licensee's behalf.

Notwithstanding the foregoing, if such default in the opinion of the City threatens the public health or safety, the City shall make a reasonable effort to provide Licensee with telephonic notice and an opportunity to immediately cure such default. If the City is unable to reasonably provide such notice or Licensee fails to immediately cure the default, the City may commence the cure on Licensee's behalf. In any event, the City shall immediately thereafter provide Licensee with written notice of City's performance of such emergency work.

Prior to commencing work on any street, alley, right-of-way, or public ground, Licensee shall exercise reasonable judgment in order to avoid any inconvenience to the general public or the City's work forces. Licensee shall not impede the flow of traffic to any greater extent than is reasonably necessary in performing any maintenance, removal, replacement, construction or repairs. Licensee shall strictly abide by the right-of-way permit approval requirements, including those requirements relating to time limitations.

Licensee is bound by all applicable lawfully enacted police power measures now or in the future adopted by the City, in addition to the terms of this License.

Section 6. INDEMNIFICATION

Licensee shall indemnify the City, its elected officials, officers, and employees, and shall hold the City harmless from liability on account of injury, death or damage to persons or property arising out of construction, improvement, removal, maintenance, repair or

operations of its facilities. If suit shall be brought against the City, either independently or jointly with Licensee, Licensee will defend, indemnify and hold the City harmless in any such suit, at the cost of Licensee. If a final judgment is obtained against the City, either independently or jointly with Licensee, Licensee will pay the judgment, including all costs and attorney fees and will hold the City harmless therefrom. The indemnity, however, shall not apply to claims for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting solely from the negligence or the willful misconduct or other intentionally wrongful acts or omissions of the City, its agents or employees.

Section 7. NOTICE OF NON-COMPLIANCE

If Licensee does not comply with the terms of this License within thirty (30) days after receipt of written notice of such non-compliance from the City, the City, at its option, may terminate the License. However, such thirty-day period will be extended for an additional period of time as is reasonable under the circumstances if Licensee's non-compliance cannot reasonably be cured within the thirty-day period and if Licensee has commenced a cure within such period and continues to diligently pursue such cure.

Section 8. TERMINATION FOR DEFAULT

If this License is terminated for default, Licensee shall release any and all permits provided by the City to construct its facilities. Licensee may terminate, with written notice to the City, any individual site or location within the City, from the then – current Communication Site Inventory list, for convenience and remove its equipment therefrom at any time. Either party may terminate this entire License Agreement for cause.

Section 9. TERMINATION FOR RELOCATION OF POLES OR UNDERGROUNDING OF UTILITIES

This License is expressly granted subject to the right of the City to terminate this License for any or all Communication Sites, upon 180 days' written notice of the relocation or undergrounding of any pole used by Licensee. Such termination will only extend to the pole or poles subject to such relocation or undergrounding. The City agrees to terminate for relocation only to the minimum extent necessary to accommodate the relocation or undergrounding of any pole used by Licensee, and to provide for relocation as provided in Section 5 herein. In the event such relocation or undergrounding makes it impossible for Licensee to operate its Wireless Communications Equipment, Licensee shall have the right to terminate the Communication Site from this Agreement upon thirty (30) days' written notice to the City.

Section 10. LOSS AND DAMAGE

Save for the negligent acts or omissions of City, its agents, employees or contractors, City shall not be liable for any damage to property of Licensee located on the right-of-way or for loss or damage to any property of Licensee or of others by theft or otherwise. City shall not be liable for any injury, death, or damage to any persons or property resulting from fire, explosion, steam, electricity, water, rain, snow or leaks from any part of the installation sites or from the street or sub-surface or from any other place or by dampness. City shall not be liable for any such damage caused by third persons, other than its agents, contractors, or subcontractors, or caused by operations in construction of any public work. Save for negligent acts or omissions or willful or wrongful acts or omissions of City, its agents, employees or contractors, City shall not be liable for any latent defect in the Premises or the

water tank, other than as set forth herein. Neither party shall be liable to the other under this License Agreement for any consequential, special, incidental, and/or indirect damages.

Section 11. ASSIGNMENT AND TRANSFER OF INTEREST

This License Agreement is not assignable or transferable without the express written permission of the City, which consent shall not be unreasonably withheld, conditioned or delayed. However, Licensee may assign, transfer or sublet its rights, without the consent of the City, to any person or entity that controls, is controlled by or is under common control with the Licensee, or pursuant to any financing, merger, sale or reorganization of Licensee resulting in an otherwise legal and statutorily acceptable successor, provided the City is notified in writing of the action no less than ninety (90) days prior to the date of assignment, transfer or sublet. Any successor(s) or assignees in whole or in part of Licensee shall be bound by all of the terms and conditions of this License and shall be subject to all provisions, obligations, stipulations and penalties herein prescribed, and shall execute any documentation reasonably requested by the City in this regard.

Section 12. EFFECTIVE DATE UPON ADOPTION BY GOVERNING BODY

The rights, privileges and duties here granted shall continue for five (5) years after the Effective Date. The Effective Date shall be the date the ordinance granting this License becomes effective under applicable law, and shall be inserted in the first page of this License. Unless released by the City, Licensee shall remove all its facilities from the streets, alleys and public places of the City at the expense of Licensee as soon as possible after the expiration, termination or abandonment of this License, or by such reasonable time to be prescribed by the City Council.

Section 13. BOND

Upon the effective date hereof, Licensee shall provide a letter of credit or enter into a bond in the sum of Fifty Thousand Dollars (\$50,000.00), with good and sufficient surety, reasonably acceptable to the City Attorney, conditioned to the effect that Licensee will construct and maintain, or if constructed, will maintain, the facilities in good order throughout the term of the grant, and (subject to the cure rights set forth in Section 8 hereof) will comply with this License in all respects. In the event of any noncompliance with any of the terms of this License by Licensee, the City is caused to draw upon said bond or letter of credit thereby reducing the principal amount thereof, Licensee shall immediately cause the said bond or letter of credit to be restored to and maintained at the principal sum of \$50,000.00. City reserves the right to require an increase in such bond or letter of credit not to exceed \$100,000.00 at such time as Licensee expands its operation to more than **ten (10) Communication Sites as approved and listed on the Communication Site Inventory.**

Section 14. GOVERNMENT APPROVALS

This License is expressly conditioned upon Licensee obtaining all other necessary local, state and federal governmental approvals. Prior to the installation of any Equipment or Facilities, Licensee shall obtain all licenses, permits and other approvals required by and for federal, state or local authority. Additionally, upon written request from the City, Licensee agrees to provide, not more than once a year, a report certifying its Equipment complies with all state and federal limits on electromagnetic frequency emission outputs.

Section 15. GOVERNING LAW

This License shall be governed under the laws of the Commonwealth of Virginia.

Section 16. NOTICES

Any notice to be given under this License shall be mailed or delivered to the City of Fairfax, Attention: City Manager, 10455 Armstrong Street, Fairfax, VA 22030, with a required copy to the Director of Public Works, as the same address, and to Licensee, at _____, and shall be sent by registered or certified mail, if mailed, return receipt requested, with postage prepaid, or by courier service, if delivered, with signed evidence of receipt; and shall be deemed delivered when received or refused by the addressee. The parties may change these addresses by like notice.

Section 17. FORCE MAJEURE

Notwithstanding the foregoing, the parties and each of them shall be excused from performing hereunder so long as performance is prevented or delayed by *Force Majeure*. For purposes of this Section, *Force Majeure* means an act of God, a natural disaster or an act of war (including terrorism), civil emergencies and labor unrest or strikes, untimely delivery of equipment, pole hits, and unavailability of essential equipment, and/or materials, and any act beyond the Party's reasonable control. It also includes an explosion, fire or other casualty or accident, which is not the result of gross negligence, an intentional act or misconduct on the part of the Party. The burden of proof for the need for such relief shall rest upon the Party seeking relief from performance under this Agreement pursuant to this Section. To obtain relief from performance pursuant to this Section, the Party seeking relief must file a written request with the other Party for consideration and approval, which approval shall not be unreasonably withheld.

Section 18. CHANGE OF LAW

If any federal, state, or local laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency) and any binding judicial interpretations thereof (collectively, "**Laws**") that govern any aspect of the rights or obligations of the parties under this Agreement shall change after the Effective Date and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change. In the event of conflicting changes to laws or regulations, and the parties cannot reconcile the conflicting changes, the parties agree that the interpretation of the conflicting provisions will be submitted to a court of competent jurisdiction for resolution and each party shall bear its costs in the judicial proceeding, including any appeals.

By: _____

Date of Acceptance

CITY OF FAIRFAX, VIRGINIA

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

CITY OF FAIRFAX ABOVE-GROUND SITE DESIGN SUMMARY COVER SHEET

Submitted by: _____ Submission Date: _____

ROW Licensee: _____ License#(TBD if new): _____

Licensee Site ID #	Communication Site GIS Coordinates	Type of Communication Facility
		[Wireless Communication Equipment] [Wireless Backhaul Equipment] [Landline Backhaul Equipment]

If Wireless Communication Equipment or Wireless Backhaul Equipment:

Pole Type/Owner	Pole Modifications	Attachment Height	Attachment Weight	Attachment Dimensions	Location of Equipment Shelter
[Private Pole] [Utility Pole] [Licensee Pole] [Not Applicable]	[Pole Reinforcement] [Pole Replacement] [New Pole] [Not Needed]				[Installed on Pole] [Any above ground equipment placed on ground requires additional City approvals]

APPLICANT SHALL PROVIDE THE FOLLOWING INFORMATION AS SPECIFIED ON THE SUBMISSION INFORMATION CHECKLIST:

EXHIBIT A

- Site plan and engineering design and specifications for installation of Communication Facility, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, and electrical conduit and cabling. Where applicable, the design documents should include specifications on design, pole modification, and ADA compliance.
- For ALL poles, include documentation from the Owner verifying that the specific pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires reinforcement or replacement in order to accommodate attachment of Communication Facility. If pole reinforcement or replacement is warranted, the design documents should include the proposed pole modifications.
- If the proposed installation will require reinforcement or replacement of an existing pole, provide applicable design and specification drawings.
- The number, size, type and proximity to the facilities of all communications conduit(s) and cables to be installed.
- Description of the utility services required to support the facilities to be installed.
- All necessary permits and letters of authorization from all affected parties.
- List of the contractors and subcontractors, and their contact information, authorized to work on the project.

THE CITY WILL PROCESS ROW PERMIT APPLICATIONS FOR SITES THAT RECEIVE PRIOR DESIGN APPROVAL AS PART OF THE ROW LICENSE APPLICATION OR LICENSE AMENDMENT PROCESS. ROW PERMIT APPLICATIONS FOR WORK SITES AND DESIGNS NOT PREVIOUSLY APPROVED AS PART OF A ROW LICENSE APPLICATION SUBMISSION PACKAGE, REQUIRE A LICENSE AMENDMENT DESIGN SUBMISSION AND APPROVAL.

APPLICANT REPRESENTATIVE: _____

PRINT NAME: _____

TITLE: _____

----- **FOR CITY USE ONLY** -----

RECEIPT DATE: _____ APPLICATION NO.: _____

APPROVED BY: _____

PRINT NAME: _____

TITLE: _____

APPROVAL DATE: _____

EXHIBIT B

ANNUAL RIGHT-OF-WAY LICENSE FEE CALCULATION SHEET

1. **UTILITY POLE FEE**

- a. Number of poles at or below 50 feet in height: _____
\$1,000.00 multiplied by number of poles: \$ _____

- b. Number of poles above 50 feet in height: _____
\$3,000 multiplied by number of poles: \$ _____

- c. Total square footage of above-ground equipment, shelters, and/or associated support facilities to be constructed on the ground at all sites: _____ SQ
FT\$1.00 multiplied by total square feet:
\$ _____

2. **DEDICATED COMMUNICATIONS FACILITIES FEE**

- a. Linear feet of dedicated communications cable and required support facilities (owned & maintained by the Licensee) to be placed in the right-of-way either overhead or underground: _____
\$2.50 multiplied by the number of linear feet: \$ _____

3. **TELECOMMUNICATIONS ACCESS LINE FEE**

- a. Annual access-line fee paid to the City following Virginia Department of Transportation Public rights-of-way use fee pursuant to the Virginia Code 56-468.1.

