

EXHIBIT NO. 1  
City of Alexandria, Virginia

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6-13-09

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6-9-09~~

MEMORANDUM

DATE: JUNE 3, 2009  
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL  
FROM: JAMES K. HARTMANN, CITY MANAGER 8  
SUBJECT: ORDINANCE TO GRANT A TELECOMMUNICATIONS SERVICES  
FRANCHISE EXCLUDING CABLE TELEVISION SERVICES, TO VERIZON  
VIRGINIA, INC.

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**ISSUE:** Consideration of an ordinance to grant a franchise to Verizon Virginia, Inc., a wholly owned subsidiary of Verizon Communications, Inc., to use the public rights-of way and other City property, for the construction and maintenance of its telecommunications system and FTTP (fiber to the premises) network in the City of Alexandria.

**RECOMMENDATION:** That City Council pass the franchise ordinance on first reading and schedule it for public hearing, second reading, and final passage on Saturday, June 13.

**DISCUSSION:** On April 18, City Council adopted an ordinance to solicit proposals for a franchise to provide telecommunications services in the City, exclusive of cable services. On May 26, Council received one proposal from Verizon Virginia, Inc. and referred it to the City Manager for review. Staff completed the review and determined that the proposal submitted meets all the terms and conditions of the solicitation, and includes all of the City's requirements for the construction and maintenance of fiber to the premises network in the City of Alexandria. The network will allow Verizon to bring FiOS services, excluding cable services, to the City of Alexandria. If a franchise award is made on June 13, Verizon has indicated that construction activities will begin this summer.

The negotiated franchise ordinance includes the following key terms:

- The non-exclusive franchise authorizes Verizon to construct and maintain a telecommunications system (data and voice or any addition to its telecommunications services except cable services) including the FTTP network, as allowed by state and federal law. It should be noted that telephone service is regulated by the State Corporation Commission and the Internet is not regulated at the federal, state or local level per federal statute.
- The franchise commences upon execution of the agreement by both parties, following final passage of the ordinance, and will expire 25 years after the effective date. The

franchisee shall have the option, subject to City Council approval, to renew the franchise for three consecutive renewal terms of five years each.

- The franchise requires Verizon to remove or relocate its facilities within a public right-of-way, at its own expense and within 30 days of written notice provided by the City, whenever the City, in its sole discretion, determines that the facilities disturb or interfere or conflict with the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, avenues, roadways, or storm drainage systems.
- The franchise outlines conditions for constructing the FTTP network, including undergrounding requirements and placement of aerial facilities, citizen notification prior to commencing construction activities in neighborhoods, tree trimming by persons holding a “Certified Arborist” certification, and requires Verizon, at its own cost and expense, to replace, repair, or restore any damaged property to its prior condition.
- The franchise requires notification to the City whenever there is a change in the control or transfer of the franchise within 30 days after the any filing with the State Corporation Commission. “Control” means ownership of 25 percent or more of the voting stock of Verizon Virginia, Inc., or the actual exercise of any substantial influence over the policies and actions of Verizon Virginia.

**FISCAL IMPACT:** The City has imposed a PRoW (Public Rights-of Way) Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia. The PRoW is 89¢ per access line per month effective July 1, 2009. These fees are remitted to the State of Virginia and are distributed to local municipalities in aggregate form, so we are unable to distinguish Verizon contributions from other vendors’ contributions.

**ATTACHMENT:** Proposed Franchise Ordinance

**STAFF:**

Rose Williams Boyd, Director of Citizen Assistance  
Karen Snow, Assistant City Attorney

1	Introduction and first reading:	06/09/09
2	Public hearing:	06/13/09
3	Second reading and enactment:	06/13/09

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to grant to Verizon Virginia Inc., its successors and assigns a franchise, under certain conditions, permitting the grantee to use the public rights-of-way in the City of Alexandria, for the design, construction, maintenance, and operation of a telecommunications system, excluding cable services, in the City.

Summary

The proposed ordinance grants a franchise to Verizon Virginia Inc., to provide telecommunications services, excluding cable services, in the City.

Sponsor

Rose Williams Boyd, Director, Office of Citizen Assistance

Staff

Rose Williams Boyd, Director, Office of Citizen Assistance  
Karen S. Snow, Assistant City Attorney

Authority

15.2-2100, et. seq., of the Code of Virginia (1950), as amended

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to grant to Verizon Virginia Inc., its successors and assigns a franchise, under certain conditions, permitting the grantee to use the public rights-of-way in the City of Alexandria, for the design, construction, maintenance, and operation of a telecommunications system, excluding cable services, in the City.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That this Franchise is hereby granted to Verizon Virginia Inc., hereinafter referred to as "Grantee," its successors and assigns, to permit the Grantee to design, construct, maintain, and operate a telecommunications system, excluding cable services, using the public rights-of-way in the City.

Section 2. That the said Franchise is awarded to the Grantee after public notice and invitation for bids, as required by law, pursuant to Section 2 of Ordinance No. 4586, and after the invitation for bids was duly closed and all bids were fully and carefully investigated and evaluated.

Section 3. That the Grantee be, and hereby is, granted a Franchise for 25 years to design, construct, maintain, and operate a telecommunications system, excluding cable services, for the benefit of residents, businesses and government in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Telecommunications Franchise Agreement attached hereto and incorporated fully herein by reference, together with all applicable laws and regulations of the City of Alexandria, the Commonwealth of Virginia and the United States, and any regulatory agency having jurisdiction, including, without limitation, with the following conditions:

1. Each year an updated map of all facilities within the City, existing and proposed, showing locations, scheduled construction and service dates, and such additional information as the city manager may specify in his reasonable discretion, shall be filed with the City's department of transportation and environmental services.

2. All necessary permits shall be obtained as set forth in paragraph 28 of the Franchise; including but not limited to boring in and/or under a public right-of-way or other public place.

3. In the event the relocation, construction, reconstruction, maintenance or repair by the City, the Commonwealth of Virginia or the Washington Metropolitan Area Transit Authority of any facilities or services is necessary or desirable, and it is necessary to alter or relocate, either permanently or temporarily, any of the Grantee's property in the public rights-of way or other public property in order to accomplish same, the Grantee will, after reasonable notice, move, alter or relocate its property in accordance with paragraphs 12 and 39 of the Franchise and should the Grantee fail to comply with such notice, its property may be removed, altered or relocated by the City, state or Washington Metropolitan Area Transit Authority at the cost of the Grantee and without liability for any resulting damage. The Grantee will do everything reasonably necessary, in a timely manner, to prevent any delays in construction projects of the City, the state or the Washington Metropolitan Area Transit Authority.

1 4. This Franchise may be assigned or transferred; provided, however, that Grantee shall  
2 provide notice to the City within thirty days after any filing with the Virginia State Corporation  
3 Commission seeking consent to such proposed transaction, as further set forth in paragraph 62  
4 of the Franchise.

5  
6 5. The Grantee shall provide to the City a surety in the amount of \$500,000 in a form  
7 acceptable to the City, to ensure completed construction of the fiber-to-the premises network.  
8 Upon completion of the construction of the network, the Grantee shall provide to the City a  
9 \$250,000 surety in a form acceptable to the City.

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11 6. The Grantee will obtain liability insurance to the satisfaction of the city attorney,  
12 which insurance shall name the City as an additional insured.

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14 7. The Grantee will not use the privileges granted by this Franchise to provide the  
15 functional equivalent of a cable system or cable service as defined in sections 9-3-17 and 9-3-  
16 18 of the Alexandria City Code.

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18 8. With respect to the construction and placement of the fiber-to-the premises network  
19 as permitted by this Franchise, the Grantee shall comply with the conditions as set forth in the  
20 Franchise, including but not limited to those set forth in paragraph 21 of the Franchise.

21  
22 9. The Grantee shall protect all property of the City or any other person during any  
23 work of designing, constructing, maintaining, or operating its system in or adjacent to the  
24 public rights-of-way or other public place, and shall fully restore, in kind, any property  
25 damaged or destroyed during any such work as set forth in paragraph 34 of the Franchise.

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27 Section 4. That the city manager be and hereby is authorized to execute such  
28 documents as may be required to effectuate the Franchise hereby granted.

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30 Section 5. That the city clerk be and hereby is authorized to attest the execution of  
31 said documents and to affix thereon the official seal of the City of Alexandria, Virginia.

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33 Section 6. That this ordinance shall become effective on the date and at the time of  
34 its final passage.

35  
36 WILLIAM D. EUILLE  
37 Mayor

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39 Attachment: Telecommunications Franchise Agreement

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42 Introduction: 06/09/2009  
43 First Reading:  
44 Publication:  
45 Public Hearing:  
46 Second Reading:  
47 Final Passage:

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## TELECOMMUNICATIONS FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is entered into this first day of July 2009, by and between the City of Alexandria, Virginia (a municipal corporation and a political subdivision of the Commonwealth of Virginia) (the "City"), and Verizon Virginia Inc. (the "Grantee").

WHEREAS, the City has the authority to grant franchises and other authorizations for the use and occupancy of the Public Rights-of-Way;

WHEREAS, the Grantee currently owns and operates a Telecommunications System in the City, and uses the Telecommunications System to provide Telecommunications Services;

WHEREAS, as part of its Telecommunications System, the Grantee desires to construct an FTTP Network (as hereinafter defined) in order to provide Telecommunications Services and other services in the City;

WHEREAS, the Grantee desires to obtain a telecommunications franchise to use and occupy the Public Rights-of-Way for the purpose of the Construction and Maintenance of Grantee's Telecommunications System;

WHEREAS, the Public Rights-of-Way are a valuable public resource that have required and will continue to require substantial investment by the City;

WHEREAS, consistent with applicable law, the City desires to minimize inconvenience and disruption to the public, provide for the orderly and efficient use of the Public Rights-of-Way now and in the future, preserve adequate capacity for existing and future uses of the Public Rights-of-Way, and obtain fair and reasonable compensation for the use of the Public Rights-of-Way;

WHEREAS, the City intends to exercise, to the fullest extent permitted by applicable law, including without limitation Sections 15.2-2100 and 56-462 of the Code of Virginia, its authority with respect to the regulation of the occupation and use of the Public Rights-of-Way in connection with the Construction and Maintenance of the Grantee's Telecommunications System and FTTP Network;

NOW, THEREFORE, the City hereby grants a telecommunications franchise to Grantee subject to the following terms and conditions:

### ARTICLE I

#### DEFINITIONS

1. Definitions. The following terms, as used in this Agreement, have the following meanings, with all terms defined in the singular to have the correlative meaning when used in the plural and vice versa:

- (a) "Agreement" means this Telecommunications Franchise Agreement.
- (b) "Cable Services" means "cable services" as defined in Section 602(6) of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as may be further amended from time to time (the "Cable Act").
- (c) "City" means the City of Alexandria, Virginia.
- (d) "Code of Virginia" means the 1950 Code of Virginia, as amended, and as it may be further amended from time to time.
- (e) "Communications Act" means the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 and as it may be further amended from time to time.
- (f) "Construction" means the installation, construction, and material expansion of any Facilities.
- (g) "Director" shall mean any director of the City's Department of Transportation and Environmental Services or the Director's designee.
- (h) "Effective Date" means July 1, 2009.
- (i) "Emergency" means a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential telecommunications services.
- (j) "Facilities" means the tangible components of the Telecommunications System and the FTTP Network, including without limitation all cables, optical fiber, poles, wires, customer service connections, electrical conductors, conduits, ducts, manholes, fixtures, appliances and appurtenances that are placed or maintained by the Grantee within the Public Rights-of-Way and used for purposes permitted by this Agreement.
- (k) "FCC" means the Federal Communications Commission.
- (l) "FTTP Network" means a fiber-to-the-premises network to be constructed by Grantee, capable of providing voice, video and high speed data services.
- (m) "Franchise" means the authorization to occupy and use the Public Rights-of-Way granted by this Agreement.

(n) "Grantee" means Verizon Virginia Inc., a Virginia public service corporation, and its lawful successors, transferees, and assigns.

(o) "Like-for-Like" means the installation or relocation of Facilities in a like or similar manner of construction when compared to previously installed Facilities. For example, placement of Facilities above-ground using aerial construction in locations where existing Facilities are constructed above ground (aerial-to-aerial) or the placement of Facilities underground, in locations where existing Facilities are constructed underground are "Like-for-Like"; in the case of underground Facilities, conduit installations are to be replaced by conduit, and direct burial installations (where permitted) are to be replaced by direct burial.

(p) "Maintenance" shall mean the maintenance, repair, replacement (including upgrades and non-material expansion) and removal of Facilities.

(q) "Person" means an individual, corporation, partnership, association, trust or any other entity or organization, including a governmental or political subdivision, including the City, or an agency or instrumentality thereof.

(r) "Place and Maintain" or "Placement and Maintenance" means to install, place, construct, maintain, operate, upgrade, expand, repair, replace or remove Facilities.

(s) "PROW Use Fee" means the Public Rights-of-Way Use Fee that the City has imposed pursuant to Section 56-468.1 of the Code of Virginia.

(t) "Street Improvement" means the erection, construction, reconstruction, repair, upgrade, replacement, installation, maintenance, removal, widening, or related work performed in connection with streets, sidewalks, alleys, avenues, lanes, boulevards, or roads.

(u) "Public Rights-of-Way" means the surface and area across, in, over, along, upon, and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including utility easements, waterways, or other public places used as public rights-of-way, as the same now or may hereafter exist, which are under the jurisdiction or control of the City. The term Public Rights-of-Way excludes private property and private easements. Public Rights-of-Way does not include the airways above a right-of-way used for broadcast, cellular mobile radio service, satellite or other wireless services.

(v) "Structures" includes buildings, signs, fences, tanks, poles, lines, fixtures, facilities, and any other tangible property or appurtenances of the City.

(w) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(x) "Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the



public, regardless of the facilities used. The term "Telecommunications Services" shall not include Cable Services.

(y) "Telecommunications System" means the Facilities (including the FTTP Network), real property (including interests in real property), and all other tangible and intangible personal property, of Grantee located in, on, over or under the Public Rights-of-Way.

(z) "Term" has the meaning set forth in this Agreement.

## ARTICLE II

### GRANT OF AUTHORITY

2. Grant of Franchise. The City grants to the Grantee a Franchise (the "Franchise") to Place and Maintain Facilities within the Public Rights-of-Way of the City subject to the conditions of this Agreement. The Franchise does not grant authority to the Grantee to Place and Maintain Facilities on private property. Except as may be required by state or federal law, the Grantee is not authorized to sublicense or sublease to any Person the right to Place and Maintain Facilities in the Public Rights-of-Way for any purpose. Nothing in this Section is intended to prevent the Grantee from leasing its Facilities to any Person, provided that such Person is otherwise authorized under applicable federal, state and local law to engage in the activities in the Streets for which such Person is leasing the Facilities. The Grantee shall have no obligation under the preceding sentence to verify such authorization or monitor the activities of such Person.
3. Scope of Franchise. The Franchise authorizes the Grantee to Place and Maintain a Telecommunications System including the FTTP Network as necessary to provide Telecommunications Services. This Franchise does not grant authority to the Grantee to provide Cable Service within the City. Grantee shall have the right to provide additional services (in addition to Telecommunications Services but not including Cable Services), provided that the City reserves the right, in its sole discretion, to require a separate franchise for any such other services, to the extent consistent with state and federal law.
4. Term of Franchise. The Franchise commences on the Effective Date and expires twenty-five (25) years after the Effective Date (the "Initial Term"), unless the Franchise is renewed as provided in Section 5 of this Agreement or the Franchise is terminated as provided in Section 64 of this Agreement. The period of time that the Franchise is in effect is referred to as the "Term."
5. Renewal. Provided that the Grantee is not then in default under the terms of this Agreement, the Grantee shall have the option, subject to City Council approval and without unreasonable delay, to renew this Franchise for three (3) consecutive renewal terms of five (5) years each (each, an "Extended Term"). The Grantee shall notify the City of its desire to exercise any such renewal option at least six (6) months in advance of the expiration date set forth in Section 4 of this Agreement or the expiration date of the then applicable Extended Term, as the case may be. During any Extended Term, all of the terms and conditions of this Agreement shall remain in full

force and effect, unless the parties hereto otherwise mutually agree in writing to modifications. In compliance with Article VII, Section 9 of the Constitution of Virginia, in no event shall the sum of the Initial Term and any Extended Terms total more than forty (40) years.

6. Nonexclusive Franchise. Nothing in this Agreement affects the right of the City to grant any other Person a franchise to occupy and use the Public Rights-of-Way for the purpose of providing Telecommunications Services, or to engage in any other activity in the Public Rights-of-Way.
7. Right of City to Use Public Rights-Of-Way. Nothing in this Agreement affects the right of the City to occupy or use the Public Rights-of-Way in any fashion, except as otherwise expressly provided in this Agreement.
8. Use of City Structures. This Franchise does not grant to the Grantee use of City-owned Structures. The terms and conditions of the Grantee's use of any City-owned Structure shall be set forth in a separate ordinance, agreement, lease or other document, as appropriate.
9. Use of Grantee's Facilities. The Grantee and the City may enter into pole attachment, joint-use, or conduit lease agreements regarding use of Grantee Facilities. Grantee shall not charge the City for any Grantee Facilities being utilized by the City for traffic signaling, lighting, police, fire or any other public safety purposes as of the Effective Date. Grantee may choose to enter into an agreement and impose charges going forward for the use of additional Grantee Facilities not in use by the City as of the Effective Date.
10. Compliance with Laws. Except as specifically provided in this agreement, the Grantee shall comply with all local laws, rules, and regulations, and with all orders or other directives of the City issued pursuant to this Agreement or with respect to the City's management of its Public Rights-of-Way, subject to applicable law, including, without limitation, Subsection 56-462.C of the Code of Virginia. The City has the right to oversee, regulate and inspect the installation, upgrade, construction, repair, maintenance and removal of Facilities in the Public Rights-of-Way in accordance with the provisions of this Agreement and applicable law. The City reserves the right to adopt or issue such rules, regulations, orders or other directives governing the Grantee or Facilities as it shall find necessary or appropriate in the lawful exercise of its police power, and such other lawful orders as the City shall find necessary or appropriate relating to management of the Public Rights-of-Way. No rule, regulation, order or other directive issued pursuant to this Section 10 shall constitute an amendment to this Agreement.
11. Street Improvements. Grantee shall remove or relocate its Facilities within a Public Right-of-Way, at its own expense and within thirty (30) days of written notice provided by the City, or such longer time as reasonably necessary given the scope of the relocation work, whenever City, in its sole discretion, determines that the Facilities disturb or interfere or conflict with the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, avenues, roadways, or storm drainage systems. The City shall provide, at no cost to Grantee, permits and alternative space in the Public Rights-of-Way for such relocation of Facilities, provided that such alternative space need not be in the exact same Public Right-of-Way but shall be in reasonable proximity to the previous location, and such space shall be

reasonably economically and technologically feasible for their relocation of such Facilities. The City shall design its streets and related drainage systems to minimize the impact on Grantee facilities. The City shall work with the Grantee to modify designs as reasonably necessary to minimize the need to relocate Grantee facilities. Any relocation of Facilities shall be in a Like-for-Like manner. The City shall reimburse the Grantee for the additional cost to place or relocate facilities underground in locations where above-ground relocation would normally suffice. In addition, the City shall reimburse the Grantee for any such relocation expense if required by Section 56-468.2 of the Code of Virginia, as amended, or any other applicable law. If the Grantee refuses or neglects to relocate its Facilities within thirty (30) days, or such longer time as reasonably necessary given the scope of the relocation work, after a second written notice from the City, the City may relocate the Facilities and the Grantee shall pay to the City the reasonable, actual costs incurred in the relocation of Grantee Facilities.

12. Requested Relocation of Grantee Facilities. Except for Street Improvement relocation of Facilities as specified above, within sixty (60) day prior written request of any Person, or, in the discretion of the City, such longer time as reasonably necessary given the scope of the relocation work, Grantee shall remove, alter, or relocate Facilities, including the temporary raising or lowering of wires. The Grantee may impose a reasonable charge for any such movement of its Facilities and may require advance payment.
13. Regulatory Approvals. The Grantee shall obtain all necessary approvals from the appropriate federal and state authorities to offer Telecommunications Services by means of the Facilities, and shall, upon the City's request, submit evidence of such approvals to the City.
14. Rights-of-Way Closings. Nothing in this Agreement waives or releases the right of the City in and to the Public Rights-of-Way. If all or part of a Public Rights-of Way is eliminated, discontinued, closed or demapped in accordance with applicable law, the Franchise shall cease with respect to such Street upon the later to occur of (a) the effective date that such Streets become eliminated, discontinued, closed or demapped and any conditions specified by the City are met; or (b) in the case of any transfer of title to such Streets to a private Person, the closing date of such transfer. The City shall condition its consent to the elimination, discontinuance, closing or demapping on the agreement of any Person to (i) grant an easement with rights of ingress and egress, at no additional charge, to the Grantee the right to continue to occupy and use the Public Rights-of-Way and/or (ii) reimburse the Grantee for the reasonable costs of supporting, protecting, or relocating the affected Facilities.
15. Unauthorized Use. In the event of any use by the Grantee of any property owned by or dedicated to the City that is not authorized by this Agreement, Grantee shall, immediately upon notice by the City, cease the use and remove all Facilities associated with the use. In addition, Grantee shall pay to the City a sum of five hundred dollars (\$500.00) for each day that the willful unauthorized use occurs.

### ARTICLE III

### COMPENSATION

16. Public Rights-of-Way Use Fee. The City has imposed a PROW Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia. The City reserves the right to impose at any time on the Grantee any other fee or payment as may be allowed by federal or state law. Grantee shall pay the PROW Use Fee, and any other fee or payment permitted to be imposed by state or federal law and duly enacted or levied in accordance with applicable law. The City has provided the Grantee appropriate notice of the PROW Use Fee as required by Section 56-468.1(G) of the Code of Virginia. If the PROW Use Fee is eliminated, discontinued, preempted or otherwise is declared or becomes invalid, the Grantee and the City shall negotiate in good faith to determine fair and reasonable compensation to the City for use of the Streets by the Grantee for Equipment to provide Telecommunications Services.
17. No Credits or Deductions. The compensation and other payments to be made: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any and all taxes or other fees or charges that the Grantee is required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Grantee.
18. Reservation of Rights. No acceptance of any compensation payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the City.
19. Remedy for Underpayment. If (a) as a result of an audit or any other review, the City determines that the Grantee has underpaid fees for use of the Public Right-of-Way (or has underpaid the PROW Use Fee which the Grantee has received from Subscribers) in any twelve (12) month period by 10% or more, but less than Five Thousand Dollars (\$5,000.00), (b) the City and the Grantee had resolved the issue previously in a prior audit or review, and (c) the Grantee has had a reasonable opportunity to cure, then in addition to making full payment of the relevant obligation, the Grantee shall reimburse the City for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants and other consultants.
20. Continuing Obligation and Holdover. If the Grantee continues to use Facilities to provide Telecommunications Services after the Term, then the Grantee and the City shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution. If this Agreement terminates for any reason whatsoever (other than a judicial or legislative determination that the compensation set forth in Section 16 of this Agreement is invalid) and the Grantee fails to cease using the Facilities in the Public Rights-of-Way to provide Telecommunications Service, the City, in addition to all other remedies available to it under this Agreement by law, shall be entitled to

receive all payments it is entitled to receive under this Agreement, including, but not limited to, the compensation set forth in Section 16 of this Agreement for so long as the Grantee has Facilities in the Public Rights-of-Way.

#### ARTICLE IV

#### FTTP NETWORK CONSTRUCTION

21. Placement of FTTP Facilities. Notwithstanding any provision of the Code of the City of Alexandria, 1981, as amended, including but not limited to Sections 5-3-1, et. seq. and 9-3-122 (Utility Services to be Placed Underground) thereof, the City grants to the Grantee the right to Construct the FTTP Network subject to the following conditions:
- (a) Where Grantee's facilities are underground, Grantee shall install its FTTP Network underground;
  - (b) Where Grantee's facilities are already aerial, Grantee shall not be required to place new fiber facilities underground along any street where another utility has non-abandoned aerial facilities, including streets where the pole lines may be on opposite sides of the street;
  - (c) Grantee may install new fiber optic cables on any pole where another utility or the City has non-abandoned cables. Grantee shall not attach new fiber optic cables to street lighting fixtures, including "Gadsby" street lighting fixtures located within designated historic districts;
  - (d) On streets where all other companies' facilities are underground and Grantee's facilities are already aerial, Grantee shall place its new fiber optic facilities underground unless the cost to construct the facilities underground in a particular location exceeds two (2) times Grantee's average buried FTTP construction costs per household in Northern Virginia (not including Prince William and Loudoun counties);
  - (e) Grantee shall ensure that all aerial Facilities that cross a Public Right-of-Way or any private drive or other private property used for vehicular traffic that are installed after the Effective Date shall have a vertical clearance of at least sixteen (16) feet from the ground. Notwithstanding the foregoing, in cases in which the Grantee over lashes fiber optic cable in the course of Construction of the FTTP Network to existing cable strands that have a vertical clearance of less than sixteen (16) feet, the Grantee may retain such existing clearance, so long as such clearance does not pose a safety hazard.
22. FTTP Construction Surety. Prior to the Effective Date, the Grantee shall furnish the City with a form of surety to ensure faithful performance under this Agreement in the amount of Five Hundred Thousand Dollars (\$500,000.00) (the "FTTP Construction Surety"). The form of the surety may, at Grantee's option, be a letter of credit, cash deposit, cashier's check, or corporate surety materially in the acceptable form attached as Exhibit A. Grantee shall maintain the surety

in place until Grantee has completed Construction of the FTTP Network. Upon completion of Construction of the FTTP Network, Grantee shall provide the City with written notice, and the City shall return or release the FTTP Construction Surety within thirty (30) days thereafter, provided that Grantee shall thereupon provide any other form of surety otherwise required by this Agreement or applicable law. The FTTP Construction Surety shall be deemed to satisfy any requirements of this Agreement or the City Code that would otherwise apply to the Construction of the FTTP Network.

23. Publicizing Proposed Construction and Other Work. Grantee shall publicize scheduled work related to the underground or buried Construction of the FTTP Network by providing written notice of such work to the Director at least thirty (30) days before the commencement of such work. No later than ten (10) days prior to beginning construction, the Grantee shall provide a first notification to those Persons affected by such Construction. Grantee shall provide a second notification not less than three (3) days prior to Construction. In its discretion, Grantee may provide notice to all affected Persons by means such as door hangers, direct mail or bill inserts. Upon request of the Director, Grantee shall hold community meetings, which shall be scheduled with the assistance of the Director and other City agencies, as reasonably necessary to provide the community notice of such planned Construction work. In addition, the Grantee shall notify affected Persons by mail, distribution of flyers and/or door hangers to residences to provide adequate notice to affected Persons. The Director shall approve the notification before it is distributed to the affected Persons to insure, at a minimum, that adequate information is provided to notify the affected Persons of the Construction work that is to be undertaken, together with the name and telephone number of a contact person designated by Grantee to respond to questions that affected Persons may raise. In addition to the above, the Grantee shall make a reasonable effort to contact the property owner or in the case of residential property, the property occupant.
24. FTTP Network Construction Permits. The City will work with the Grantee to ensure an effective and efficient construction permit approval process. The City shall respond to Grantee Construction Permit applications as soon as practicable and not less than fifteen (15) days from the date of submission by the Grantee. If the permit is approved, the Grantee may proceed with construction. If a permit is denied, the City shall describe in writing why the permit was reasonably denied and specify any required plan modifications or additional information necessary for approval. The City shall respond to the resubmission of a previously denied construction permit within five (5) business days of the resubmission. All construction permits shall remain open for one hundred and eighty (180) days, and the City shall grant reasonable sixty (60) day extensions for good cause. Construction permits, along with any required traffic control plans, shall be approved within the time frames above, and there shall be no separate approval process for traffic control plans.
25. Parking Permits for FTTP Network Construction. The City shall provide the Grantee with parking permits at specific locations for FTTP Construction work, at the customary fee for such permits.
26. Geographic Area for FTTP Permits. The City shall approve FTTP construction permits up to a distance not to exceed ten thousand (10,000) feet, as reasonably necessary, to install longer fiber-optic spans between network connection points.

27. FTTP Network Deployment Plan.

- (a) At least (30) days prior to deployment of the FTTP Network, Grantee shall make available for inspection by the Director a proprietary and confidential FTTP Network Deployment Plan which shall describe or otherwise show each of the Public Rights-of-Way in which Grantee intends, to the best of its knowledge at the time, to construct the FTTP Network during the twelve (12) months following the plan's submission, the type of Facilities Grantee intends to construct in each such Public Right-of-Way, and the approximate date on which Grantee intends to begin construction in each Public Right-of-Way. Such inspection shall take place at a mutually agreed upon and convenient location. The City may review any and all documents, but shall not copy, duplicate or otherwise make notations regarding specific details of the proprietary and confidential FTTP Network Deployment Plan. Such FTTP Network Deployment Plan shall be non-binding, but shall represent a reasonable projection by the Grantee of the activities it anticipates undertaking over the subsequent year. The City agrees to hold in confidence, to the maximum extent permitted by law, any information it receives from Grantee under its FTTP Network Deployment Plan which, at the time that it is made available for review by the City and is marked "proprietary information confidential." If the City receives a demand from any Person or governmental entity for disclosure of any information identified as "Confidential" pursuant to this Section, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request prior to granting the Person or governmental entity access to such information.
- (b) Grantee shall within a reasonable time period review any comments submitted, and shall respond within a reasonable time period to any questions posed, by the Director with respect to FTTP Network Deployment Plan. In the event that, during a twelve (12) month period covered by the FTTP Network Deployment Plan, Grantee makes significant changes in its anticipated routes, Grantee shall promptly provide for inspection to the Director any amendments to the FTTP Network Deployment Plan covering such changes.

**ARTICLE V**

**GENERAL CONSTRUCTION REQUIREMENTS**

28. Construction Permitting. All Construction in the Public Rights-of-Way by the Grantee shall be subject to the City's general permit requirements, and Grantee shall comply with all reasonable requirements established by the Director. Grantee shall, at the time it applies for a Construction permit, submit to the Director the accompanying information which (a) shall identify the specific

location within each Public Rights-of-Way in which the proposed Construction is to take place, (b) shall describe the Facilities to be installed in each Public Rights-of-Way and the Construction techniques to be used in accomplishing the installation, (c) shall provide any required traffic control plan that shall be reviewed and approved by the Director, (d) shall state, as to each Public Right-of-Way, the dates on which the proposed Construction is to commence and on which the proposed Construction is anticipated to be completed, (e) shall verify that Grantee has obtained, or will obtain prior to commencing the Construction, approval of the placement of the Facilities and any required permits from any other entity (not including departments or agencies of the City) whose approval is required by law, and (f) shall provide other reasonable information the Director reasonably requests. The Director shall have the discretion, which is to be reasonably exercised, to determine the timing of the proposed Construction, taking into account the dates requested by the grantee and other planned and/or on-going construction work in the affected Public Rights-of-Way. Grantee agrees that Construction of Facilities in Public Rights-of-Ways shall be done in such locations and in such manner so as not to unreasonably interfere with existing water, gas, sewer pipes, traffic signal, street light and other utilities and conduits in the Public Ways, or with the public's use of the Public Ways, and shall, to the maximum degree feasible, be coordinated with any construction being simultaneously undertaken at the same location by another provider of telecommunications or of cable service or by a provider of utilities.

29. Maintenance in Arterial Rights-of-Way. Grantee may perform Maintenance on Facilities located in or along Arterial Rights-of-Way from time to time without prior approval of the Director as long as neither the component of the Facilities being worked on, nor any of the Facilities or workers involved in such Maintenance are located on the travel, parking, curb or sidewalk portion of the Arterial Rights-of-Way. The Arterial Rights-of-Way are designated by the City. The City has provided the Grantee with a current listing of designated Arterial Rights-of-Way, and shall provide updates to the listing upon Grantee request. At least thirty (30) days prior to performing Maintenance on any Facilities while located on the travel, parking, curb or sidewalk portion of the Arterial Rights-of-Way, Grantee (i) shall inform the Director in writing of the location at which it intends to perform such Maintenance, (ii) shall provide reasonable information the Director requests, and (iii) shall obtain either a verbal or written approval of the Maintenance from the Director or their designee. In performing Maintenance, Grantee shall comply with all reasonable requirements established by the Director.
30. Maintenance in Non-Arterial Rights-of-Way. Grantee may perform Maintenance on Facilities located in the Public Rights-of-Way, other than Arterial Rights-of-Way, without prior approval of the Director. In performing Maintenance, Grantee shall comply with all reasonable requirements established by the Director.
31. Customer Service Connections. To meet in-service and repair requirements of state and local regulatory authorities, at the request and with permission of the respective property owners, Grantee may Construct or Maintain customer service connections or "drops", which provide connectivity between the Grantee network Facilities located in the Public Rights-of-Way with customer premises located on private property, without prior approval of the Director.



32. Tree Trimming. The Grantee may trim trees that overhang a public right-of-way so as to prevent the branches of such trees from coming in contact with Grantee Facilities. However, no tree trimming by Grantee may take place except pursuant to a tree trimming plan that has been reviewed and approved by the City Arborist. Tree trimming may only be performed by persons holding a "Certified Arborist" certification issued by the International Society of Arboriculture (ISA).
33. Removal. Grantee may, at any time, in the exercise of its sole and absolute discretion, remove any or all of the Facilities from the Public Rights-of-Way. When performing any aspect of removal where the Facilities being worked on or any of the equipment or workers involved in the removal are located on the travel, parking, curb or sidewalk portion of a street, or any other portion of the Public Rights-of-Way, Grantee shall comply with all procedures applicable to Maintenance, as set forth above in Section.
34. Damage to the Public Rights-of-Way and Other Property by Grantee.
- (a) If, in the course of Construction or Maintenance or otherwise dealing with any of the Facilities, Grantee damages any pavement, street, alley, sidewalk, sewer, water or other pipe, in or adjacent to the Public Rights-of-Way, or any other public property, real or personal, belonging or dedicated to the City, Grantee shall promptly repair the same to its preexisting condition at its own cost and expense. If winter weather conditions or the availability of materials delay permanent pavement restoration, the Grantee shall make an acceptable temporary patch. When weather conditions permit or materials become available, the Grantee shall make permanent restoration as noted above. Grantee shall also maintain such temporary patches until a permanent repair is completed. If Grantee shall default in this obligation, the City may cure the default itself, and may charge to Grantee the reasonable cost it incurs in curing the default; provided, that prior to performing any work to cure a default, the City shall give Grantee written notice of the default and a period of ten (10) business days from the date of the notice in which to initiate action to cure the default and a period of forty-five (45) days in which to complete the cure; provided further, that these ten (10) and forty-five (45) day periods will be extended by the Director for a reasonable amount of time if a cure of the default cannot reasonably be commenced, or the default cannot reasonably be cured, within such periods respectively, and Grantee has diligently pursued commencement of, or completion of, a cure during the period as applicable. Notwithstanding the foregoing, if the Director determines, in his sole discretion consistent with applicable law, that the damage threatens the public health or safety, the City may commence the repair of the damage and assess its costs upon Grantee; provided, that, prior to commencing such repair work, the City shall make a reasonable effort to provide Grantee with telephonic notice and an opportunity to immediately repair the damage itself. In the event the Grantee is unable to, or otherwise fails to, repair the damage within the time frames noted above and the City performs the repair work, the City shall, immediately upon completion of the work, provide the Grantee with written notice of the work it has performed, and also shall, reasonably soon after the completion of the work, provide the Grantee with a statement of the reasonable costs the City incurred in performing the work.

(b) The Grantee shall repave or resurface the Public Rights-of-Ways in accordance with the then-current standards set forth by the Director if there are any street cuts or other disturbances of the surface of the Public Rights-of-Way as a result of any Construction or Maintenance by the Grantee under this Agreement.

(c) Any costs assessed upon the Grantee under this section shall be paid to the City within thirty (30) days of the assessment.

35. Safety Precautions. Grantee shall maintain in good and safe condition all Facilities it places within Public Rights-of-Ways. The Grantee shall, at its own cost and expense, undertake to prevent accidents at its work sites in, at or on the Public Rights-of-Way, including the placing and maintenance of proper guards, fences, barricades, watchmen and suitable and sufficient lighting, in accordance with federal and state law.
36. Quality. All work involved in the Placement and Maintenance of Facilities shall be performed in a safe, thorough and reliable manner in accordance with industry, professional, state and federal mandated standards and using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any Facilities violate any health or safety law or regulation, then the Grantee shall, at its own cost and expense, promptly correct all such conditions.
37. No Obstruction. Except for Emergencies or routine Maintenance in a Non-Arterial Right-of-Way or Customer Service Connection work, the Grantee shall not obstruct traffic to any street, road, or other Public Rights-of-Way within the corporate limits of the City without the prior consent of the City. Facilities of the Grantee in the Public Rights-of-Way shall be located so as to cause minimal interference with any use of the Public Rights-of-Way and adjoining property.
38. Emergency. During emergency situations, the Grantee may take all reasonable measures to restore service and alter its Facilities as necessary to ensure the safety of the residents of the City. As soon as practicable, the Grantee shall notify the Director or their designee of any emergency necessitating an obstruction. Grantee shall coordinate its activities in responding to the emergency with the Director or his or her designee.
39. Restoration. The Grantee shall, at its own cost and expense, replace, repair or restore any damaged property as close as reasonably possible to its prior condition. The Grantee shall be liable, at its own cost and expense, to reasonably replace or repair any Structure, or Public Right-of-Way that is disturbed or damaged as a result of the Grantee's activities, within a reasonable time, to the condition that existed prior to the commencement of Grantee's activities. If winter weather conditions or the availability of materials delay permanent pavement restoration, the Grantee shall make an acceptable temporary patch. When weather conditions permit or materials become available, the Grantee shall make permanent restoration as noted above. If Grantee does not commence replacement or repair within a reasonable time period as agreed to by the parties and after notice by the City to the Grantee, the City may make such replacement or repair and the Grantee shall pay the reasonable cost of the same.

40. Protection of the Public Rights-of-Way. In connection with the Construction and Maintenance of Facilities by Grantee, the Grantee shall, at its own cost and expense, protect the Public Rights-of-Ways and any City-owned Structures thereon, there under or there over, and shall obtain the prior approval of the City, pursuant to this Agreement, before altering the Public Rights-of-Way or any such Structures. Any such alteration shall be made by the Grantee, at its sole cost and expense, in a manner prescribed by the City to protect the Public Rights-of-Way and any City-owned Structures thereon. The Grantee shall be liable, at its own cost and expense, to replace or repair, in a manner as may be reasonably specified by the City, any Public Right-of-Way or City-owned Structure thereon, thereunder or there over that may become disturbed or damaged as a result of the installation, upgrade, construction, repair, maintenance and removal thereof; provided, however, that: unless otherwise required by applicable law, the Grantee shall not be obligated to install or provide any unreasonable betterment or upgrade that would exceed the characteristics of such Public Right-of-Way or City-owned Structure prior to the disturbance or damage by the Grantee. The Grantee shall warrant for one (1) year, commencing on the date the work is approved by the City, that any such replacement or repair (excluding trees, grass and other plantings) conforms to written City specifications and requirements made available to the Grantee. If the Grantee does not commence such replacement or repair after thirty (30) days notice or reasonable time frame given the scope of work and availability of materials, the City may make such replacement or repair and the Grantee shall pay the reasonable cost of the same.

## ARTICLE VI

### REPORTS AND RECORDS

41. Reports. At the request of the City, and subject to the terms of Section 43, the Grantee shall submit to the City, within a reasonable period of time, such information, as maintained in the ordinary course of business, as the City may reasonably require to verify compliance with the terms of this Agreement.
42. Books and Records. To the extent reasonably necessary to determine the Grantee's compliance with this Agreement or to carry out the City's authority to manage the Public Rights-of-Way, throughout the Term, the Grantee shall make available to the City for inspection within thirty (30) business days' notice to the Grantee, such complete and accurate books of account, records, documents and other information as the City may reasonably need with respect to the Facilities, including, without limitation, books of account, records, documents and other information adequate to enable the Grantee to demonstrate, at all times throughout the Term that it is, and has been, in compliance with the terms of this Agreement and the terms of Section 56-468.1 of the Code of Virginia, providing for a Public Rights-of-Way ("PROW") Use Fee. If such books, records, documents and other information are located outside the corporate limits of the City, the Grantee shall provide copies of the necessary books, records, documents and other information for inspection at a Grantee location within a one hundred twenty (120) mile radius of the City, or the Grantee shall pay the reasonable travel costs and expenses of the representatives designated by the City to examine such books, records, documents and other information in a location

outside a one hundred twenty (120) mile radius of the City. All such documents that pertain to the PROW Use Fee that may be the subject of an audit by the City shall be retained by the Grantee for such period of time as is set forth in the statute of limitations applicable to the fee or tax at issue.

43. Treatment of Proprietary Information. Access by the City to any of the documents, records or other information covered by this Agreement shall not be denied by the Grantee on grounds that such documents, records or information are alleged by the Grantee to contain Proprietary Information. For purposes of this Agreement, "Proprietary Information" means that portion of documents, records or other information which is in the possession of the Grantee which is not generally available to the public and which the Grantee desires to protect against unrestricted disclosure or competitive use. If the Grantee claims that documents, records or other information requested by the City contain Proprietary Information, the City agrees to review the Proprietary Information at the Grantee's premises and, in connection with such review, to limit access to the Proprietary Information to those individuals who require the Information in the exercise of the City's rights under this Agreement. The City will not remove any Proprietary Information from the Grantee's premises or record any Proprietary Information, by making copies or written notes containing verbatim information, and, to the extent permitted by applicable law, the City will not disclose Proprietary Information to any Person. All documents, records or other information which is disclosed by the Grantee to the City and which the Grantee claims is Proprietary Information shall be labeled as "Proprietary" if such information is in writing, and if such information is oral, it shall be identified as "Proprietary" prior to disclosure. The labeling of documents, records or other information as "Proprietary" shall be the sole responsibility of the Grantee. The protections offered to the Grantee by this Section shall not apply to documents, records or other information which: (a) are made public or become available to the public other than through a disclosure by the City; (b) are already in the possession of the City prior to the Effective Date; (c) are received from a third party without restriction; (d) are independently developed by the City; or (e) are disclosed pursuant to a valid court order or applicable law.

## ARTICLE VII

### LIABILITY AND INSURANCE

44. Insurance Specifications. Throughout the term, the Grantee shall, at its own expense, maintain a liability insurance policy or policies, together with evidence acceptable to the City demonstrating, through a certificate of insurance, that the Grantee is maintaining the insurance required by this section. Such policy or policies shall be issued by companies duly authorized or permitted to do business in the Commonwealth of Virginia. Such companies must carry a rating by Best of not less than "A-". Such policy or policies shall be commercial general liability policy and shall (i) insure the Grantee and (ii) include the City and its officers, boards, commissions, councils, elected officials and agents as an additional insured as their interest may appear (through the certificate of insurance) in the minimum combined amount of five million dollars (\$5,000,000.00) combined single limit for bodily injury and property damage. Limits may be attained by a combination of primary and excess/umbrella liability insurance. The

foregoing minimum limitation shall not prohibit the Grantee from obtaining a general liability insurance policy or policies in excess of such limitations. The Grantee shall furnish the City with a certificate of insurance evidencing the aforesaid insurance coverage and including the City, its officers, boards, commissions, councils, elected officials and agents as additional insureds as their interest may appear on the liability policy or policies required. In addition, the City shall be shown in the aforesaid as certificate holder. The certificate shall contain a provision stating that the insurer or its authorized representative(s) shall endeavor to provide thirty (30) days prior written notice of intent to non-renew, cancellation or material adverse change, except ten (10) day notice for nonpayment of premium shall apply.

45. Insurance – Maintenance. The liability insurance policies required above shall be maintained by the Grantee throughout the Term and such other period of time during which the Grantee operates or is engaged in the removal of Facilities. Within thirty (30) days after the date of cancellation of insurance, the Grantee shall obtain and furnish to the City a certificate of insurance evidencing replacement of the insurance required by this Agreement. Such certificate shall show continuous insurance coverage from the date of cancellation of prior insurance forward.
46. Increased Insurance Coverage. In the event of any changed circumstances following the Effective Date related to the activities of the Grantee in the Public Rights-of-Ways, which materially affect the risks associated with the activities of the Grantee permitted or authorized by the City, after consulting with the Grantee, may alter the minimum limitation of liability insurance policy or policies or other evidence of insurance.
47. Indemnification.

- (a) Grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, and its officers, employees and agent from and against any and all losses and any and all claims, suits, actions, liability and judgments for damages or other relief arising out of the installation, construction, operation or maintenance of the Grantee's Facilities, including but not limited to any claim for bodily injury or for property damage. The indemnity obligation of the Grantee under this section shall include, but is not limited to, providing legal representation and otherwise defending the City and City officers, employees and agents against any claim, suit, or action covered by this indemnification. The City shall provide the Grantee with prompt notice of any loss, claim, suit or action covered by this indemnification.
- (b) If a suit or action for which the City or its officers, employees and agents are entitled to be indemnified and held harmless under subsection (a) shall be brought against the City or one or more of its officers, employees or agents, either individually or jointly with the Grantee, the Grantee shall defend, indemnify and hold harmless the City and the sued officers, employees and agents at the sole cost and expense of the Grantee. The City shall promptly provide the Grantee with written notice of the commencement of any such suit or action. The Grantee

shall conduct the defense of such suit or action. The City may also participate in this defense directly, at its own expense.

- (c) If a final judgment is obtained against the City or one or more of its officers, employees or agents in a suit or action, either independently or jointly with Grantee, for which the City and its officers, employees and agents are entitled to be indemnified and held harmless under this section, Grantee shall pay every judgment, including all costs and attorneys' fees, entered against the City and any of its officers, employees and agents.
- (d) The Grantee shall be entitled to settle a claim brought in a suit or action for which the City and its officers, employees and agents are entitled to be indemnified and held harmless under subsection (a), provided that the Grantee must obtain the prior written approval of the City for any settlement of such claims against the City, which approval shall not be unreasonably withheld or unreasonably delayed.
- (e) The indemnities in this section shall survive the expiration of or earlier termination of this Agreement for a period of five (5) years.

48. Liability not Limited. The legal liability of the Grantee to the City and any Person for any of the matters that are the subject of the liability insurance policies or other evidence of insurance required above, including, without limitation, the Grantee indemnification obligations as set forth in this Agreement, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by Grantee.
49. Liability of City. Neither the City nor its officials, employees, agents, attorneys, consultants or independent contractors shall be responsible to the Grantee for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any Facilities by or on behalf of the Grantee or the City in accordance with this Agreement or in connection with any emergency related to the health and safety of the public. The City and its officers, employees and agents shall have no liability to the Grantee, any Affiliated Person or any other Person for any other damages as a result of the exercise of any right of the City pursuant to this Agreement or applicable law, the rights of the City to approve or disapprove the grant, termination, amendment, renewal or transfer of the Franchise, or to otherwise modify all or any part of this Agreement or the Franchise. The City, its officers, employees and agents shall not be responsible for any liability of the Grantee, any Affiliated Person or any other Person, arising out of or in connection with acts or omissions of the Grantee or any officer, employee, agent or subcontractor thereof, in the Construction or Maintenance of Facilities or the provision of services by means of the Facilities. However, nothing in this Section shall waive any rights that the Grantee otherwise has against the City for any willful misconduct or negligent acts or omissions of the City.
50. Liability of Grantee. The Grantee shall be responsible for any liability, including, without limitation, any liability of the City and any officer, employee or agent of the City, arising out of or in connection with acts or omissions of the Grantee or any officer, employee, agent or

subcontractor thereof, in the installation, upgrade, construction, repair, maintenance and removal of Facilities or the provision of services by means of the Facilities. The Grantee shall at its own cost and expense, replace, repair or restore any of the City's damaged property to its prior condition if such damage is caused by any act or failure to act of the Grantee or any officer, employee, agent or subcontractor thereof, in connection with the Construction or Maintenance of Facilities or the provision of services by means of the Facilities.

51. Consequential Damages. Notwithstanding any other provision contained in this Agreement, in no event shall either party be liable for any special, incidental, consequential, indirect, or exemplary damages.

## ARTICLE VIII

### PERFORMANCE GUARANTEES

52. General Surety. Upon the release of the FTTP Construction Surety, the Grantee shall furnish the City with a form of surety to ensure faithful performance under this Agreement in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00). The form of the surety may, at Grantee's option, be a letter of credit, cash deposit, or cashier's check, as herein described. The General Surety shall be written by a corporate surety or bank reasonably acceptable to the City and authorized to do business in the Commonwealth of Virginia. Unless the City notifies the Grantee that a reasonable longer period shall apply, the Grantee shall maintain the General Surety in the amount specified in this section for one hundred twenty (120) days thereafter. Within sixty (60) days after the date of any notice of cancellation of the General Surety, the Grantee shall obtain and deposit with the City a replacement surety that complies with the requirements of this Section and that is reasonably acceptable to the City Attorney. Such replacement surety shall show continuous coverage as required by this Section from the effective date of cancellation of the prior surety forward.
53. Letter of Credit Form. Any surety provided hereunder in the form of a letter of credit shall be irrevocable and unconditional and in a form reasonably satisfactory to the City Attorney.
54. Additional Surety. In addition to the General Surety, the Director may also require the Grantee to submit additional surety in connection with specific Construction or Maintenance, in accordance with applicable law and the City's standard permitting procedures. The Grantee shall only be required to maintain such Additional Surety for the duration of such specific Construction or Maintenance.
55. Changed Amount. At any time during the Term, the City may, acting reasonably, require the Grantee to increase the amount of the General Surety if the City finds that new risks or other factors applicable to the Grantee's activities in the Public Rights of Way exist that reasonably necessitate or justify a change in the amount of the General Surety. Such new facts may include, but are not limited to, such matters as material changes in the Grantee's activities in the Public Rights-of-Way; material changes in the amount and location of Facilities; activities that require restoration resulting from Construction or other activities by Grantee located within the City's

Public Rights-of-Way, the Grantee's recent record of repeated non-compliance with the terms and conditions of this Agreement; and material changes in the amount and nature of Construction, Maintenance, or other activities to be performed by the Grantee in the Public Rights-of-Way pursuant to this Agreement.

56. Purpose of FTTP Construction Surety, General Surety and Additional Surety. The FTTP Construction Surety, General Surety and Additional Surety shall serve as security for:
- a. The faithful performance by the Grantee of all material terms, conditions and obligations of this Agreement; and
  - b. Any expenditure, damage, cost or loss incurred by the City occasioned by the Grantee's failure to comply with its obligations pursuant to this Agreement and/or with all rules, regulations, orders, permits and other directives of the City relating to Construction or Maintenance of the Facilities, or management of the Public Rights-of Way;
  - c. the removal of Facilities from the Public Rights-of-Way at the termination of the Agreement, at the election of the City, pursuant to Section 66 of this Agreement; and
  - d. any loss or damage to the Public Rights-of-Way or any property of the City during the installation, upgrade, construction, repair, maintenance and removal of Facilities.
57. Withdrawals from the FTTP Construction Surety or the General Surety. The City shall provide not less than thirty (30) days notice of the City's intent to make a withdrawal from Construction Surety or General Surety. If the surety is in the form of a letter of credit, cash deposit, or cashier's check, the City may make withdrawals from the FTTP Construction Surety or the General Surety for the satisfaction of obligations under this Agreement, or for the purposes specified in Section 56 of this Agreement. Withdrawals from the FTTP Construction Surety or the General Surety shall not be deemed a cure of the default(s) that led to such withdrawals. The City may not seek recourse against either the FTTP Construction Surety or the General Surety for any costs or damages for which the City has previously been compensated through a withdrawal from the FTTP Construction Surety or the General Surety or otherwise by the Grantee.
58. Notice of Withdrawals. The City shall give the Grantee at least ten (10) days' notice prior to making any withdrawal from the FTTP Construction Surety or the General Surety, provided, however, that the City shall not make any withdrawals by reason of any breach for which the Grantee has not been given notice and opportunity to cure prior to the notice required by this Section and any other provision of this Agreement. The withdrawal of amounts from the FTTP Construction Surety or the General Surety shall constitute a credit against the amount of the applicable liability of the Grantee to the City, but only to the extent of said withdrawal.
59. Replenishment of the FTTP Construction Surety or the General Surety. Within thirty (30) days after receipt of notice from the City that any amount has been withdrawn from the FTTP Construction Surety or the General Surety, the Grantee shall restore the FTTP Construction Surety or the General Surety to the amount specified in this Agreement, provided that, if a court



finally determines that said withdrawal by the City was improper, the City shall refund the improperly withdrawn amount to the FTTP Construction Surety or the General Surety or to the Grantee such that the balance in the FTTP Construction Surety or the General Surety shall not exceed the amount specified in this Agreement.

60. Not a Limit on Liability. The obligation to perform and the liability of the Grantee pursuant to this Agreement shall not be limited by the acceptance of either the FTTP Construction Surety or the General Surety required by this Article.
61. Public Safety. In case of fire, disaster or other emergency, or to correct an unsafe work condition, as determined by the City in its sole discretion, the City may cut or move Grantee Facilities as reasonably necessary to protect public health or safety. The City will make every reasonable effort to consult with the Grantee prior to any such cutting or movement of Facilities and the Grantee shall be given the opportunity to perform such work itself. The City shall have the obligation to protect Grantee's Facilities to the maximum extent reasonable under the circumstances. All costs to repair or replace such Facilities shall be borne by the Grantee.

## ARTICLE IX

### TRANSFERS

62. Change in Control or Transfer of Franchise. The Grantee, Verizon Virginia, Inc. is a wholly owned subsidiary of Verizon Communications Inc. In the event that (i) a change in Control of the Grantee, or (ii) a transfer of the Franchise or any rights thereunder, or (iii) a transfer of the rights and interests of the Grantee in the Telecommunications System, is proposed by the Grantee after the Effective Date, the Grantee shall provide notice to the City, within thirty (30) days after any filing with the Virginia State Corporation Commission seeking consent to such proposed transaction. The notice shall identify the Person that will acquire Control of the Grantee, or that will acquire the Franchise or the rights, interests or obligations of the Grantee in the System or the Equipment. The Grantee or its successor in interest shall continue to hold all required certificates of public convenience and necessity, or such other successor authorization, issued by the Virginia State Corporation Commission; and the Grantee or its successor in interest shall continue to be bound by the terms and conditions of this Agreement, including but not limited to, the provisions requiring the liability insurance policy and performance bond/security fund (Article VI and Article VII of this Agreement). For purposes of this Section, "Control" means ownership of twenty-five percent or more of the voting stock of the Grantee, or the actual exercise of any substantial influence over the policies and actions of the Grantee.
63. Permitted Encumbrances. Nothing in this Article IX shall be deemed to prohibit any assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the Facilities or any right or interest therein, for financing purposes, provided that the City's rights under this Agreement are in no way adversely affected or diminished. The consent of the City shall not be required with respect to any transfer to, or taking of possession by, any banking or lending institution which is a secured creditor of the Grantee of all or any part of the System pursuant to the rights

of such secured creditor the laws of the Commonwealth of Virginia, provided further that the City's rights under this Agreement are in no way adversely affected or diminished.

**ARTICLE X**  
**TERMINATION**

64. Termination Events. The City, at its option, may terminate this Agreement upon any material breach of this Agreement by the Grantee that is not cured within thirty (30) days after the Grantee receives notice from the City, or such longer period of time as may be reasonable under the circumstances, provided the cure is commenced within the thirty (30) day period after notice from the City and the Grantee is proceeding with due diligence to complete such cure. A material breach shall include, but shall not be limited to, the following:

a. the condemnation by public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the Facilities, the effect of which would materially frustrate or impede the ability of the Grantee to carry out its obligations and the purposes of this Agreement, if the Grantee fails to demonstrate to the reasonable satisfaction of the City, within the thirty (30) day notice period provided above, that such condemnation, sale or dedication would not materially frustrate or impede such ability of the Grantee;

b. any denial, forfeiture or revocation by any federal, state or local governmental authority having regulatory jurisdiction over the Grantee of any material authorization required by law or the expiration without renewal of any such authorization, and such events, either individually or in the aggregate, have an adverse affect on the installation, upgrade, construction, repair, maintenance or removal of the Facilities, and the Grantee fails to take steps, within the thirty (30) day notice period provided above, to obtain or restore such authorization, and to diligently pursue such steps;

c. except as may be otherwise provided in this Agreement, any failure of the Grantee to maintain the insurance and/or corporate risk management program, if such program is applicable, substantially as required by Article VII of this Agreement;

d. any failure of the Grantee to maintain any form of surety required by this Agreement;

e. any failure of the Grantee to comply with the transfer notice set forth in Article IX of this Agreement;

f. any failure of the Grantee to comply with any material provision of this Agreement;

g. any abandonment of the entire Telecommunications System or FTTP Network; and

h. any persistent failure of the Grantee, after notice and an opportunity to cure with respect to substantially all such failures of the Grantee, to comply with any term,

condition or provision of this Agreement or any other ordinance, law, regulation, rule or order of the City relating to management of the Public Rights-of-Way in connection with installation, upgrade, construction, repair, maintenance and removal of Facilities.

65. Rights Upon Termination. Upon termination of the Agreement, the City shall have the right to direct the Grantee to remove all or any portion of the Facilities from the Public Rights-of-Way, at Grantee's sole cost and expense. The City shall allow the Grantee to abandon certain underground facilities in place if the City determines that removal of Facilities would cause an unreasonable disruption to the public Rights-of-Way.

66. Conditions of Removal. In the event the City directs the Grantee to remove any Facilities from the Public Rights-of-Way, the Grantee shall undertake such removal subject to the following:

a. in removing the Facilities, or part thereof, the Grantee shall refill and compact, at its own cost and expense, any excavation that shall be made by it and shall leave, in all material aspects, all Public Rights-of-Way and other property in as good condition as that prevailing prior to the Grantee's removal of the Equipment from the Public Rights-of-Way and without affecting, altering or disturbing in any way any electric or other cables, wires, structures or attachments;

b. the City shall have the right to inspect and approve the condition of such Public Rights-of-Way within one hundred twenty (120) days after notice such removal is completed, and, to the extent that the City determines that said Public Rights-of-Way and other property have not been left in materially as good condition as that prevailing prior to the Grantee's removal of the Facilities, the Grantee shall be liable to the City for the cost of restoring the Public Rights-of-Way and other property to said condition;

c. all of the surety, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all Public Rights-of-Way, and for not less than one hundred twenty (120) days thereafter; and

d. removal shall be commenced within sixty (60) days of the removal order by the City and shall be substantially completed within twelve (12) months thereafter including all reasonably associated repair of the Public Rights-of-Way.

67. Failure to Commence Removal. If, in the reasonable judgment of the City, the Grantee fails to commence removal of the Facilities within sixty (60) days after the City's removal order, or if the Grantee fails to substantially complete such removal, including all associated repair of the Public Rights-of-Way, within twelve (12) months thereafter, then, to the extent not inconsistent with applicable law, the City shall have the right to:

a. declare that all rights, title and interest to the Facilities belong to the City with all rights of ownership, including, but not limited to, the right to connect and use the Facilities or to effect a transfer of all right, title and interest in the Facilities to another Person for operation; or

b. authorize removal of the Facilities in the Public Rights-of-Way at the Grantee's cost and expense, by another Person.

68. Title to Facilities. To the extent consistent with applicable law, any portion of the Facilities designated by the City for removal and not timely removed by the Grantee shall belong to and become the property of the City without payment to the Grantee, and the Grantee shall execute and deliver such documents in form and substance reasonably acceptable to the City, to evidence such ownership by the City.

## ARTICLE XI

### SUBSEQUENT ACTIONS

69. Franchise Approval Consist with Applicable Law. By acceptance of the terms and conditions of this Agreement, the Grantee acknowledges and agrees that the processes and procedures pursuant to which this Agreement was entered into and the Franchise was granted are consistent with applicable law as of the Effective Date of this Agreement. "Applicable law" for purposes of this Article XI shall include federal, state and local statutes and regulations, and federal, state and local final, non-appealable judicial and administrative decisions. The Grantee shall at all times comply with all provisions in this Agreement and all lawful amendments and modifications to this Agreement.
70. Procedures in Event of Subsequent Invalidity. In the event that, after the Effective Date, any court, agency, commission, legislative body or other authority of competent jurisdiction (i) declares this Agreement invalid; in whole or in part, or (ii) requires the Grantee either to (A) perform any act that is inconsistent with any provision of this Agreement or (B) cease performing any act required by any provision of this Agreement, including any obligations with respect to compensation or other financial obligations pursuant to this Agreement, then the Grantee shall promptly notify the City of such fact. Upon receipt of such notification, the City and the Grantee, acting in good faith, shall each determine whether such declaration or requirement has a material and adverse effect on this Agreement. Regardless of the City's or the Grantee's determination or the length of time that such determination may take, the Grantee may comply with such declaration or requirement, and such compliance will not be considered a breach or default of this Agreement. If the City and the Grantee, acting in good faith, agree that such declaration or requirement does not have a material and adverse effect on this Agreement, then the Grantee shall continue to comply with such declaration or requirement. If either the City or the Grantee, acting in good faith, determines that such declaration or requirement does have such an effect or that compliance with such declaration or requirement by the Grantee would materially frustrate or impede the ability of the Grantee to carry out its obligations pursuant to, and the purposes of, this Agreement, then the Grantee and the City shall enter into good faith negotiations to amend this Agreement. If the Grantee or the City fails to negotiate in good faith to produce an agreement which is reasonably acceptable to both the City and the Grantee, then the Grantee or the City may accelerate the expiration of the Term so that the Term shall expire on a date determined by the party accelerating the Term not less than six (6) months after such

determination. In the event there are six (6) months or less remaining in the Term, this Section 57 shall not operate to extend the Term.

## ARTICLE XII

### MISCELLANEOUS

71. Delays and Failures Beyond Control of Grantee. Notwithstanding any other provision of this Agreement, the Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, strike or labor unrest, act of public enemy, accident, fire, flood or other act of God, terrorism, sabotage or other events, where the Grantee has exercised all due care in the prevention thereof, to the extent that such causes or other events are beyond the reasonable control of the Grantee, and such causes or events are not the result of the fault or negligence of the Grantee. If such delay in performance or failure to perform affects only part of the Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). The Grantee agrees that in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible.

72. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations, or other direction or communication hereunder by any party to another shall be in writing sent to the following address:

City: Alexandria City Hall  
Attention: City Manager  
301 King Street  
Alexandria, Virginia 22314

With a copy to: Alexandria City Hall  
Attention: City Attorney  
301 King Street  
Alexandria, Virginia 22314

Grantee: Verizon Virginia Inc.  
Attention: Vice President and General Counsel  
703 E. Grace St., 7th floor  
Richmond, VA 23219

73. Additional Representations and Warranties. In addition to the representations, warranties, and covenants of the Grantee to the City set forth elsewhere in this Agreement, the Grantee represents and warrants to the City and covenants and agrees (which representations, warranties,

covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City) that, as of the Effective Date

a. Organization, Standing, Power, Authorization and Enforceability. The Grantee is a public service corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and is duly authorized to do business in the Commonwealth of Virginia and the City of Alexandria. The Grantee has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby, and if it is conducting business in another jurisdiction, it is in good standing as a foreign corporation in each jurisdiction in which it conducts business.

b. The execution, delivery and performance of this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Grantee and its Guarantor(s), and this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Grantee and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Grantee and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms.

c. Consent. No consent, approval or authorization of, or declaration or filing with, any public, governmental or other authority (including, without limitation, the FCC or any other federal agency or any state, country, or municipal agency, authority, commission or council, and, if applicable, public utility commissions, telephone companies and other entities) on the part of the Grantee is required for the valid execution and delivery of this Agreement or any other agreement or instrument executed or delivered in connection herewith.

d. No Coercion; Full Disclosure. The Grantee enters into this Agreement willingly and without coercion, undue influence or duress. In addition, the Grantee has not entered into this Agreement with the intent to act contrary to the provisions herein.

e. Accuracy of Written Information. Without limiting the specific language of any other representation and warranty herein, all information furnished by the Grantee to the City in writing in connection with this Agreement, by authorized officers of the Grantee, is accurate and complete in all material respects, and includes all material facts required to be stated therein and does not contain any untrue statement of a material fact or omit any material fact necessary to make the statements therein not misleading, and the Grantee has not misrepresented or omitted material facts in its negotiations with the City.

f. Compliance with Law. The Grantee is in material compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the installation, upgrade, construction, repair, maintenance and removal of the Telecommunications System in the Streets and is a certificated provider of local exchange telephone service in the Commonwealth of Virginia.

g. Litigation; Investigations. Except as disclosed in writing to the City prior to the execution of this Agreement, there is no civil, criminal, administrative, arbitration or other proceeding, investigation or claim, pending or threatened against the Grantee, at law or in equity,

or before any foreign, federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, including, without limitation, matters involving the granting of a temporary or permanent injunction against the Grantee that, if granted, would have a material adverse effect on the ability of the Grantee to comply with this Agreement or to take any action to be taken by the Grantee pursuant to this Agreement.

h. Fees. The Grantee has paid all uncontested franchise, license or other fees and charges that have become due pursuant to this Franchise (provided that any such contested action be done in accordance with applicable law) and has made adequate provisions for any such fees and charges that have accrued. Nothing in this subsection (h) shall preclude the City from filing collection actions on contested taxes or other fees as otherwise available to the City under applicable law.

74. Licenses and Permits. The Grantee has used best efforts to secure all necessary permits and licenses in connection with the installation, upgrade, construction, repair, maintenance and removal of Equipment and is a certificated provider of local exchange telephone service in the Commonwealth of Virginia. In the event that the Grantee receives notice or becomes aware that it is no longer a certificated provider of local exchange services, the Grantee shall provide to the City notice of such event.
75. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the City and the Grantee and their respective successors and permitted transferees and assigns.
76. Headings; Other Terms. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby", "herein", "hereof", "hereinafter", "hereunder", and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; the terms "shall" and "will" are mandatory, not merely directive. All references to any gender shall be deemed to include all others, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.
77. No Third Party Beneficiary Rights. Nothing in this Franchise is intended to interfere with any tariffs, contracts or other arrangements between the Grantee and a third party, or to create any third party beneficiary rights.
78. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and merges and supersedes all prior representations, agreements and understandings, whether oral or written, between the City and Grantee with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the City or the Grantee.
79. Additional Covenants. Until the termination of this Agreement and the satisfaction in full by the Grantee of its obligations under this Agreement, in consideration of the Franchise, the Grantee agrees that it will comply with the following affirmative covenants, unless the City otherwise consents in writing:

a. Compliance with Laws; Licenses and Permits. The Grantee shall comply with: (i) all applicable laws, rules, regulations, orders, writs, decrees and judgments including, but not limited to, those of the FCC relating to the installation, upgrade, construction, repair, maintenance and removal of Equipment and those of any other federal, state agency or authority of competent jurisdiction relating to the installation, upgrade, construction, repair, maintenance and removal of Facilities; and except as provided in Section 21, (ii) all local laws and all reasonable rules, regulations, orders, or other directives of the City issued pursuant to this Agreement relating to the installation, upgrade, construction, repair, maintenance and removal of Facilities. The Grantee shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to install, upgrade, construct, repair, maintain and remove Facilities.

b. Ability to Perform. In the event the City reasonably identifies a material risk that the Grantee will be unable to perform its material obligations under this Agreement, including the installation, upgrade, construction, repair, maintenance and removal of the Facilities, the City may request, and the Grantee shall provide to the City, a report addressing such matters and containing such detail and substance to demonstrate that it can perform, on a timely basis, all material obligations pursuant to this Agreement. The Grantee shall supplement any such report as the City may reasonably request.

c. Condition of Facilities. All Facilities will be maintained in good repair and condition throughout the Term, to the extent necessary to avoid damaging the Public Rights-of-Way.

80. No Waiver; Cumulative Remedies. No failure on the part of the City or the Grantee to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, all subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of the City or the Grantee under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City or the Grantee at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by the City or the Grantee at any other time. In order for any waiver of the City or the Grantee to be effective, it must be in writing.

81. Survival. All representations and warranties contained in this Agreement shall survive the Term. The Grantee acknowledges that certain of the obligations to be performed under this Agreement are to be performed after the Franchise terminates or expires.

82. Delegation of City Rights. The City reserves the right to delegate and redelegate, from time to time, any of its rights or obligations under this Agreement to any body, organization or official of the City. Upon any such delegation or redelegation, references to "City" in this Agreement shall refer to the body, organization or official to whom such delegation or redelegation has been made. Any such delegation by the City shall be effective upon written notice by the City to the Grantee of such delegation. Upon receipt of such notice by the Grantee, the Grantee shall be bound by all terms and conditions of the delegation not in conflict with this Agreement. Any



such delegation, revocation or redelegation, no matter how often made, shall not be deemed an amendment to this Agreement or require any consent of the Grantee.

83. Claims Under Agreement. The City and the Grantee agree that any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in Richmond, Virginia ("Federal Court") or in a court of the Commonwealth of Virginia located in the City of Richmond ("Virginia State Court").
  
84. Reservation of Rights. The City reserves the right to adopt or issue such rules, regulations, orders or other directives governing the Grantee and the Facilities as it shall find necessary, appropriate and within the exercise of its police power or such other power or authority as the City may have, and such other orders as the City shall find necessary or appropriate relating to management of the Public Rights-of-Way, and the Grantee expressly agrees to comply with all such lawful rules, regulations, orders or other directives, provided that such rules, regulations, orders or other directives are of general applicability. No rule, regulation, order or other directive issued pursuant to this Section shall constitute an amendment to this Agreement, provided that such rule, regulation, order or other directive is not inconsistent with this Agreement. The parties agree to undertake discussions toward achieving mutually acceptable solutions to issues identified by either party and related to this Franchise.

ADOPTED by the Council of the City of Alexandria, Virginia this \_\_\_\_\_ Day of \_\_\_\_\_, 2009.

APPROVED:

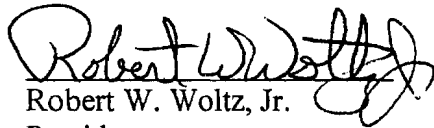
\_\_\_\_\_  
, Mayor

ATTEST

\_\_\_\_\_  
Clerk of the Council

The terms and conditions of this Franchise are agreed to by Grantee:

VERIZON VIRGINIA INC.

  
Robert W. Woltz, Jr.  
President

Date: 5/14/09

Franchise Bond

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS: That we, Verizon Virginia Inc., 703 E. Grace St., 7th floor, Richmond, VA 23219, as Principal, and \_\_\_\_\_ Surety Company of America, ADDRESS, USA, as Surety, are held and firmly bound unto City of Alexandria, Virginia 301 King Street, Alexandria, Virginia 22314, as Obligee, in the sum of \_\_\_\_\_ Thousand and 00/100 Dollars (\$XXX,XXX) for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.**

**WHEREAS**, the Principal has been granted a Franchise Agreement for the purpose of installing telecommunications equipment in the City's public right-of-way and is required to post this bond as a condition of said Agreement:

**WHEREAS**, the Obligee has agreed to accept this bond as security for performance of Principal's obligations under said Agreement during the time period this bond remains in effect:

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH** that if the Principal shall faithfully perform its obligations under said permits, then this obligation shall be void, otherwise to remain in full force and effect.

**PROVIDED HOWEVER**, that this bond is executed subject to the following conditions:

In the event of default by the Principal, Obligee shall deliver to Surety a written statement of the details of such default within 30 days after the Obligee shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein. No right of action shall accrue to any person or entity other than the obligee named herein.

This bond may be canceled by surety by giving not less than sixty (60) days written notice to the Obligee, stating therein the effective date of such termination or cancellation. Such notice shall not terminate any obligations resulting from default by the Principal that may have accrued under this bond prior to the effective date of such termination. Neither cancellation nor termination of this bond by Surety, nor inability of Principal to file a replacement bond or replacement security for its obligations, shall in itself constitute a loss to the Obligee recoverable under this bond.

It is hereby understood and agreed that this bond may not be cancelled or not renewed by the surety until at least sixty (60) days' written notice to the City of surety's intention to cancel or not renew this bond.

The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond is in effect or the amount of claims brought against this bond.

IN WITNESS WHEREOF, the above bounded Principal and Surety have hereunto signed and sealed this bond effective this \_\_\_ day of \_\_\_\_\_, 200\_\_.

Verizon Virginia Inc.

By: Robert Wolff

\_\_\_\_\_

By:

\_\_\_\_\_, Attorney-in-Fact

**Bond No.** \_\_\_\_\_

THE ABOVE TERMS AND CONDITIONS OF THIS BOND HAVE BEEN REVIEWED AND ACCEPTED BY THE (OBLIGEE).

ACKNOWLEDGED AND ACCEPTED BY OBLIGEE:

BY: \_\_\_\_\_  
PRINTED NAME/TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**RETURN A COPY OF ACCEPTED BOND TO:**

Wachovia Insurance Services Inc.  
Attn: \_\_\_\_\_  
1401 H Street NW, Suite 750  
Washington, D.C 20005

24  
6-13-09



**Elizabeth Ramsey**  
<eramsey@ruarth.net>

05/24/2009 11:23 AM

Please respond to  
Elizabeth Ramsey  
<eramsey@ruarth.net>

To william.euille@alexandriava.gov,  
timothy.lovain@alexandriava.gov, councilmangaines@aol.com,  
council@krupicka.com, delpepper@aol.com,

cc

bcc

Subject COA Contact Us: FIOS

**Time: [Sun May 24, 2009 11:23:40] IP Address: [96.231.66.9]**

**Issue Type:** Mayor, Vice Mayor, and Council Members  
**First Name:** Elizabeth  
**Last Name:** Ramsey  
**Street Address:** 1741 Preston Rd  
**City:** Alexandria  
**State:** VA  
**Zip:** 22302  
**Phone:** 7036716822  
**Email Address:** eramsey@ruarth.net  
**Subject:** FIOS  
The City web site says that "Fios should be available in Alexandria in late 2009 or 2010" but then it also says that the City needs to negotiate telephone and cable franchises with Verizon, implying that this has yet to be completed. The site says that the City encourages competition, yet Alexandria is very late among regional jurisdictions to allow FIOS. I can only conclude that the holdup is with the City, not with Verizon.  
**Comments:** I strongly urge the City Council to move the negotiations with Verizon to completion so that the City is not 100% dependent on Comcast for true high-speed Internet service.  
-Elizabeth Ramsey  
Parkfairfax  
resident

24  
6-13-09



**Helen Do**  
<helendo13@gmail.com>

05/29/2009 01:44 PM

Please respond to  
Helen Do  
<helendo13@gmail.com>

To william.cuille@alexandriava.gov,  
timothy.lovain@alexandriava.gov, councilmangaines@aol.com,  
council@krupicka.com, delpepper@aol.com,

cc

bcc

Subject COA Contact Us: Fios



Time: [Fri May 29, 2009 13:44:18] IP Address: [208.73.110.242]

**Issue Type:** Mayor, Vice Mayor, and Council Members  
**First Name:** Helen  
**Last Name:** Do  
**Street Address:** 409 Tennessee Ave  
**City:** Alexandria  
**State:** VA  
**Zip:** 22305  
**Phone:** 7036711921  
**Email Address:** helendo13@gmail.com  
**Subject:** Fios  
Please bring Fios to Alexandria. Comcast is horrible and we would like to  
**Comments:** have another option.  
Thank you



**Brian Barker**  
<btbarker@comcast.net>

05/30/2009 08:41 AM

Please respond to  
Brian Barker  
<btbarker@comcast.net>

To william.euille@alexandriava.gov,  
timothy.lovain@alexandriava.gov, councilmangaines@aol.com,  
council@krupicka.com, delpepper@aol.com,

cc

bcc

Subject COA Contact Us: Verizon Fios

24  
6-13-09

**Time: [Sat May 30, 2009 08:41:27] IP Address: [68.83.209.79]**

**Issue Type:** Mayor, Vice Mayor, and Council Members

**First Name:** Brian

**Last Name:** Barker

**Street Address:** 808 Beverley Drive

**City:** Alexandria

**State:** VA

**Zip:** 22302

**Phone:** 703 838-0268

**Email Address:** btbarker@comcast.net

**Subject:** Verizon Fios

Dear Mayor and Council Members,  
Please do what ever it takes to bring

Verizon Fios to Alexandria City as I am paying too much for Comcast which

also provides  
terrible customer services. We would greatly appreciate an

**Comments:** alternative to Comcast.

Thank you,

Brian and Amy Barker  
808 Beverley

Drive



**John Fitzgerald**  
<j\_fitz\_gerald@yahoo.com>

05/31/2009 09:36 AM

Please respond to  
John Fitzgerald  
<j\_fitz\_gerald@yahoo.com>

To william.euille@alexandriava.gov,  
timothy.lovain@alexandriava.gov, councilmangaines@aol.com,  
council@krupicka.com, delpepper@aol.com,

cc

bcc

Subject COA Contact Us: Verizon/Comcast Competition - Giving Citizens  
a Choice

24  
6-13-09

**Time: [Sun May 31, 2009 09:36:16] IP Address: [76.21.178.236]**

**Issue Type:** Mayor, Vice Mayor, and Council Members  
**First Name:** John  
**Last Name:** Fitzgerald  
**Street Address:** 609 Beverly Drive  
**City:** Alexandria  
**State:** VA  
**Zip:** 22305  
**Phone:** 703.939.4664  
**Email Address:** j\_fitz\_gerald@yahoo.com  
**Subject:** Verizon/Comcast Competition - Giving Citizens a Choice  
I encourage the City Manager's office to make every possible effort to ensure the final Verizon contract is going to be acceptable to City Council (even if that means it may need some modification between now and June 9).  
We really need a favorable contract for the residents of Alexandria so the Council is able to approve it. It would be a shame to come this far, and the Council find something not acceptable in the contract that would prevent them from approving it. We need no bureaucratic delays in getting FiOS up and operational so we improve competition in this city for telephone, cable and internet services. COMCAST has had a monopoly for years and their customer service, technology, infrastructure is horrible.  
**Comments:** I live in the Beverley Hills area where we have suffered through poor COMCAST delivery for years. We accept it because there is NO



other choice. Dish Network and DirectTV has a minimal user base due to the tree cover in the area. Thus, COMCAST is the only option.

Please focus

efforts on at least transforming this virtual "monopoly" into at least a "duopoly" where there is a choice in cost, service and quality.

Sincerely,

John Fitzgerald

24  
6-13-09



**Brian Barker**  
<btbarker@comcast.net>

05/30/2009 08:41 AM

Please respond to  
Brian Barker  
<btbarker@comcast.net>

To william.euille@alexandriava.gov,  
timothy.lovain@alexandriava.gov, councilmangaines@aol.com,  
council@krupicka.com, delpepper@aol.com,

cc

bcc

Subject COA Contact Us: Verizon Fios

**Time: [Sat May 30, 2009 08:41:27] IP Address: [68.83.209.79]**

**Issue Type:** Mayor, Vice Mayor, and Council Members  
**First Name:** Brian  
**Last Name:** Barker  
**Street Address:** 808 Beverley Drive  
**City:** Alexandria  
**State:** VA  
**Zip:** 22302  
**Phone:** 703 838-0268  
**Email Address:** btbarker@comcast.net  
**Subject:** Verizon Fios  
Dear Mayor and Council Members,  
Please do what ever it takes to bring  
Verizon Fios to Alexandria City as I am paying too much for Comcast which  
also provides  
terrible customer services. We would greatly appreciate an  
**Comments:** alternative to Comcast.  
Thank you,  
Brian and Amy Barker  
808 Beverley  
Drive

24  
6-13-09



**John Fitzgerald**  
<j\_fitz\_gerald@yahoo.com>

05/31/2009 09:36 AM

Please respond to  
John Fitzgerald  
<j\_fitz\_gerald@yahoo.com>

To william.euille@alexandriava.gov,  
timothy.lovain@alexandriava.gov, councilmangaines@aol.com,  
council@krupicka.com, delpepper@aol.com,

cc

bcc

Subject COA Contact Us: Verizon/Comcast Competition - Giving Citizens  
a Choice



**Time: [Sun May 31, 2009 09:36:16] IP Address: [76.21.178.236]**

**Issue Type:** Mayor, Vice Mayor, and Council Members

**First Name:** John

**Last Name:** Fitzgerald

**Street Address:** 609 Beverly Drive

**City:** Alexandria

**State:** VA

**Zip:** 22305

**Phone:** 703.939.4664

**Email Address:** j\_fitz\_gerald@yahoo.com

**Subject:** Verizon/Comcast Competition - Giving Citizens a Choice

I encourage the City Manager's office to make every possible effort to ensure the final Verizon contract is going to be acceptable to City Council (even if that means it may need some modification between now and June 9).

We really need a favorable contract for the residents of

Alexandria so the Council is able to approve it. It would be a shame to

come this far, and the Council find something not acceptable in the contract that would prevent them from approving it. We need no bureaucratic delays in getting FiOS up and operational so we improve competition in this city for telephone, cable and internet services. COMCAST has had a monopoly for years and their customer service, technology, infrastructure is horrible.

**Comments:**

I live in the Beverley Hills area where we have suffered through poor COMCAST delivery for years. We accept it because there is NO

other choice. Dish Network and DirectTV has a minimal user base due to the tree cover in the area. Thus, COMCAST is the only option.

Please focus

efforts on at least transforming this virtual "monopoly" into at least a "duopoly" where there is a choice in cost, service and quality.

Sincerely,

John Fitzgerald

## ORDINANCE NO. 4599

AN ORDINANCE to grant to Verizon Virginia Inc., its successors and assigns a franchise, under certain conditions, permitting the grantee to use the public rights-of-way in the City of Alexandria, for the design, construction, maintenance, and operation of a telecommunications system, excluding cable services, in the City.

### THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That this Franchise is hereby granted to Verizon Virginia Inc., hereinafter referred to as "Grantee," its successors and assigns, to permit the Grantee to design, construct, maintain, and operate a telecommunications system, excluding cable services, using the public rights-of-way in the City.

Section 2. That the said Franchise is awarded to the Grantee after public notice and invitation for bids, as required by law, pursuant to Section 2 of Ordinance No. 4586, and after the invitation for bids was duly closed and all bids were fully and carefully investigated and evaluated.

Section 3. That the Grantee be, and hereby is, granted a Franchise for 25 years to design, construct, maintain, and operate a telecommunications system, excluding cable services, for the benefit of residents, businesses and government in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Telecommunications Franchise Agreement attached hereto and incorporated fully herein by reference, together with all applicable laws and regulations of the City of Alexandria, the Commonwealth of Virginia and the United States, and any regulatory agency having jurisdiction, including, without limitation, with the following conditions:

1. Each year an updated map of all facilities within the City, existing and proposed, showing locations, scheduled construction and service dates, and such additional information as the city manager may specify in his reasonable discretion, shall be filed with the City's Department of Transportation and Environmental Services.

2. All necessary permits shall be obtained as set forth in paragraph 28 of the Franchise; including but not limited to boring in and/or under a public right-of-way or other public place.

3. In the event the relocation, construction, reconstruction, maintenance or repair by the City, the Commonwealth of Virginia or the Washington Metropolitan Area Transit Authority of any facilities or services is necessary or desirable, and it is necessary to alter or relocate, either permanently or temporarily, any of the Grantee's property in the public rights-of way or other public property in order to accomplish same, the Grantee will, after reasonable notice, move, alter or relocate its property in accordance with paragraphs 12 and 39 of the Franchise and should the Grantee fail to comply with such notice, its property may be removed, altered or relocated by the City, state or Washington Metropolitan Area Transit Authority at the cost of the Grantee and without liability for any resulting damage. The Grantee will do everything reasonably necessary, in a timely manner, to prevent any delays in construction projects of the City, the state or the Washington Metropolitan Area Transit Authority.

4. This Franchise may be assigned or transferred; provided, however, that Grantee shall provide notice to the City within thirty days after any filing with the Virginia State Corporation Commission seeking consent to such proposed transaction, as further set forth in paragraph 62 of the Franchise.

5. The Grantee shall provide to the City a surety in the amount of \$500,000 in a form acceptable to the City, to ensure completed construction of the fiber-to-the premises network. Upon completion of the construction of the network, the Grantee shall provide to the City a \$250,000 surety in a form acceptable to the City.

6. The Grantee will obtain liability insurance to the satisfaction of the city attorney, which insurance shall name the City as an additional insured.

7. The Grantee will not use the privileges granted by this Franchise to provide the functional equivalent of a cable system or cable service as defined in sections 9-3-17 and 9-3-18 of the Alexandria City Code.

8. With respect to the construction and placement of the fiber-to-the premises network as permitted by this Franchise, the Grantee shall comply with the conditions as set forth in the Franchise, including but not limited to those set forth in paragraph 21 of the Franchise.

9. The Grantee shall protect all property of the City or any other person during any work of designing, constructing, maintaining, or operating its system in or adjacent to the public rights-of-way or other public place, and shall fully restore, in kind, any property damaged or destroyed during any such work as set forth in paragraph 34 of the Franchise.

Section 4. That the city manager be and hereby is authorized to execute such documents as may be required to effectuate the Franchise hereby granted.

Section 5. That the city clerk be and hereby is authorized to attest the execution of said documents and to affix thereon the official seal of the City of Alexandria, Virginia.

Section 6. That this ordinance shall become effective on the date and at the time of its final passage.

WILLIAM D. EUILLE  
Mayor

Attachment: Telecommunications Franchise Agreement

Final Passage: June 13, 2009

## TELECOMMUNICATIONS FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is entered into this first day of July 2009, by and between the City of Alexandria, Virginia (a municipal corporation and a political subdivision of the Commonwealth of Virginia) (the "City"), and Verizon Virginia Inc. (the "Grantee").

WHEREAS, the City has the authority to grant franchises and other authorizations for the use and occupancy of the Public Rights-of-Way;

WHEREAS, the Grantee currently owns and operates a Telecommunications System in the City, and uses the Telecommunications System to provide Telecommunications Services;

WHEREAS, as part of its Telecommunications System, the Grantee desires to construct an FTTP Network (as hereinafter defined) in order to provide Telecommunications Services and other services in the City;

WHEREAS, the Grantee desires to obtain a telecommunications franchise to use and occupy the Public Rights-of-Way for the purpose of the Construction and Maintenance of Grantee's Telecommunications System;

WHEREAS, the Public Rights-of-Way are a valuable public resource that have required and will continue to require substantial investment by the City;

WHEREAS, consistent with applicable law, the City desires to minimize inconvenience and disruption to the public, provide for the orderly and efficient use of the Public Rights-of-Way now and in the future, preserve adequate capacity for existing and future uses of the Public Rights-of-Way, and obtain fair and reasonable compensation for the use of the Public Rights-of-Way;

WHEREAS, the City intends to exercise, to the fullest extent permitted by applicable law, including without limitation Sections 15.2-2100 and 56-462 of the Code of Virginia, its authority with respect to the regulation of the occupation and use of the Public Rights-of-Way in connection with the Construction and Maintenance of the Grantee's Telecommunications System and FTTP Network;

NOW, THEREFORE, the City hereby grants a telecommunications franchise to Grantee subject to the following terms and conditions:

### ARTICLE I

#### DEFINITIONS

1. Definitions. The following terms, as used in this Agreement, have the following meanings, with all terms defined in the singular to have the correlative meaning when used in the plural and vice versa:

(a) "Agreement" means this Telecommunications Franchise Agreement.

(b) "Cable Services" means "cable services" as defined in Section 602(6) of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as may be further amended from time to time (the "Cable Act").

(c) "City" means the City of Alexandria, Virginia.

(d) "Code of Virginia" means the 1950 Code of Virginia, as amended, and as it may be further amended from time to time.

(e) "Communications Act" means the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 and as it may be further amended from time to time.

(f) "Construction" means the installation, construction, and material expansion of any Facilities.

(g) "Director" shall mean any director of the City's Department of Transportation and Environmental Services or the Director's designee.

(h) "Effective Date" means July 1, 2009.

(i) "Emergency" means a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential telecommunications services.

(j) "Facilities" means the tangible components of the Telecommunications System and the FTTP Network, including without limitation all cables, optical fiber, poles, wires, customer service connections, electrical conductors, conduits, ducts, manholes, fixtures, appliances and appurtenances that are placed or maintained by the Grantee within the Public Rights-of-Way and used for purposes permitted by this Agreement.

(k) "FCC" means the Federal Communications Commission.

(l) "FTTP Network" means a fiber-to-the-premises network to be constructed by Grantee, capable of providing voice, video and high speed data services.

(m) "Franchise" means the authorization to occupy and use the Public Rights-of-Way granted by this Agreement.



(n) "Grantee" means Verizon Virginia Inc., a Virginia public service corporation, and its lawful successors, transferees, and assigns.

(o) "Like-for-Like" means the installation or relocation of Facilities in a like or similar manner of construction when compared to previously installed Facilities. For example, placement of Facilities above-ground using aerial construction in locations where existing Facilities are constructed above ground (aerial-to-aerial) or the placement of Facilities underground, in locations where existing Facilities are constructed underground are "Like-for-Like"; in the case of underground Facilities, conduit installations are to be replaced by conduit, and direct burial installations (where permitted) are to be replaced by direct burial.

(p) "Maintenance" shall mean the maintenance, repair, replacement (including upgrades and non-material expansion) and removal of Facilities.

(q) "Person" means an individual, corporation, partnership, association, trust or any other entity or organization, including a governmental or political subdivision, including the City, or an agency or instrumentality thereof.

(r) "Place and Maintain" or "Placement and Maintenance" means to install, place, construct, maintain, operate, upgrade, expand, repair, replace or remove Facilities.

(s) "PROW Use Fee" means the Public Rights-of-Way Use Fee that the City has imposed pursuant to Section 56-468.1 of the Code of Virginia.

(t) "Street Improvement" means the erection, construction, reconstruction, repair, upgrade, replacement, installation, maintenance, removal, widening, or related work performed in connection with streets, sidewalks, alleys, avenues, lanes, boulevards, or roads.

(u) "Public Rights-of-Way" means the surface and area across, in, over, along, upon, and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including utility easements, waterways, or other public places used as public rights-of-way, as the same now or may hereafter exist, which are under the jurisdiction or control of the City. The term Public Rights-of-Way excludes private property and private easements. Public Rights-of-Way does not include the airways above a right-of-way used for broadcast, cellular mobile radio service, satellite or other wireless services.

(v) "Structures" includes buildings, signs, fences, tanks, poles, lines, fixtures, facilities, and any other tangible property or appurtenances of the City.

(w) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(x) "Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the

public, regardless of the facilities used. The term "Telecommunications Services" shall not include Cable Services.

(y) "Telecommunications System" means the Facilities (including the FTTP Network), real property (including interests in real property), and all other tangible and intangible personal property, of Grantee located in, on, over or under the Public Rights-of-Way.

(z) "Term" has the meaning set forth in this Agreement.

## ARTICLE II

### GRANT OF AUTHORITY

2. Grant of Franchise. The City grants to the Grantee a Franchise (the "Franchise") to Place and Maintain Facilities within the Public Rights-of-Way of the City subject to the conditions of this Agreement. The Franchise does not grant authority to the Grantee to Place and Maintain Facilities on private property. Except as may be required by state or federal law, the Grantee is not authorized to sublicense or sublease to any Person the right to Place and Maintain Facilities in the Public Rights-of-Way for any purpose. Nothing in this Section is intended to prevent the Grantee from leasing its Facilities to any Person, provided that such Person is otherwise authorized under applicable federal, state and local law to engage in the activities in the Streets for which such Person is leasing the Facilities. The Grantee shall have no obligation under the preceding sentence to verify such authorization or monitor the activities of such Person.
3. Scope of Franchise. The Franchise authorizes the Grantee to Place and Maintain a Telecommunications System including the FTTP Network as necessary to provide Telecommunications Services. This Franchise does not grant authority to the Grantee to provide Cable Service within the City. Grantee shall have the right to provide additional services (in addition to Telecommunications Services but not including Cable Services), provided that the City reserves the right, in its sole discretion, to require a separate franchise for any such other services, to the extent consistent with state and federal law.
4. Term of Franchise. The Franchise commences on the Effective Date and expires twenty-five (25) years after the Effective Date (the "Initial Term"), unless the Franchise is renewed as provided in Section 5 of this Agreement or the Franchise is terminated as provided in Section 64 of this Agreement. The period of time that the Franchise is in effect is referred to as the "Term."
5. Renewal. Provided that the Grantee is not then in default under the terms of this Agreement, the Grantee shall have the option, subject to City Council approval and without unreasonable delay, to renew this Franchise for three (3) consecutive renewal terms of five (5) years each (each, an "Extended Term"). The Grantee shall notify the City of its desire to exercise any such renewal option at least six (6) months in advance of the expiration date set forth in Section 4 of this Agreement or the expiration date of the then applicable Extended Term, as the case may be. During any Extended Term, all of the terms and conditions of this Agreement shall remain in full

force and effect, unless the parties hereto otherwise mutually agree in writing to modifications. In compliance with Article VII, Section 9 of the Constitution of Virginia, in no event shall the sum of the Initial Term and any Extended Terms total more than forty (40) years.

6. Nonexclusive Franchise. Nothing in this Agreement affects the right of the City to grant any other Person a franchise to occupy and use the Public Rights-of-Way for the purpose of providing Telecommunications Services, or to engage in any other activity in the Public Rights-of-Way.
7. Right of City to Use Public Rights-Of-Way. Nothing in this Agreement affects the right of the City to occupy or use the Public Rights-of-Way in any fashion, except as otherwise expressly provided in this Agreement.
8. Use of City Structures. This Franchise does not grant to the Grantee use of City-owned Structures. The terms and conditions of the Grantee's use of any City-owned Structure shall be set forth in a separate ordinance, agreement, lease or other document, as appropriate.
9. Use of Grantee's Facilities. The Grantee and the City may enter into pole attachment, joint-use, or conduit lease agreements regarding use of Grantee Facilities. Grantee shall not charge the City for any Grantee Facilities being utilized by the City for traffic signaling, lighting, police, fire or any other public safety purposes as of the Effective Date. Grantee may choose to enter into an agreement and impose charges going forward for the use of additional Grantee Facilities not in use by the City as of the Effective Date.
10. Compliance with Laws. Except as specifically provided in this agreement, the Grantee shall comply with all local laws, rules, and regulations, and with all orders or other directives of the City issued pursuant to this Agreement or with respect to the City's management of its Public Rights-of-Way, subject to applicable law, including, without limitation, Subsection 56-462.C of the Code of Virginia. The City has the right to oversee, regulate and inspect the installation, upgrade, construction, repair, maintenance and removal of Facilities in the Public Rights-of-Way in accordance with the provisions of this Agreement and applicable law. The City reserves the right to adopt or issue such rules, regulations, orders or other directives governing the Grantee or Facilities as it shall find necessary or appropriate in the lawful exercise of its police power, and such other lawful orders as the City shall find necessary or appropriate relating to management of the Public Rights-of-Way. No rule, regulation, order or other directive issued pursuant to this Section 10 shall constitute an amendment to this Agreement.
11. Street Improvements. Grantee shall remove or relocate its Facilities within a Public Right-of-Way, at its own expense and within thirty (30) days of written notice provided by the City, or such longer time as reasonably necessary given the scope of the relocation work, whenever City, in its sole discretion, determines that the Facilities disturb or interfere or conflict with the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, avenues, roadways, or storm drainage systems. The City shall provide, at no cost to Grantee, permits and alternative space in the Public Rights-of-Way for such relocation of Facilities, provided that such alternative space need not be in the exact same Public Right-of-Way but shall be in reasonable proximity to the previous location, and such space shall be

reasonably economically and technologically feasible for their relocation of such Facilities. The City shall design its streets and related drainage systems to minimize the impact on Grantee facilities. The City shall work with the Grantee to modify designs as reasonably necessary to minimize the need to relocate Grantee facilities. Any relocation of Facilities shall be in a Like-for-Like manner. The City shall reimburse the Grantee for the additional cost to place or relocate facilities underground in locations where above-ground relocation would normally suffice. In addition, the City shall reimburse the Grantee for any such relocation expense if required by Section 56-468.2 of the Code of Virginia, as amended, or any other applicable law. If the Grantee refuses or neglects to relocate its Facilities within thirty (30) days, or such longer time as reasonably necessary given the scope of the relocation work, after a second written notice from the City, the City may relocate the Facilities and the Grantee shall pay to the City the reasonable, actual costs incurred in the relocation of Grantee Facilities.

12. Requested Relocation of Grantee Facilities. Except for Street Improvement relocation of Facilities as specified above, within sixty (60) day prior written request of any Person, or, in the discretion of the City, such longer time as reasonably necessary given the scope of the relocation work, Grantee shall remove, alter, or relocate Facilities, including the temporary raising or lowering of wires. The Grantee may impose a reasonable charge for any such movement of its Facilities and may require advance payment.
13. Regulatory Approvals. The Grantee shall obtain all necessary approvals from the appropriate federal and state authorities to offer Telecommunications Services by means of the Facilities, and shall, upon the City's request, submit evidence of such approvals to the City.
14. Rights-of-Way Closings. Nothing in this Agreement waives or releases the right of the City in and to the Public Rights-of-Way. If all or part of a Public Rights-of Way is eliminated, discontinued, closed or demapped in accordance with applicable law, the Franchise shall cease with respect to such Street upon the later to occur of (a) the effective date that such Streets become eliminated, discontinued, closed or demapped and any conditions specified by the City are met; or (b) in the case of any transfer of title to such Streets to a private Person, the closing date of such transfer. The City shall condition its consent to the elimination, discontinuance, closing or demapping on the agreement of any Person to (i) grant an easement with rights of ingress and egress, at no additional charge, to the Grantee the right to continue to occupy and use the Public Rights-of-Way and/or (ii) reimburse the Grantee for the reasonable costs of supporting, protecting, or relocating the affected Facilities.
15. Unauthorized Use. In the event of any use by the Grantee of any property owned by or dedicated to the City that is not authorized by this Agreement, Grantee shall, immediately upon notice by the City, cease the use and remove all Facilities associated with the use. In addition, Grantee shall pay to the City a sum of five hundred dollars (\$500.00) for each day that the willful unauthorized use occurs.

### ARTICLE III

### COMPENSATION

16. Public Rights-of-Way Use Fee. The City has imposed a PROW Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia. The City reserves the right to impose at any time on the Grantee any other fee or payment as may be allowed by federal or state law. Grantee shall pay the PROW Use Fee, and any other fee or payment permitted to be imposed by state or federal law and duly enacted or levied in accordance with applicable law. The City has provided the Grantee appropriate notice of the PROW Use Fee as required by Section 56-468.1(G) of the Code of Virginia. If the PROW Use Fee is eliminated, discontinued, preempted or otherwise is declared or becomes invalid, the Grantee and the City shall negotiate in good faith to determine fair and reasonable compensation to the City for use of the Streets by the Grantee for Equipment to provide Telecommunications Services.
17. No Credits or Deductions. The compensation and other payments to be made: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any and all taxes or other fees or charges that the Grantee is required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Grantee.
18. Reservation of Rights. No acceptance of any compensation payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the City.
19. Remedy for Underpayment. If (a) as a result of an audit or any other review, the City determines that the Grantee has underpaid fees for use of the Public Right-of-Way (or has underpaid the PROW Use Fee which the Grantee has received from Subscribers) in any twelve (12) month period by 10% or more, but less than Five Thousand Dollars (\$5,000.00), (b) the City and the Grantee had resolved the issue previously in a prior audit or review, and (c) the Grantee has had a reasonable opportunity to cure, then in addition to making full payment of the relevant obligation, the Grantee shall reimburse the City for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants and other consultants.
20. Continuing Obligation and Holdover. If the Grantee continues to use Facilities to provide Telecommunications Services after the Term, then the Grantee and the City shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution. If this Agreement terminates for any reason whatsoever (other than a judicial or legislative determination that the compensation set forth in Section 16 of this Agreement is invalid) and the Grantee fails to cease using the Facilities in the Public Rights-of-Way to provide Telecommunications Service, the City, in addition to all other remedies available to it under this Agreement by law, shall be entitled to

receive all payments it is entitled to receive under this Agreement, including, but not limited to, the compensation set forth in Section 16 of this Agreement for so long as the Grantee has Facilities in the Public Rights-of-Way.

#### ARTICLE IV

#### FTTP NETWORK CONSTRUCTION

21. Placement of FTTP Facilities. Notwithstanding any provision of the Code of the City of Alexandria, 1981, as amended, including but not limited to Sections 5-3-1, et. seq. and 9-3-122 (Utility Services to be Placed Underground) thereof, the City grants to the Grantee the right to Construct the FTTP Network subject to the following conditions:
- (a) Where Grantee's facilities are underground, Grantee shall install its FTTP Network underground;
  - (b) Where Grantee's facilities are already aerial, Grantee shall not be required to place new fiber facilities underground along any street where another utility has non-abandoned aerial facilities, including streets where the pole lines may be on opposite sides of the street;
  - (c) Grantee may install new fiber optic cables on any pole where another utility or the City has non-abandoned cables. Grantee shall not attach new fiber optic cables to street lighting fixtures, including "Gadsby" street lighting fixtures located within designated historic districts;
  - (d) On streets where all other companies' facilities are underground and Grantee's facilities are already aerial, Grantee shall place its new fiber optic facilities underground unless the cost to construct the facilities underground in a particular location exceeds two (2) times Grantee's average buried FTTP construction costs per household in Northern Virginia (not including Prince William and Loudoun counties);
  - (e) Grantee shall ensure that all aerial Facilities that cross a Public Right-of-Way or any private drive or other private property used for vehicular traffic that are installed after the Effective Date shall have a vertical clearance of at least sixteen (16) feet from the ground. Notwithstanding the foregoing, in cases in which the Grantee over lashes fiber optic cable in the course of Construction of the FTTP Network to existing cable strands that have a vertical clearance of less than sixteen (16) feet, the Grantee may retain such existing clearance, so long as such clearance does not pose a safety hazard.
22. FTTP Construction Surety. Prior to the Effective Date, the Grantee shall furnish the City with a form of surety to ensure faithful performance under this Agreement in the amount of Five Hundred Thousand Dollars (\$500,000.00) (the "FTTP Construction Surety"). The form of the surety may, at Grantee's option, be a letter of credit, cash deposit, cashier's check, or corporate surety materially in the acceptable form attached as Exhibit A. Grantee shall maintain the surety

in place until Grantee has completed Construction of the FTTP Network. Upon completion of Construction of the FTTP Network, Grantee shall provide the City with written notice, and the City shall return or release the FTTP Construction Surety within thirty (30) days thereafter, provided that Grantee shall thereupon provide any other form of surety otherwise required by this Agreement or applicable law. The FTTP Construction Surety shall be deemed to satisfy any requirements of this Agreement or the City Code that would otherwise apply to the Construction of the FTTP Network.

23. Publicizing Proposed Construction and Other Work. Grantee shall publicize scheduled work related to the underground or buried Construction of the FTTP Network by providing written notice of such work to the Director at least thirty (30) days before the commencement of such work. No later than ten (10) days prior to beginning construction, the Grantee shall provide a first notification to those Persons affected by such Construction. Grantee shall provide a second notification not less than three (3) days prior to Construction. In its discretion, Grantee may provide notice to all affected Persons by means such as door hangers, direct mail or bill inserts. Upon request of the Director, Grantee shall hold community meetings, which shall be scheduled with the assistance of the Director and other City agencies, as reasonably necessary to provide the community notice of such planned Construction work. In addition, the Grantee shall notify affected Persons by mail, distribution of flyers and/or door hangers to residences to provide adequate notice to affected Persons. The Director shall approve the notification before it is distributed to the affected Persons to insure, at a minimum, that adequate information is provided to notify the affected Persons of the Construction work that is to be undertaken, together with the name and telephone number of a contact person designated by Grantee to respond to questions that affected Persons may raise. In addition to the above, the Grantee shall make a reasonable effort to contact the property owner or in the case of residential property, the property occupant.
24. FTTP Network Construction Permits. The City will work with the Grantee to ensure an effective and efficient construction permit approval process. The City shall respond to Grantee Construction Permit applications as soon as practicable and not less than fifteen (15) days from the date of submission by the Grantee. If the permit is approved, the Grantee may proceed with construction. If a permit is denied, the City shall describe in writing why the permit was reasonably denied and specify any required plan modifications or additional information necessary for approval. The City shall respond to the resubmission of a previously denied construction permit within five (5) business days of the resubmission. All construction permits shall remain open for one hundred and eighty (180) days, and the City shall grant reasonable sixty (60) day extensions for good cause. Construction permits, along with any required traffic control plans, shall be approved within the time frames above, and there shall be no separate approval process for traffic control plans.
25. Parking Permits for FTTP Network Construction. The City shall provide the Grantee with parking permits at specific locations for FTTP Construction work, at the customary fee for such permits.
26. Geographic Area for FTTP Permits. The City shall approve FTTP construction permits up to a distance not to exceed ten thousand (10,000) feet, as reasonably necessary, to install longer fiber-optic spans between network connection points.

27. FTTP Network Deployment Plan.

- (a) At least (30) days prior to deployment of the FTTP Network, Grantee shall make available for inspection by the Director a proprietary and confidential FTTP Network Deployment Plan which shall describe or otherwise show each of the Public Rights-of-Way in which Grantee intends, to the best of its knowledge at the time, to construct the FTTP Network during the twelve (12) months following the plan's submission, the type of Facilities Grantee intends to construct in each such Public Right-of-Way, and the approximate date on which Grantee intends to begin construction in each Public Right-of-Way. Such inspection shall take place at a mutually agreed upon and convenient location. The City may review any and all documents, but shall not copy, duplicate or otherwise make notations regarding specific details of the proprietary and confidential FTTP Network Deployment Plan. Such FTTP Network Deployment Plan shall be non-binding, but shall represent a reasonable projection by the Grantee of the activities it anticipates undertaking over the subsequent year. The City agrees to hold in confidence, to the maximum extent permitted by law, any information it receives from Grantee under its FTTP Network Deployment Plan which, at the time that it is made available for review by the City and is marked "proprietary information confidential." If the City receives a demand from any Person or governmental entity for disclosure of any information identified as "Confidential" pursuant to this Section, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request prior to granting the Person or governmental entity access to such information.
  
- (b) Grantee shall within a reasonable time period review any comments submitted, and shall respond within a reasonable time period to any questions posed, by the Director with respect to FTTP Network Deployment Plan. In the event that, during a twelve (12) month period covered by the FTTP Network Deployment Plan, Grantee makes significant changes in its anticipated routes, Grantee shall promptly provide for inspection to the Director any amendments to the FTTP Network Deployment Plan covering such changes.

ARTICLE V

GENERAL CONSTRUCTION REQUIREMENTS

28. Construction Permitting. All Construction in the Public Rights-of-Way by the Grantee shall be subject to the City's general permit requirements, and Grantee shall comply with all reasonable requirements established by the Director. Grantee shall, at the time it applies for a Construction permit, submit to the Director the accompanying information which (a) shall identify the specific



location within each Public Rights-of-Way in which the proposed Construction is to take place, (b) shall describe the Facilities to be installed in each Public Rights-of-Way and the Construction techniques to be used in accomplishing the installation, (c) shall provide any required traffic control plan that shall be reviewed and approved by the Director, (d) shall state, as to each Public Right-of-Way, the dates on which the proposed Construction is to commence and on which the proposed Construction is anticipated to be completed, (e) shall verify that Grantee has obtained, or will obtain prior to commencing the Construction, approval of the placement of the Facilities and any required permits from any other entity (not including departments or agencies of the City) whose approval is required by law, and (f) shall provide other reasonable information the Director reasonably requests. The Director shall have the discretion, which is to be reasonably exercised, to determine the timing of the proposed Construction, taking into account the dates requested by the grantee and other planned and/or on-going construction work in the affected Public Rights-of-Way. Grantee agrees that Construction of Facilities in Public Rights-of-Ways shall be done in such locations and in such manner so as not to unreasonably interfere with existing water, gas, sewer pipes, traffic signal, street light and other utilities and conduits in the Public Ways, or with the public's use of the Public Ways, and shall, to the maximum degree feasible, be coordinated with any construction being simultaneously undertaken at the same location by another provider of telecommunications or of cable service or by a provider of utilities.

29. Maintenance in Arterial Rights-of-Way. Grantee may perform Maintenance on Facilities located in or along Arterial Rights-of-Way from time to time without prior approval of the Director as long as neither the component of the Facilities being worked on, nor any of the Facilities or workers involved in such Maintenance are located on the travel, parking, curb or sidewalk portion of the Arterial Rights-of-Way. The Arterial Rights-of-Way are designated by the City. The City has provided the Grantee with a current listing of designated Arterial Rights-of-Way, and shall provide updates to the listing upon Grantee request. At least thirty (30) days prior to performing Maintenance on any Facilities while located on the travel, parking, curb or sidewalk portion of the Arterial Rights-of-Way, Grantee (i) shall inform the Director in writing of the location at which it intends to perform such Maintenance, (ii) shall provide reasonable information the Director requests, and (iii) shall obtain either a verbal or written approval of the Maintenance from the Director or their designee. In performing Maintenance, Grantee shall comply with all reasonable requirements established by the Director.
30. Maintenance in Non-Arterial Rights-of-Way. Grantee may perform Maintenance on Facilities located in the Public Rights-of-Way, other than Arterial Rights-of-Way, without prior approval of the Director. In performing Maintenance, Grantee shall comply with all reasonable requirements established by the Director.
31. Customer Service Connections. To meet in-service and repair requirements of state and local regulatory authorities, at the request and with permission of the respective property owners, Grantee may Construct or Maintain customer service connections or "drops", which provide connectivity between the Grantee network Facilities located in the Public Rights-of-Way with customer premises located on private property, without prior approval of the Director.

32. Tree Trimming. The Grantee may trim trees that overhang a public right-of-way so as to prevent the branches of such trees from coming in contact with Grantee Facilities. However, no tree trimming by Grantee may take place except pursuant to a tree trimming plan that has been reviewed and approved by the City Arborist. Tree trimming may only be performed by persons holding a "Certified Arborist" certification issued by the International Society of Arboriculture (ISA).
33. Removal. Grantee may, at any time, in the exercise of its sole and absolute discretion, remove any or all of the Facilities from the Public Rights-of-Way. When performing any aspect of removal where the Facilities being worked on or any of the equipment or workers involved in the removal are located on the travel, parking, curb or sidewalk portion of a street, or any other portion of the Public Rights-of-Way, Grantee shall comply with all procedures applicable to Maintenance, as set forth above in Section.
34. Damage to the Public Rights-of-Way and Other Property by Grantee.
  - (a) If, in the course of Construction or Maintenance or otherwise dealing with any of the Facilities, Grantee damages any pavement, street, alley, sidewalk, sewer, water or other pipe, in or adjacent to the Public Rights-of-Way, or any other public property, real or personal, belonging or dedicated to the City, Grantee shall promptly repair the same to its preexisting condition at its own cost and expense. If winter weather conditions or the availability of materials delay permanent pavement restoration, the Grantee shall make an acceptable temporary patch. When weather conditions permit or materials become available, the Grantee shall make permanent restoration as noted above. Grantee shall also maintain such temporary patches until a permanent repair is completed. If Grantee shall default in this obligation, the City may cure the default itself, and may charge to Grantee the reasonable cost it incurs in curing the default; provided, that prior to performing any work to cure a default, the City shall give Grantee written notice of the default and a period of ten (10) business days from the date of the notice in which to initiate action to cure the default and a period of forty-five (45) days in which to complete the cure; provided further, that these ten (10) and forty-five (45) day periods will be extended by the Director for a reasonable amount of time if a cure of the default cannot reasonably be commenced, or the default cannot reasonably be cured, within such periods respectively, and Grantee has diligently pursued commencement of, or completion of, a cure during the period as applicable. Notwithstanding the foregoing, if the Director determines, in his sole discretion consistent with applicable law, that the damage threatens the public health or safety, the City may commence the repair of the damage and assess its costs upon Grantee; provided, that, prior to commencing such repair work, the City shall make a reasonable effort to provide Grantee with telephonic notice and an opportunity to immediately repair the damage itself. In the event the Grantee is unable to, or otherwise fails to, repair the damage within the time frames noted above and the City performs the repair work, the City shall, immediately upon completion of the work, provide the Grantee with written notice of the work it has performed, and also shall, reasonably soon after the completion of the work, provide the Grantee with a statement of the reasonable costs the City incurred in performing the work.

- (b) The Grantee shall repave or resurface the Public Rights-of-Ways in accordance with the then-current standards set forth by the Director if there are any street cuts or other disturbances of the surface of the Public Rights-of-Way as a result of any Construction or Maintenance by the Grantee under this Agreement.
  - (c) Any costs assessed upon the Grantee under this section shall be paid to the City within thirty (30) days of the assessment.
35. Safety Precautions. Grantee shall maintain in good and safe condition all Facilities it places within Public Rights-of-Ways. The Grantee shall, at its own cost and expense, undertake to prevent accidents at its work sites in, at or on the Public Rights-of-Way, including the placing and maintenance of proper guards, fences, barricades, watchmen and suitable and sufficient lighting, in accordance with federal and state law.
36. Quality. All work involved in the Placement and Maintenance of Facilities shall be performed in a safe, thorough and reliable manner in accordance with industry, professional, state and federal mandated standards and using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any Facilities violate any health or safety law or regulation, then the Grantee shall, at its own cost and expense, promptly correct all such conditions.
37. No Obstruction. Except for Emergencies or routine Maintenance in a Non-Arterial Right-of-Way or Customer Service Connection work, the Grantee shall not obstruct traffic to any street, road, or other Public Rights-of-Way within the corporate limits of the City without the prior consent of the City. Facilities of the Grantee in the Public Rights-of-Way shall be located so as to cause minimal interference with any use of the Public Rights-of-Way and adjoining property.
38. Emergency. During emergency situations, the Grantee may take all reasonable measures to restore service and alter its Facilities as necessary to ensure the safety of the residents of the City. As soon as practicable, the Grantee shall notify the Director or their designee of any emergency necessitating an obstruction. Grantee shall coordinate its activities in responding to the emergency with the Director or his or her designee.
39. Restoration. The Grantee shall, at its own cost and expense, replace, repair or restore any damaged property as close as reasonably possible to its prior condition. The Grantee shall be liable, at its own cost and expense, to reasonably replace or repair any Structure, or Public Right-of-Way that is disturbed or damaged as a result of the Grantee's activities, within a reasonable time, to the condition that existed prior to the commencement of Grantee's activities. If winter weather conditions or the availability of materials delay permanent pavement restoration, the Grantee shall make an acceptable temporary patch. When weather conditions permit or materials become available, the Grantee shall make permanent restoration as noted above. If Grantee does not commence replacement or repair within a reasonable time period as agreed to by the parties and after notice by the City to the Grantee, the City may make such replacement or repair and the Grantee shall pay the reasonable cost of the same.

40. Protection of the Public Rights-of-Way. In connection with the Construction and Maintenance of Facilities by Grantee, the Grantee shall, at its own cost and expense, protect the Public Rights-of-Ways and any City-owned Structures thereon, there under or there over, and shall obtain the prior approval of the City, pursuant to this Agreement, before altering the Public Rights-of-Way or any such Structures. Any such alteration shall be made by the Grantee, at its sole cost and expense, in a manner prescribed by the City to protect the Public Rights-of-Way and any City-owned Structures thereon. The Grantee shall be liable, at its own cost and expense, to replace or repair, in a manner as may be reasonably specified by the City, any Public Right-of-Way or City-owned Structure thereon, thereunder or there over that may become disturbed or damaged as a result of the installation, upgrade, construction, repair, maintenance and removal thereof; provided, however, that: unless otherwise required by applicable law, the Grantee shall not be obligated to install or provide any unreasonable betterment or upgrade that would exceed the characteristics of such Public Right-of-Way or City-owned Structure prior to the disturbance or damage by the Grantee. The Grantee shall warrant for one (1) year, commencing on the date the work is approved by the City, that any such replacement or repair (excluding trees, grass and other plantings) conforms to written City specifications and requirements made available to the Grantee. If the Grantee does not commence such replacement or repair after thirty (30) days notice or reasonable time frame given the scope of work and availability of materials, the City may make such replacement or repair and the Grantee shall pay the reasonable cost of the same.

## ARTICLE VI

### REPORTS AND RECORDS

41. Reports. At the request of the City, and subject to the terms of Section 43, the Grantee shall submit to the City, within a reasonable period of time, such information, as maintained in the ordinary course of business, as the City may reasonably require to verify compliance with the terms of this Agreement.
42. Books and Records. To the extent reasonably necessary to determine the Grantee's compliance with this Agreement or to carry out the City's authority to manage the Public Rights-of-Way, throughout the Term, the Grantee shall make available to the City for inspection within thirty (30) business days' notice to the Grantee, such complete and accurate books of account, records, documents and other information as the City may reasonably need with respect to the Facilities, including, without limitation, books of account, records, documents and other information adequate to enable the Grantee to demonstrate, at all times throughout the Term that it is, and has been, in compliance with the terms of this Agreement and the terms of Section 56-468.1 of the Code of Virginia, providing for a Public Rights-of-Way ("PROW") Use Fee. If such books, records, documents and other information are located outside the corporate limits of the City, the Grantee shall provide copies of the necessary books, records, documents and other information for inspection at a Grantee location within a one hundred twenty (120) mile radius of the City, or the Grantee shall pay the reasonable travel costs and expenses of the representatives designated by the City to examine such books, records, documents and other information in a location

outside a one hundred twenty (120) mile radius of the City. All such documents that pertain to the PROW Use Fee that may be the subject of an audit by the City shall be retained by the Grantee for such period of time as is set forth in the statute of limitations applicable to the fee or tax at issue.

43. Treatment of Proprietary Information. Access by the City to any of the documents, records or other information covered by this Agreement shall not be denied by the Grantee on grounds that such documents, records or information are alleged by the Grantee to contain Proprietary Information. For purposes of this Agreement, "Proprietary Information" means that portion of documents, records or other information which is in the possession of the Grantee which is not generally available to the public and which the Grantee desires to protect against unrestricted disclosure or competitive use. If the Grantee claims that documents, records or other information requested by the City contain Proprietary Information, the City agrees to review the Proprietary Information at the Grantee's premises and, in connection with such review, to limit access to the Proprietary Information to those individuals who require the Information in the exercise of the City's rights under this Agreement. The City will not remove any Proprietary Information from the Grantee's premises or record any Proprietary Information, by making copies or written notes containing verbatim information, and, to the extent permitted by applicable law, the City will not disclose Proprietary Information to any Person. All documents, records or other information which is disclosed by the Grantee to the City and which the Grantee claims is Proprietary Information shall be labeled as "Proprietary" if such information is in writing, and if such information is oral, it shall be identified as "Proprietary" prior to disclosure. The labeling of documents, records or other information as "Proprietary" shall be the sole responsibility of the Grantee. The protections offered to the Grantee by this Section shall not apply to documents, records or other information which: (a) are made public or become available to the public other than through a disclosure by the City; (b) are already in the possession of the City prior to the Effective Date; (c) are received from a third party without restriction; (d) are independently developed by the City; or (e) are disclosed pursuant to a valid court order or applicable law.

## ARTICLE VII

### LIABILITY AND INSURANCE

44. Insurance Specifications. Throughout the term, the Grantee shall, at its own expense, maintain a liability insurance policy or policies, together with evidence acceptable to the City demonstrating, through a certificate of insurance, that the Grantee is maintaining the insurance required by this section. Such policy or policies shall be issued by companies duly authorized or permitted to do business in the Commonwealth of Virginia. Such companies must carry a rating by Best of not less than "A-". Such policy or policies shall be commercial general liability policy and shall (i) insure the Grantee and (ii) include the City and its officers, boards, commissions, councils, elected officials and agents as an additional insured as their interest may appear (through the certificate of insurance) in the minimum combined amount of five million dollars (\$5,000,000.00) combined single limit for bodily injury and property damage. Limits may be attained by a combination of primary and excess/umbrella liability insurance. The

foregoing minimum limitation shall not prohibit the Grantee from obtaining a general liability insurance policy or policies in excess of such limitations. The Grantee shall furnish the City with a certificate of insurance evidencing the aforesaid insurance coverage and including the City, its officers, boards, commissions, councils, elected officials and agents as additional insureds as their interest may appear on the liability policy or policies required. In addition, the City shall be shown in the aforesaid as certificate holder. The certificate shall contain a provision stating that the insurer or its authorized representative(s) shall endeavor to provide thirty (30) days prior written notice of intent to non-renew, cancellation or material adverse change, except ten (10) day notice for nonpayment of premium shall apply.

45. Insurance – Maintenance. The liability insurance policies required above shall be maintained by the Grantee throughout the Term and such other period of time during which the Grantee operates or is engaged in the removal of Facilities. Within thirty (30) days after the date of cancellation of insurance, the Grantee shall obtain and furnish to the City a certificate of insurance evidencing replacement of the insurance required by this Agreement. Such certificate shall show continuous insurance coverage from the date of cancellation of prior insurance forward.

46. Increased Insurance Coverage. In the event of any changed circumstances following the Effective Date related to the activities of the Grantee in the Public Rights-of-Ways, which materially affect the risks associated with the activities of the Grantee permitted or authorized by the City, after consulting with the Grantee, may alter the minimum limitation of liability insurance policy or policies or other evidence of insurance.

47. Indemnification.

(a) Grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, and its officers, employees and agent from and against any and all losses and any and all claims, suits, actions, liability and judgments for damages or other relief arising out of the installation, construction, operation or maintenance of the Grantee's Facilities, including but not limited to any claim for bodily injury or for property damage. The indemnity obligation of the Grantee under this section shall include, but is not limited to, providing legal representation and otherwise defending the City and City officers, employees and agents against any claim, suit, or action covered by this indemnification. The City shall provide the Grantee with prompt notice of any loss, claim, suit or action covered by this indemnification.

(b) If a suit or action for which the City or its officers, employees and agents are entitled to be indemnified and held harmless under subsection (a) shall be brought against the City or one or more of its officers, employees or agents, either individually or jointly with the Grantee, the Grantee shall defend, indemnify and hold harmless the City and the sued officers, employees and agents at the sole cost and expense of the Grantee. The City shall promptly provide the Grantee with written notice of the commencement of any such suit or action. The Grantee

shall conduct the defense of such suit or action. The City may also participate in this defense directly, at its own expense.

- (c) If a final judgment is obtained against the City or one or more of its officers, employees or agents in a suit or action, either independently or jointly with Grantee, for which the City and its officers, employees and agents are entitled to be indemnified and held harmless under this section, Grantee shall pay every judgment, including all costs and attorneys' fees, entered against the City and any of its officers, employees and agents.
- (d) The Grantee shall be entitled to settle a claim brought in a suit or action for which the City and its officers, employees and agents are entitled to be indemnified and held harmless under subsection (a), provided that the Grantee must obtain the prior written approval of the City for any settlement of such claims against the City, which approval shall not be unreasonably withheld or unreasonably delayed.
- (e) The indemnities in this section shall survive the expiration of or earlier termination of this Agreement for a period of five (5) years.

48. Liability not Limited. The legal liability of the Grantee to the City and any Person for any of the matters that are the subject of the liability insurance policies or other evidence of insurance required above, including, without limitation, the Grantee indemnification obligations as set forth in this Agreement, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by Grantee.
49. Liability of City. Neither the City nor its officials, employees, agents, attorneys, consultants or independent contractors shall be responsible to the Grantee for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any Facilities by or on behalf of the Grantee or the City in accordance with this Agreement or in connection with any emergency related to the health and safety of the public. The City and its officers, employees and agents shall have no liability to the Grantee, any Affiliated Person or any other Person for any other damages as a result of the exercise of any right of the City pursuant to this Agreement or applicable law, the rights of the City to approve or disapprove the grant, termination, amendment, renewal or transfer of the Franchise, or to otherwise modify all or any part of this Agreement or the Franchise. The City, its officers, employees and agents shall not be responsible for any liability of the Grantee, any Affiliated Person or any other Person, arising out of or in connection with acts or omissions of the Grantee or any officer, employee, agent or subcontractor thereof, in the Construction or Maintenance of Facilities or the provision of services by means of the Facilities. However, nothing in this Section shall waive any rights that the Grantee otherwise has against the City for any willful misconduct or negligent acts or omissions of the City.
50. Liability of Grantee. The Grantee shall be responsible for any liability, including, without limitation, any liability of the City and any officer, employee or agent of the City, arising out of or in connection with acts or omissions of the Grantee or any officer, employee, agent or

subcontractor thereof, in the installation, upgrade, construction, repair, maintenance and removal of Facilities or the provision of services by means of the Facilities. The Grantee shall at its own cost and expense, replace, repair or restore any of the City's damaged property to its prior condition if such damage is caused by any act or failure to act of the Grantee or any officer, employee, agent or subcontractor thereof, in connection with the Construction or Maintenance of Facilities or the provision of services by means of the Facilities.

51. Consequential Damages. Notwithstanding any other provision contained in this Agreement, in no event shall either party be liable for any special, incidental, consequential, indirect, or exemplary damages.

## ARTICLE VIII

### PERFORMANCE GUARANTEES

52. General Surety. Upon the release of the FTTP Construction Surety, the Grantee shall furnish the City with a form of surety to ensure faithful performance under this Agreement in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00). The form of the surety may, at Grantee's option, be a letter of credit, cash deposit, or cashier's check, as herein described. The General Surety shall be written by a corporate surety or bank reasonably acceptable to the City and authorized to do business in the Commonwealth of Virginia. Unless the City notifies the Grantee that a reasonable longer period shall apply, the Grantee shall maintain the General Surety in the amount specified in this section for one hundred twenty (120) days thereafter. Within sixty (60) days after the date of any notice of cancellation of the General Surety, the Grantee shall obtain and deposit with the City a replacement surety that complies with the requirements of this Section and that is reasonably acceptable to the City Attorney. Such replacement surety shall show continuous coverage as required by this Section from the effective date of cancellation of the prior surety forward.
53. Letter of Credit Form. Any surety provided hereunder in the form of a letter of credit shall be irrevocable and unconditional and in a form reasonably satisfactory to the City Attorney.
54. Additional Surety. In addition to the General Surety, the Director may also require the Grantee to submit additional surety in connection with specific Construction or Maintenance, in accordance with applicable law and the City's standard permitting procedures. The Grantee shall only be required to maintain such Additional Surety for the duration of such specific Construction or Maintenance.
55. Changed Amount. At any time during the Term, the City may, acting reasonably, require the Grantee to increase the amount of the General Surety if the City finds that new risks or other factors applicable to the Grantee's activities in the Public Rights of Way exist that reasonably necessitate or justify a change in the amount of the General Surety. Such new facts may include, but are not limited to, such matters as material changes in the Grantee's activities in the Public Rights-of-Way; material changes in the amount and location of Facilities; activities that require restoration resulting from Construction or other activities by Grantee located within the City's



Public Rights-of-Way, the Grantee's recent record of repeated non-compliance with the terms and conditions of this Agreement; and material changes in the amount and nature of Construction, Maintenance, or other activities to be performed by the Grantee in the Public Rights-of-Way pursuant to this Agreement.

56. Purpose of FTTP Construction Surety, General Surety and Additional Surety. The FTTP Construction Surety, General Surety and Additional Surety shall serve as security for:
- a. The faithful performance by the Grantee of all material terms, conditions and obligations of this Agreement; and
  - b. Any expenditure, damage, cost or loss incurred by the City occasioned by the Grantee's failure to comply with its obligations pursuant to this Agreement and/or with all rules, regulations, orders, permits and other directives of the City relating to Construction or Maintenance of the Facilities, or management of the Public Rights-of Way;
  - c. the removal of Facilities from the Public Rights-of-Way at the termination of the Agreement, at the election of the City, pursuant to Section 66 of this Agreement; and
  - d. any loss or damage to the Public Rights-of-Way or any property of the City during the installation, upgrade, construction, repair, maintenance and removal of Facilities.
57. Withdrawals from the FTTP Construction Surety or the General Surety. The City shall provide not less than thirty (30) days notice of the City's intent to make a withdrawal from Construction Surety or General Surety. If the surety is in the form of a letter of credit, cash deposit, or cashier's check, the City may make withdrawals from the FTTP Construction Surety or the General Surety for the satisfaction of obligations under this Agreement, or for the purposes specified in Section 56 of this Agreement. Withdrawals from the FTTP Construction Surety or the General Surety shall not be deemed a cure of the default(s) that led to such withdrawals. The City may not seek recourse against either the FTTP Construction Surety or the General Surety for any costs or damages for which the City has previously been compensated through a withdrawal from the FTTP Construction Surety or the General Surety or otherwise by the Grantee.
58. Notice of Withdrawals. The City shall give the Grantee at least ten (10) days' notice prior to making any withdrawal from the FTTP Construction Surety or the General Surety, provided, however, that the City shall not make any withdrawals by reason of any breach for which the Grantee has not been given notice and opportunity to cure prior to the notice required by this Section and any other provision of this Agreement. The withdrawal of amounts from the FTTP Construction Surety or the General Surety shall constitute a credit against the amount of the applicable liability of the Grantee to the City, but only to the extent of said withdrawal.
59. Replenishment of the FTTP Construction Surety or the General Surety. Within thirty (30) days after receipt of notice from the City that any amount has been withdrawn from the FTTP Construction Surety or the General Surety, the Grantee shall restore the FTTP Construction Surety or the General Surety to the amount specified in this Agreement, provided that, if a court

finally determines that said withdrawal by the City was improper, the City shall refund the improperly withdrawn amount to the FTTP Construction Surety or the General Surety or to the Grantee such that the balance in the FTTP Construction Surety or the General Surety shall not exceed the amount specified in this Agreement.

60. Not a Limit on Liability. The obligation to perform and the liability of the Grantee pursuant to this Agreement shall not be limited by the acceptance of either the FTTP Construction Surety or the General Surety required by this Article.
61. Public Safety. In case of fire, disaster or other emergency, or to correct an unsafe work condition, as determined by the City in its sole discretion, the City may cut or move Grantee Facilities as reasonably necessary to protect public health or safety. The City will make every reasonable effort to consult with the Grantee prior to any such cutting or movement of Facilities and the Grantee shall be given the opportunity to perform such work itself. The City shall have the obligation to protect Grantee's Facilities to the maximum extent reasonable under the circumstances. All costs to repair or replace such Facilities shall be borne by the Grantee.

## ARTICLE IX

### TRANSFERS

62. Change in Control or Transfer of Franchise. The Grantee, Verizon Virginia, Inc. is a wholly owned subsidiary of Verizon Communications Inc. In the event that (i) a change in Control of the Grantee, or (ii) a transfer of the Franchise or any rights thereunder, or (iii) a transfer of the rights and interests of the Grantee in the Telecommunications System, is proposed by the Grantee after the Effective Date, the Grantee shall provide notice to the City, within thirty (30) days after any filing with the Virginia State Corporation Commission seeking consent to such proposed transaction. The notice shall identify the Person that will acquire Control of the Grantee, or that will acquire the Franchise or the rights, interests or obligations of the Grantee in the System or the Equipment. The Grantee or its successor in interest shall continue to hold all required certificates of public convenience and necessity, or such other successor authorization, issued by the Virginia State Corporation Commission; and the Grantee or its successor in interest shall continue to be bound by the terms and conditions of this Agreement, including but not limited to, the provisions requiring the liability insurance policy and performance bond/security fund (Article VI and Article VII of this Agreement). For purposes of this Section, "Control" means ownership of twenty-five percent or more of the voting stock of the Grantee, or the actual exercise of any substantial influence over the policies and actions of the Grantee.
63. Permitted Encumbrances. Nothing in this Article IX shall be deemed to prohibit any assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the Facilities or any right or interest therein, for financing purposes, provided that the City's rights under this Agreement are in no way adversely affected or diminished. The consent of the City shall not be required with respect to any transfer to, or taking of possession by, any banking or lending institution which is a secured creditor of the Grantee of all or any part of the System pursuant to the rights

of such secured creditor the laws of the Commonwealth of Virginia, provided further that the City's rights under this Agreement are in no way adversely affected or diminished.

## ARTICLE X

### TERMINATION

64. Termination Events. The City, at its option, may terminate this Agreement upon any material breach of this Agreement by the Grantee that is not cured within thirty (30) days after the Grantee receives notice from the City, or such longer period of time as may be reasonable under the circumstances, provided the cure is commenced within the thirty (30) day period after notice from the City and the Grantee is proceeding with due diligence to complete such cure. A material breach shall include, but shall not be limited to, the following:

a. the condemnation by public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the Facilities, the effect of which would materially frustrate or impede the ability of the Grantee to carry out its obligations and the purposes of this Agreement, if the Grantee fails to demonstrate to the reasonable satisfaction of the City, within the thirty (30) day notice period provided above, that such condemnation, sale or dedication would not materially frustrate or impede such ability of the Grantee;

b. any denial, forfeiture or revocation by any federal, state or local governmental authority having regulatory jurisdiction over the Grantee of any material authorization required by law or the expiration without renewal of any such authorization, and such events, either individually or in the aggregate, have an adverse affect on the installation, upgrade, construction, repair, maintenance or removal of the Facilities, and the Grantee fails to take steps, within the thirty (30) day notice period provided above, to obtain or restore such authorization, and to diligently pursue such steps;

c. except as may be otherwise provided in this Agreement, any failure of the Grantee to maintain the insurance and/or corporate risk management program, if such program is applicable, substantially as required by Article VII of this Agreement;

d. any failure of the Grantee to maintain any form of surety required by this Agreement;

e. any failure of the Grantee to comply with the transfer notice set forth in Article IX of this Agreement;

f. any failure of the Grantee to comply with any material provision of this Agreement;

g. any abandonment of the entire Telecommunications System or FTTP Network; and

h. any persistent failure of the Grantee, after notice and an opportunity to cure with respect to substantially all such failures of the Grantee, to comply with any term,

condition or provision of this Agreement or any other ordinance, law, regulation, rule or order of the City relating to management of the Public Rights-of-Way in connection with installation, upgrade, construction, repair, maintenance and removal of Facilities.

65. Rights Upon Termination. Upon termination of the Agreement, the City shall have the right to direct the Grantee to remove all or any portion of the Facilities from the Public Rights-of-Way, at Grantee's sole cost and expense. The City shall allow the Grantee to abandon certain underground facilities in place if the City determines that removal of Facilities would cause an unreasonable disruption to the public Rights-of-Way.

66. Conditions of Removal. In the event the City directs the Grantee to remove any Facilities from the Public Rights-of-Way, the Grantee shall undertake such removal subject to the following:

a. in removing the Facilities, or part thereof, the Grantee shall refill and compact, at its own cost and expense, any excavation that shall be made by it and shall leave, in all material aspects, all Public Rights-of-Way and other property in as good condition as that prevailing prior to the Grantee's removal of the Equipment from the Public Rights-of-Way and without affecting, altering or disturbing in any way any electric or other cables, wires, structures or attachments;

b. the City shall have the right to inspect and approve the condition of such Public Rights-of-Way within one hundred twenty (120) days after notice such removal is completed, and, to the extent that the City determines that said Public Rights-of-Way and other property have not been left in materially as good condition as that prevailing prior to the Grantee's removal of the Facilities, the Grantee shall be liable to the City for the cost of restoring the Public Rights-of-Way and other property to said condition;

c. all of the surety, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all Public Rights-of-Way, and for not less than one hundred twenty (120) days thereafter; and

d. removal shall be commenced within sixty (60) days of the removal order by the City and shall be substantially completed within twelve (12) months thereafter including all reasonably associated repair of the Public Rights-of-Way.

67. Failure to Commence Removal. If, in the reasonable judgment of the City, the Grantee fails to commence removal of the Facilities within sixty (60) days after the City's removal order, or if the Grantee fails to substantially complete such removal, including all associated repair of the Public Rights-of-Way, within twelve (12) months thereafter, then, to the extent not inconsistent with applicable law, the City shall have the right to:

a. declare that all rights, title and interest to the Facilities belong to the City with all rights of ownership, including, but not limited to, the right to connect and use the Facilities or to effect a transfer of all right, title and interest in the Facilities to another Person for operation; or

b. authorize removal of the Facilities in the Public Rights-of-Way at the Grantee's cost and expense, by another Person.

68. Title to Facilities. To the extent consistent with applicable law, any portion of the Facilities designated by the City for removal and not timely removed by the Grantee shall belong to and become the property of the City without payment to the Grantee, and the Grantee shall execute and deliver such documents in form and substance reasonably acceptable to the City, to evidence such ownership by the City.

## ARTICLE XI

### SUBSEQUENT ACTIONS

69. Franchise Approval Consist with Applicable Law. By acceptance of the terms and conditions of this Agreement, the Grantee acknowledges and agrees that the processes and procedures pursuant to which this Agreement was entered into and the Franchise was granted are consistent with applicable law as of the Effective Date of this Agreement. "Applicable law" for purposes of this Article XI shall include federal, state and local statutes and regulations, and federal, state and local final, non-appealable judicial and administrative decisions. The Grantee shall at all times comply with all provisions in this Agreement and all lawful amendments and modifications to this Agreement.
70. Procedures in Event of Subsequent Invalidity. In the event that, after the Effective Date, any court, agency, commission, legislative body or other authority of competent jurisdiction (i) declares this Agreement invalid, in whole or in part, or (ii) requires the Grantee either to (A) perform any act that is inconsistent with any provision of this Agreement or (B) cease performing any act required by any provision of this Agreement, including any obligations with respect to compensation or other financial obligations pursuant to this Agreement, then the Grantee shall promptly notify the City of such fact. Upon receipt of such notification, the City and the Grantee, acting in good faith, shall each determine whether such declaration or requirement has a material and adverse effect on this Agreement. Regardless of the City's or the Grantee's determination or the length of time that such determination may take, the Grantee may comply with such declaration or requirement, and such compliance will not be considered a breach or default of this Agreement. If the City and the Grantee, acting in good faith, agree that such declaration or requirement does not have a material and adverse effect on this Agreement, then the Grantee shall continue to comply with such declaration or requirement. If either the City or the Grantee, acting in good faith, determines that such declaration or requirement does have such an effect or that compliance with such declaration or requirement by the Grantee would materially frustrate or impede the ability of the Grantee to carry out its obligations pursuant to, and the purposes of, this Agreement, then the Grantee and the City shall enter into good faith negotiations to amend this Agreement. If the Grantee or the City fails to negotiate in good faith to produce an agreement which is reasonably acceptable to both the City and the Grantee, then the Grantee or the City may accelerate the expiration of the Term so that the Term shall expire on a date determined by the party accelerating the Term not less than six (6) months after such

determination. In the event there are six (6) months or less remaining in the Term, this Section 57 shall not operate to extend the Term.

## ARTICLE XII

### MISCELLANEOUS

71. Delays and Failures Beyond Control of Grantee. Notwithstanding any other provision of this Agreement, the Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, strike or labor unrest, act of public enemy, accident, fire, flood or other act of God, terrorism, sabotage or other events, where the Grantee has exercised all due care in the prevention thereof, to the extent that such causes or other events are beyond the reasonable control of the Grantee, and such causes or events are not the result of the fault or negligence of the Grantee. If such delay in performance or failure to perform affects only part of the Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). The Grantee agrees that in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible.

72. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations, or other direction or communication hereunder by any party to another shall be in writing sent to the following address:

City: Alexandria City Hall  
Attention: City Manager  
301 King Street  
Alexandria, Virginia 22314

With a copy to: Alexandria City Hall  
Attention: City Attorney  
301 King Street  
Alexandria, Virginia 22314

Grantee: Verizon Virginia Inc.  
Attention: Vice President and General Counsel  
703 E. Grace St., 7th floor  
Richmond, VA 23219

73. Additional Representations and Warranties. In addition to the representations, warranties, and covenants of the Grantee to the City set forth elsewhere in this Agreement, the Grantee represents and warrants to the City and covenants and agrees (which representations, warranties,

covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City) that, as of the Effective Date

a. Organization, Standing, Power, Authorization and Enforceability. The Grantee is a public service corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and is duly authorized to do business in the Commonwealth of Virginia and the City of Alexandria. The Grantee has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby, and if it is conducting business in another jurisdiction, it is in good standing as a foreign corporation in each jurisdiction in which it conducts business.

b. The execution, delivery and performance of this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Grantee and its Guarantor(s), and this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Grantee and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Grantee and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms.

c. Consent. No consent, approval or authorization of, or declaration or filing with, any public, governmental or other authority (including, without limitation, the FCC or any other federal agency or any state, country, or municipal agency, authority, commission or council, and, if applicable, public utility commissions, telephone companies and other entities) on the part of the Grantee is required for the valid execution and delivery of this Agreement or any other agreement or instrument executed or delivered in connection herewith.

d. No Coercion; Full Disclosure. The Grantee enters into this Agreement willingly and without coercion, undue influence or duress. In addition, the Grantee has not entered into this Agreement with the intent to act contrary to the provisions herein.

e. Accuracy of Written Information. Without limiting the specific language of any other representation and warranty herein, all information furnished by the Grantee to the City in writing in connection with this Agreement, by authorized officers of the Grantee, is accurate and complete in all material respects, and includes all material facts required to be stated therein and does not contain any untrue statement of a material fact or omit any material fact necessary to make the statements therein not misleading, and the Grantee has not misrepresented or omitted material facts in its negotiations with the City.

f. Compliance with Law. The Grantee is in material compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the installation, upgrade, construction, repair, maintenance and removal of the Telecommunications System in the Streets and is a certificated provider of local exchange telephone service in the Commonwealth of Virginia.

g. Litigation; Investigations. Except as disclosed in writing to the City prior to the execution of this Agreement, there is no civil, criminal, administrative, arbitration or other proceeding, investigation or claim, pending or threatened against the Grantee, at law or in equity,

or before any foreign, federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, including, without limitation, matters involving the granting of a temporary or permanent injunction against the Grantee that, if granted, would have a material adverse effect on the ability of the Grantee to comply with this Agreement or to take any action to be taken by the Grantee pursuant to this Agreement.

h. Fees. The Grantee has paid all uncontested franchise, license or other fees and charges that have become due pursuant to this Franchise (provided that any such contested action be done in accordance with applicable law) and has made adequate provisions for any such fees and charges that have accrued. Nothing in this subsection (h) shall preclude the City from filing collection actions on contested taxes or other fees as otherwise available to the City under applicable law.

74. Licenses and Permits. The Grantee has used best efforts to secure all necessary permits and licenses in connection with the installation, upgrade, construction, repair, maintenance and removal of Equipment and is a certificated provider of local exchange telephone service in the Commonwealth of Virginia. In the event that the Grantee receives notice or becomes aware that it is no longer a certificated provider of local exchange services, the Grantee shall provide to the City notice of such event.
75. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the City and the Grantee and their respective successors and permitted transferees and assigns.
76. Headings; Other Terms. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby", "herein", "hereof", "hereinafter", "hereunder", and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; the terms "shall" and "will" are mandatory, not merely directive. All references to any gender shall be deemed to include all others, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.
77. No Third Party Beneficiary Rights. Nothing in this Franchise is intended to interfere with any tariffs, contracts or other arrangements between the Grantee and a third party, or to create any third party beneficiary rights.
78. Entire Agreement. This Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and merges and supersedes all prior representations, agreements and understandings, whether oral or written, between the City and Grantee with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the City or the Grantee.
79. Additional Covenants. Until the termination of this Agreement and the satisfaction in full by the Grantee of its obligations under this Agreement, in consideration of the Franchise, the Grantee agrees that it will comply with the following affirmative covenants, unless the City otherwise consents in writing:



a. Compliance with Laws, Licenses and Permits. The Grantee shall comply with: (i) all applicable laws, rules, regulations, orders, writs, decrees and judgments including, but not limited to, those of the FCC relating to the installation, upgrade, construction, repair, maintenance and removal of Equipment and those of any other federal, state agency or authority of competent jurisdiction relating to the installation, upgrade, construction, repair, maintenance and removal of Facilities; and except as provided in Section 21, (ii) all local laws and all reasonable rules, regulations, orders, or other directives of the City issued pursuant to this Agreement relating to the installation, upgrade, construction, repair, maintenance and removal of Facilities. The Grantee shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to install, upgrade, construct, repair, maintain and remove Facilities.

b. Ability to Perform. In the event the City reasonably identifies a material risk that the Grantee will be unable to perform its material obligations under this Agreement, including the installation, upgrade, construction, repair, maintenance and removal of the Facilities, the City may request, and the Grantee shall provide to the City, a report addressing such matters and containing such detail and substance to demonstrate that it can perform, on a timely basis, all material obligations pursuant to this Agreement. The Grantee shall supplement any such report as the City may reasonably request.

c. Condition of Facilities. All Facilities will be maintained in good repair and condition throughout the Term, to the extent necessary to avoid damaging the Public Rights-of-Way.

80. No Waiver; Cumulative Remedies. No failure on the part of the City or the Grantee to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, all subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of the City or the Grantee under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City or the Grantee at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by the City or the Grantee at any other time. In order for any waiver of the City or the Grantee to be effective, it must be in writing.

81. Survival. All representations and warranties contained in this Agreement shall survive the Term. The Grantee acknowledges that certain of the obligations to be performed under this Agreement are to be performed after the Franchise terminates or expires.

82. Delegation of City Rights. The City reserves the right to delegate and redelegate, from time to time, any of its rights or obligations under this Agreement to any body, organization or official of the City. Upon any such delegation or redelegation, references to "City" in this Agreement shall refer to the body, organization or official to whom such delegation or redelegation has been made. Any such delegation by the City shall be effective upon written notice by the City to the Grantee of such delegation. Upon receipt of such notice by the Grantee, the Grantee shall be bound by all terms and conditions of the delegation not in conflict with this Agreement. Any

such delegation, revocation or redelegation, no matter how often made, shall not be deemed an amendment to this Agreement or require any consent of the Grantee.

83. Claims Under Agreement. The City and the Grantee agree that any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in Richmond, Virginia ("Federal Court") or in a court of the Commonwealth of Virginia located in the City of Richmond ("Virginia State Court").
  
84. Reservation of Rights. The City reserves the right to adopt or issue such rules, regulations, orders or other directives governing the Grantee and the Facilities as it shall find necessary, appropriate and within the exercise of its police power or such other power or authority as the City may have, and such other orders as the City shall find necessary or appropriate relating to management of the Public Rights-of-Way, and the Grantee expressly agrees to comply with all such lawful rules, regulations, orders or other directives, provided that such rules, regulations, orders or other directives are of general applicability. No rule, regulation, order or other directive issued pursuant to this Section shall constitute an amendment to this Agreement, provided that such rule, regulation, order or other directive is not inconsistent with this Agreement. The parties agree to undertake discussions toward achieving mutually acceptable solutions to issues identified by either party and related to this Franchise.

ADOPTED by the Council of the City of Alexandria, Virginia this \_\_\_\_\_ Day of \_\_\_\_\_, 2009.

APPROVED:

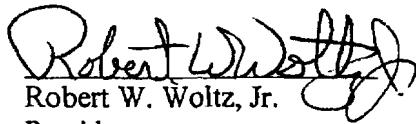
\_\_\_\_\_  
, Mayor

ATTEST

\_\_\_\_\_  
Clerk of the Council

The terms and conditions of this Franchise are agreed to by Grantee:

VERIZON VIRGINIA INC.

  
Robert W. Woltz, Jr.  
President

Date: 5/14/09

Franchise Bond

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS: That we, Verizon Virginia Inc., 703 E. Grace St., 7th floor, Richmond, VA 23219, as Principal, and \_\_\_\_\_ Surety Company of America, ADDRESS, USA, as Surety, are held and firmly bound unto City of Alexandria, Virginia 301 King Street, Alexandria, Virginia 22314, as Obligee, in the sum of \_\_\_\_\_ Thousand and 00/100 Dollars (\$XXX,XXX) for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.**

**WHEREAS**, the Principal has been granted a Franchise Agreement for the purpose of installing telecommunications equipment in the City's public right-of-way and is required to post this bond as a condition of said Agreement:

**WHEREAS**, the Obligee has agreed to accept this bond as security for performance of Principal's obligations under said Agreement during the time period this bond remains in effect:

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH** that if the Principal shall faithfully perform its obligations under said permits, then this obligation shall be void, otherwise to remain in full force and effect.

**PROVIDED HOWEVER**, that this bond is executed subject to the following conditions:

In the event of default by the Principal, Obligee shall deliver to Surety a written statement of the details of such default within 30 days after the Obligee shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein. No right of action shall accrue to any person or entity other than the obligee named herein.

This bond may be canceled by surety by giving not less than sixty (60) days written notice to the Obligee, stating therein the effective date of such termination or cancellation. Such notice shall not terminate any obligations resulting from default by the Principal that may have accrued under this bond prior to the effective date of such termination. Neither cancellation nor termination of this bond by Surety, nor inability of Principal to file a replacement bond or replacement security for its obligations, shall in itself constitute a loss to the Obligee recoverable under this bond.

It is hereby understood and agreed that this bond may not be cancelled or not renewed by the surety until at least sixty (60) days' written notice to the City of surety's intention to cancel or not renew this bond.

The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond is in effect or the amount of claims brought against this bond.

IN WITNESS WHEREOF, the above bounded Principal and Surety have hereunto signed and sealed this bond effective this \_\_\_ day of \_\_\_\_\_, 200\_.

Verizon Virginia Inc.

By: Robert Wolff

\_\_\_\_\_

By:

\_\_\_\_\_, Attorney-in-Fact

Bond No. \_\_\_\_\_

THE ABOVE TERMS AND CONDITIONS OF THIS BOND HAVE BEEN REVIEWED AND ACCEPTED BY THE (OBLIGEE).

ACKNOWLEDGED AND ACCEPTED BY OBLIGEE:

BY: \_\_\_\_\_  
PRINTED NAME/TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

RETURN A COPY OF ACCEPTED BOND TO:

Wachovia Insurance Services Inc.  
Attn: \_\_\_\_\_  
1401 H Street NW, Suite 750  
Washington, D.C 20005