

Resolution No.:	<u>18-292</u>
Introduced:	<u>October 13, 2015</u>
Adopted:	<u>October 20, 2015</u>

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY MARYLAND**

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Lead Sponsor: Council President at the Request of the County Executive

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**SUBJECT:** Grant of franchise to Mobilitie, LLC to use the Public Right-of-Way

**Background**

1. Sections 49-20 and 49-21 of the County Code provide that the County Council may grant a franchise for use of the public right-of-way after:
  - a) the franchise applicant publishes notice of the application once a week for three consecutive weeks in a newspaper of general circulation in the County;
  - b) the County Executive investigates the value of the franchise and the adequacy of the proposed compensation the applicant will pay to the County;
  - c) the Executive holds a hearing on the application if any taxpayer or affected property owner objects to the franchise within 10 days after the last notice of the application is published;
  - d) the Executive makes a written recommendation to the Council about the franchise, including findings about the value of the franchise, any response to objections that have been raised, and any other relevant issues; and
  - e) the Council decides that the franchise is expedient and proper.
2. On August 6, 13, and 20, 2015, Mobilitie, LLC. published notice of its application for a franchise to use the public right-of-way. The Executive received no objection to the franchise by the August 30, 2015 deadline and was therefore not required to conduct a hearing on the franchise application.
3. October 2, 2015, the Council received the Executive's recommendation to grant a franchise to Mobilitie, LLC. and a proposed franchise agreement.

**Action**

The County Council for Montgomery County Maryland approves the following resolution:

The County Council finds that granting a franchise to Mobilitie, LLC. for use of the public right-of-way is expedient and proper. The Council grants the franchise under the terms of the attached franchise agreement.

This is a correct copy of Council action.

Handwritten signature of Linda M. Lauer in cursive script.

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Linda M. Lauer, Clerk of the Council

## FRANCHISE AGREEMENT

The County Council for Montgomery County, Maryland, having approved by Resolution No. 18-292 dated the 20 day of October, 2015, a franchise ("Franchise") to construct and maintain telecommunications facilities in the Public Right-of-Way, this franchise agreement ("Franchise Agreement") is made as of this 20 day of October, 2015, by and between Montgomery County, Maryland, a body corporate and politic (hereafter the "County"), and Mobilitie, LLC, a Nevada limited liability company ("Mobilitie").

### RECITALS

WHEREAS, under Maryland and County laws, the County has the right and power to regulate the time, location, and manner of attachment, installation, operation, and maintenance of telecommunications facilities in the Public Right-of-Way within the limits of the County; and

WHEREAS, Mobilitie wishes to construct, install, operate, and maintain Facilities within the Public Right-of-Way; and

WHEREAS, Mobilitie has made application to the County for a franchise to construct, install, operate, and maintain the Facilities in, under, over, and upon the Public Right-of-Way of the County, pursuant to Chapter 49 of the Montgomery County Code 2004, as amended; and

WHEREAS, Mobilitie has caused said franchise application to be published once a week for three consecutive weeks in one or more newspapers having general circulation in the County, setting forth the location, character and extent of the franchise sought, and stating the terms and compensation to be received therefor; and

WHEREAS, it appears to Montgomery County that the granting of the requested franchise is proper pursuant to Chapter 49 of the Montgomery County Code 2004, as amended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, this Franchise Agreement is entered into by and between the parties subject to the following terms and conditions:

#### 1. 1. DEFINITIONS.

For the purposes of this Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein. The word "shall" is always mandatory.

1.1 "Affiliate" of a Person means a corporation, partnership, limited partnership, limited liability company, or similar entity that controls, is controlled by, or is under common control with the Person.

1.2 "Agency" means any governmental agency or quasi-governmental agency other than the County, including the FCC and the PSC.

1.3 "Agreement" means this Franchise Agreement.

**1.4** “CAO” means the Chief Administrative Officer of the County or authorized designee.

**1.5** “County” means Montgomery County, Maryland.

**1.6** “Effective Date” means the date of the County Council resolution approving this Agreement.

**1.7** “Facilities” means fiber optic cables, conduits, converters, splice boxes, cabinets, handholds, manholes, vaults, equipment, optical repeaters, DWDM and CWDM multiplexers, antennae, drains, surface location markers, appurtenances, and related facilities located or to be located by Mobilitie in the Public Right-of-Way and used or useful for providing Services.

**1.8** “FCC” means the Federal Communications Commission.

**1.9** “Gross Revenues” means all revenues and other consideration derived by Mobilitie or its Affiliates, from Services provided in the County and from the use, operation, lease, or license of all or part of the Facilities, including but not limited to all revenues and consideration derived from co-location agreements. “Gross Revenues” does not include the sale of all or substantially all of the Facilities to a third party such that Mobilitie will no longer be the owner or operator of the Facilities, nor does it include the local, state, or federal taxes or surcharges collected by Mobilitie that have been billed to a Subscriber and separately stated on such bill.

**1.10** “Law” means any and all judicial decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, administrative order, certificate, order, or other requirement of the Federal Government, State, or County, or other Agency having joint or several jurisdiction over the parties to this Agreement, in effect either on the Effective Date or at any time during the presence of Facilities in the Public Right-of-Way.

**1.11** “Mobilitie” means Mobilitie, LLC, a Nevada limited liability company, and its lawful successors, assigns, and transferees.

**1.12** “Person” means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association or organization of any kind.

**1.13** “PSC” means the Maryland Public Service Commission.

**1.14** “Public Right-of-Way” means any location in, upon, above, along, across, under, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, sidewalks, and places, or other easements now or hereafter held by the County for any public purpose, as the same now or may thereafter exist that are under the jurisdiction of the County. This term shall not refer to property owned by any Person or Agency other than the County, except as provided by applicable Laws or pursuant to an agreement between the County and any such Person or Agency.

**1.15** “Services” means the transmission, using the Facilities, of any information, including, but not limited to, voice, video, or data. “Services” includes telephone service and internet service but does not include (i) over-the-air broadcasts to the public at large licensed by the FCC or any successor thereto, (ii) cable service (the one-way transmission to Subscribers of video programming or other programming services, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service), or (iii) OVS service (cable-like services provided through an open video system for which certification is granted by the FCC under Section 653 of the Telecommunications Act of 1996.)

**1.16** “Subscriber” means any Person to whom Mobilitie provides Services or who, by contract or agreement with Mobilitie, uses any part of the Facilities. “Subscriber” includes Persons outside the County who Mobilitie has allowed, by contract or agreement, to use the Facilities in the County.

## **2. TERM.**

This Agreement shall be for a term of fifteen (15) years, unless it is earlier terminated by either party in accordance with the provisions herein, and shall commence on the Effective Date. This Agreement and any permits issued hereunder are subject to any present and future legislation or resolution that may be enacted by the County Council.

## **3. SCOPE OF FRANCHISE.**

**3.1** Any and all rights expressly granted to Mobilitie under this Agreement, which shall be exercised at Mobilitie’s sole cost and expense, shall be subject to the prior and continuing right of the County under applicable Laws to use any and all parts of the Public Right-of-Way only, exclusively or concurrently, with any other Person or Persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the Public Right-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest a perpetual real property interest in land in Mobilitie, including any fee, leasehold interest, or easement. The County makes no representations or warranties with respect to the title to the Public Right-of-Way or the nature of the County’s interest in the Public Right-of-Way. If there are other interests, if any, in the Public Right-of-Way, Mobilitie must obtain the necessary consent for its use from each Person who holds any such interest. Mobilitie must indemnify and hold the County harmless from any claims or costs arising out of or related to a constitutional takings claim or other legal action by reason of Mobilitie’s use of the Public Right-of-Way.

**3.2** The County hereby grants a non-exclusive right to Mobilitie to construct, reconstruct, attach, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace the Facilities in or upon, under, above, and across the Public Right-of-Way and on County-owned street light poles, or other such County-owned property located in the Public Right-of-Way, in accordance with County laws, for use in the provision of Services to Persons located inside or outside the County. No Facilities may be attached to street light fixtures, street light bracket arms, or traffic signals.

3.3 During the term of this Agreement, the proposed location of the Facilities by Mobilitie or its designee shall be disclosed, in writing, to the County by Mobilitie at least fifteen (15) days prior to its construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, or relocation. The written disclosure from Mobilitie must include drawings and diagrams depicting the location of the proposed facilities and the manner of their installation. Upon receiving the written notice and any drawings or diagrams, the County will determine whether to allow the proposed installation of the Facilities on County-owned poles. If the County approves the proposed installation, the County will so notify Mobilitie. The County is not obligated to replace any pole or other County-owned equipment to accommodate the Facilities. Mobilitie must replace, at its cost, any replacement pole that is needed to accommodate Mobilitie's Facilities. The County reserves the sole discretion to approve the manner of installation of any of the Facilities.

3.4 The County hereby further authorizes Mobilitie to construct, reconstruct, attach, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace its Facilities in or on street light poles, power poles, or other property owned by public utility companies or other property owners located within the Public Right-of-Way as may be permitted by the public utility company or property owner, as the case may be. To the extent required by Law, Mobilitie shall obtain permission from the individual utility or property owner prior to the time that Mobilitie undertakes any of the activities permitted by this Agreement. Upon request, Mobilitie shall provide documentation of said permission to the County. Prior to undertaking any construction activity, Mobilitie shall provide reasonable advance notice to affected property owners as required by Law.

3.5 Except as permitted by applicable Law or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, Mobilitie shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and County or municipal property without the express written approval of the owner or owners of each affected property.

3.6 Mobilitie shall comply with all applicable Law, including the "Miss Utility" law and applicable electrical codes, in the exercise and performance of its rights and obligations under this Agreement. Mobilitie hereby acknowledges that the rights granted by this Agreement are subject to the police powers of the County.

3.7 Mobilitie represents and agrees that the Facilities subject to this Agreement will be used exclusively for the rendering of Services and no other services, except to the extent that Mobilitie is required by State or Federal authorities, in the proper exercise of their jurisdiction over such matters, to make the Facilities available for use by third parties.

3.8 The County reserves the right to modify the service voltage delivered to or at any street light pole, utility pole, or other property on which Facilities may be located.

**3.9** The County reserves the right to remove or repair any property upon which the Facilities have been placed.

**4. FEES AND TAXES.**

**4.1** Mobilitie acknowledges and agrees that the County may require Subscribers to pay a users' tax to the County pursuant to applicable County law. If Mobilitie provides Service to any Subscribers who are subject to a users' tax, Mobilitie agrees to collect the tax from any such Subscribers and remit such tax to the County in accordance with applicable County law.

**4.2** The County is not presently seeking monetary compensation for Mobilitie's use and occupation of the Public Right-of-Way. The County reserves the right to charge Mobilitie, as compensation for this Agreement, an amount equal to five percent (5%) of Mobilitie's Gross Revenues or such other amount set by County law or resolution. If such a charge is imposed, Mobilitie will pay the amount every six (6) months.

**4.3** If the County charges Mobilitie monetary compensation, Mobilitie shall keep accurate books of account, and make such books of account available for inspection by the County for the purpose of determining the amounts due to the County under Section 4.2. The County shall have the right to inspect Mobilitie's books of account at any time during regular business hours on five (5) days' prior written notice and may audit the books from time to time at the County's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under Section 4.1 or 4.2. No later than one hundred twenty days from the end of Mobilitie's fiscal year, Mobilitie must file with the County an annual statement of revenues, certified by Mobilitie's chief financial officer, relating to its operations and revenues within the County. The County agrees to keep confidential any non-public information it receives from Mobilitie in accordance with applicable law. The statement of revenues shall include a detailed breakdown of the Gross Revenues and uncollectible accounts for the fiscal year, and shall be prepared in accordance with Generally Accepted Accounting Principles.

**4.4** Mobilitie shall reimburse the County within thirty (30) days of the receipt of a request, for all reasonable expenses relating to the preparation, issuance, implementation and administration of this Agreement, not to exceed Two Thousand Dollars (\$2,000) in the aggregate.

**4.5** Mobilitie shall pay the County, in advance, on each anniversary of the Effective Date, an electricity fee, which shall be the estimated cost on an annual basis of the electricity used by the Facilities being installed under this Agreement on County owned street light poles, lighting fixtures, or electroliers under this Agreement. The rate for the cost of electricity shall be calculated at the average annual per Facility electricity used in accordance with the rates allowed by Schedule TN of the Potomac Electric Power Company Rate Schedules, which is attached hereto as Exhibit C, or any successor rate schedule. If the actual cost of the electricity used by the Facilities exceeds the estimated cost, Mobilitie shall compensate the County for the difference. If the actual cost of the electricity used by the Facilities is less than the estimated

cost, Mobilitie shall be entitled to offset the difference in the payment of the next year's electricity fee.

**4.6** Mobilitie shall pay to the County an annual fee (the "Annual Fee") in the amount of one hundred Dollars (\$100.00) per pole for the use of each County-owned pole, street light, or other County-owned property located in the Public Rights-of-Way upon which Facilities are installed pursuant to this Agreement. The initial Annual Fee shall be due and payable not later than the date of installation of the first Facilities pursuant to this Agreement (the "Installation Date"), and shall equal the number of County-owned poles on which Mobilitie estimates it will install Facilities during the succeeding twelve (12) months multiplied by the Annual Fee. The Annual Fee for subsequent years shall be due and payable not later than thirty (30) days following each anniversary of the Installation Date and shall equal the number of County-owned fixtures, poles, or property on which Mobilitie has then installed Facilities pursuant to this Agreement multiplied by the Annual Fee, adjusted for the Prior Year Adjustment, as described immediately below. The Prior Year Adjustment shall either increase or decrease a subsequent year's aggregate Annual Fee to account for the installation or removal of Facilities during the prior year, and shall equal the difference between (i) the number of poles used to calculate the prior year's aggregate Annual Fee multiplied by twelve (12) and (ii) the actual number of months during such year that Mobilitie's Facilities were attached to County poles, multiplied by one-twelfth of the Annual Fee. The annual fee will increase by 10% in the sixth year of this Agreement and an additional 10% in the tenth year of this Agreement.

## **5. REMOVAL AND RELOCATION OF THE FACILITIES.**

**5.1** Mobilitie understands and acknowledges that the County may require Mobilitie to relocate the Facilities. At the County's request, Mobilitie shall, within thirty (30) days after receipt of prior written notice in situations described in subsection (i) below, and immediately in situations described in subsections (ii) and (iii) below, relocate the Facilities, at Mobilitie's sole cost and expense, whenever the County reasonably determines that relocation is needed: (i) to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a County project, facility, or service; (ii) because the Facilities are interfering with or adversely affecting proper operation of the County light poles, traffic signals, or other County facilities, or (iii) to protect or preserve the public health, safety, or welfare including, without limitation, any emergency situation. Mobilitie must obtain all permits and approvals required by the County before relocating the Facilities. If Mobilitie fails to relocate the Facilities as requested by the County in accordance with this paragraph, the County shall be entitled to remove the Facilities at Mobilitie's sole cost and expense.

**5.2** If any part of the Facilities subject to this Agreement is abandoned by not being placed in service for a period of six (6) months or more, Mobilitie promptly shall notify the County, and Mobilitie must, at Mobilitie's sole cost and expense, promptly remove the abandoned part of the Facilities or dedicate the same to the County. The County shall not issue notice to Mobilitie that the County requires removal or dedication of any part of the Facilities, unless and until the County first issues all required County permits and approvals required of the County for such activity and gives fifteen (15) days' prior written notice to Mobilitie to remove the Telecommunications System. If Mobilitie shall fail to remove any part of the Facilities as

required by the County under this paragraph, the County shall be entitled to remove any part of the Facilities at Mobilitie's sole cost and expense. Mobilitie shall execute such documents of title as will convey all right, title, and interest in the abandoned Facilities, but in no other property, intellectual or otherwise, to the County.

**5.3** Whenever the construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement, or relocation of the Facilities is performed by Mobilitie under this Agreement, and such construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement or relocation shall cause the Public Right-of-Way to be damaged, Mobilitie, at its sole cost and expense, promptly shall repair and return the Public Right-of-Way in which the Facilities are located to its previous condition. If Mobilitie does not repair the site as required, then the County shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of Mobilitie and charge Mobilitie for the proposed costs to be incurred at the County's standard rate, if any, or the actual costs incurred by the County. Upon the receipt of a demand for payment by the County, Mobilitie shall reimburse the County for such costs.

## **6. CONSTRUCTION PERMIT AND SECURITY DEPOSIT.**

**6.1** If the construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement, or relocation of the Facilities shall require any construction work in the Public Right-of-Way, Mobilitie shall apply for the appropriate street opening and other permits required by Law. Mobilitie shall perform such construction work as required by the permits and in accordance with all applicable Laws.

**6.2** Within thirty (30) days of the completion of any construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement, or relocation work, Mobilitie promptly shall furnish to the County, in hard copy and electronic format or other format reasonably acceptable to the County, suitable documentation containing a full set of drawings showing, in detail, the exact location of the Facilities in the Public Right-of-Way.

**6.3** Mobilitie shall deposit or file with the County a cash security deposit, a surety bond acceptable to the County Attorney, or letter of credit acceptable to the County Attorney within thirty (30) days of the Effective Date, in the amount of Fifty Thousand Dollars (\$50,000) as security for the faithful performance by Mobilitie of the provisions of this Agreement and the Laws. If Mobilitie fails to pay the County any taxes, fees, costs or expenses within ten (10) days of receipt of notice to pay from the County, or fails to comply with any provision of this Agreement or the Laws that can be remedied by an expenditure from the security fund, then the County may proceed to immediately withdraw the amount thereof or proceed against the surety bond or the letter of credit. Such action by the County is in addition to any other remedy provided to the County by this Agreement or the Laws. If the Franchise is terminated or revoked for cause by the County, the security deposit, the surety bond, or the letter of credit shall become the property of the County, unless there are no outstanding defaults or County claims, or moneys owed to the County, in which case, Mobilitie may request that the County return the security deposit, the surety bond, or the letter of credit to Mobilitie.

## **7. INDEMNIFICATION AND WAIVER.**

**7.1** Mobilitie agrees at its sole cost and expense to indemnify, protect, defend (with counsel acceptable to the County) and hold harmless the County, the county executive, county council members, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the "Losses") arising, directly or indirectly, in whole or in part, out of the activities or Facilities of Mobilitie, its officers, employees, agents, consultants, attorneys, and contractors, described in this Agreement, except to the extent arising from or caused by the gross negligence or willful misconduct of the County, the county executive, county council members, officers, employees, agents, or contractors. Any damage to County property caused by Mobilitie or its contractors must be repaired by Mobilitie at its cost, including any damage caused by contact or stray voltage.

**7.2** The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

**7.3** Mobilitie waives any and all claims, demands, causes of action, and rights it may assert against the County on account of any loss, damage, or injury to the Facilities or any loss or degradation of the Services as a result of a sudden or gradual loss or change of electrical power caused by or arising from the installation, maintenance, replacement, or relocation of any County-owned facility in the Public Right-of-Way (except to the extent caused by or arising from the gross negligence or willful misconduct of the County), or an Act of God, an event or occurrence which is beyond the reasonable control of the County, a power outage, or a lightning strike. The County is not liable for any damage to Facilities caused by the acts of third parties. The County is not obligated to replace any pole or County facility that is damaged. Nothing herein shall be construed to waive the County's governmental immunity.

## **8. INSURANCE.**

**8.1** Mobilitie shall obtain and maintain at all times during the term of this Agreement comprehensive general liability insurance and comprehensive automotive liability insurance protecting Mobilitie in an amount of not less than two million dollars (\$2,000,000) (including umbrella or excess coverage) per occurrence (combined single limit), including bodily injury and property damage, and not less than two million dollars (\$2,000,000) (including umbrella or excess coverage) aggregate, for each personal injury, products-completed operations, and each accident. Such insurance shall name the County, the county executive, its council members, officers, employees, agents, and contractors as additional insured for any liability arising out of Mobilitie's performance of work under this Agreement, or suitable additional- insured endorsement acceptable to the County. Coverage shall be provided in accordance with the limits specified and the provisions indicated herein. Claims-made policies are not acceptable. Such insurance shall not be canceled or materially altered to reduce coverage until the County has

received at least thirty (30) days advance written notice of such cancellation or change. Mobilitie shall be responsible for notifying the County of such change or cancellation.

**8.2** Mobilitie, within thirty (30) days of the Effective Date of this Agreement, shall file the required original certificate(s) of insurance with endorsements with the County, subject to the County's prior approval, which shall clearly state all of the following:

**8.2.1** Policy number; name of insurance company; name, address, and telephone number of the agent or authorized representative; name, address, and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts. Each policy of insurance required by this Agreement shall be issued by a responsible insurance company qualified and authorized to do business in the State of Maryland.

**8.2.2** That thirty (30) days prior written notice to the County is required for any change or cancellation to the insurance policy.

**8.2.3** Mobilitie's insurance is primary to any other valid or collectible insurance that the County may possess, including any self-insured retentions the County may have, and any other insurance the County does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

The certificate(s) of insurance with endorsements and notices shall be mailed to:

Chief Administrative Officer  
Montgomery County, Maryland  
Executive Office Building  
101 Monroe Street  
Rockville, Maryland 20850

**8.3** Mobilitie shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than five hundred thousand dollars (\$500,000) or such other amounts required by Maryland law, and furnish the County with a certificate showing proof of such coverage.

**8.4** Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the County prior to the execution of this Agreement.

## **9. NOTICES.**

All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; (ii) by means of prepaid overnight delivery service; or (iii) by facsimile transmission, if followed by a hard copy of the same delivered through the U.S. mail or by overnight delivery service as just described, as follows:

County: Chief Administrative Officer  
Executive Office Building  
101 Monroe Street  
Rockville, Maryland 20850

With a copy to: Director, Department of Transportation  
101 Monroe Street  
Rockville, Maryland 20850

Mobilitie: Mobilitie, LLC  
ATTN: Legal Department  
2220 University Drive  
Newport Beach, CA 92660

Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

## **10. TERMINATION AND DEFAULT.**

**10.1** This Agreement may be terminated by either party upon thirty (30) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default (or, if such default is not curable within thirty (30) days, if the defaulting party fails to commence such cure within thirty (30) days or thereafter fails to diligently prosecute such cure to completion), provided that the grace period for any monetary default is ten (10) business days from receipt of notice.

**10.2** The County reserves the right to revoke the Franchise, subject to reasonable notice and the opportunity to cure as set forth in Section 11.1 for a material breach of the Franchise, including, but not limited to the following: (i) non-payment of franchise fees, (ii) failure to comply with the provisions of the Laws and this Agreement, (iii) use of the Public Rights-of-Way in violation of this Agreement, and (iv) misreporting any required compensation amount.

**10.3** Each party retains all of its rights to enforce this Agreement. The County reserves the right to seek injunctive relief, mandamus, or any other appropriate relief as may be necessary to enforce or correct a violation of the provisions of the Law or this Agreement.

## **11. MISCELLANEOUS PROVISIONS.**

**11.1** Mobilitie shall not transfer or assign the franchise or Facilities, or any part thereof without the express prior written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. Mobilitie shall give the County prior written notice of any

proposed assignment or transfer for which the County's consent is required hereunder. The County Council shall give Mobilitie written approval or disapproval of any such proposed assignment or transfer within a reasonable time period not to exceed ninety (90) days after the County Council receives Mobilitie's request therefor, and the County Council's failure to approve or disapprove any such request within such ninety (90) day period shall be deemed an approval. Mobilitie shall provide all information and documents reasonably requested by the County relating to the assignment or transfer.

**11.2** Mobilitie understands that this Agreement does not provide Mobilitie with exclusive use of the Public Right-of-Way and that the County shall have the right to permit other providers of telecommunications systems to install equipment or devices in the Public Right-of-Way.

**11.3** This Agreement contains the entire understanding between the parties with respect to the subject matter herein and supersedes all prior understandings and agreements, whether written or oral. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

**11.4** This Agreement may not be amended except pursuant to a written instrument signed by both parties.

**11.5** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

**11.6** Mobilitie shall be available to the staff employees of any County department having jurisdiction over Mobilitie activities 24 hours a day, 7 days a week, regarding problems or complaints resulting from the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities. The County may contact Mobilitie by telephone at (887) 204-8155 regarding such problems or complaints. Mobilitie shall provide prior written notice to the County as provided for in this Agreement in the event such telephone number changes at any time.

**11.7** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. In the event that suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Maryland, or in the United States District Court of Maryland, Southern Division.

**11.8** All exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

**11.9** This Agreement is binding upon the successors and assigns of the parties hereto.

**11.10** Mobilitie acknowledges that the County may develop rules, regulations, and specifications that apply to the construction, reconstruction, attachment, movement, placement, installation, location, removal, reattachment, reinstallation, replacement, or relocation of the Facilities in the Public Right-of-Way, and such rules, regulations, and specifications, when finalized, shall govern Mobilitie's activities hereunder as if they were in effect at the time the Agreement was executed.

**11.11** Mobilitie agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. Mobilitie assures the County that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference, or handicap.

**11.12** Mobilitie represents that it has not retained anyone to solicit or secure this Agreement from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or a bona fide established commercial selling or leasing agency maintained by Mobilitie for the purpose of securing business or an attorney rendering a professional legal service consistent with applicable canons of ethics.

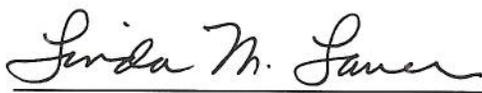
**11.13** Mobilitie understands that, unless authorized under Section 11B-52 and Chapter 19A of the Montgomery County Code 1994, as amended, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

**11.14** It is expressly understood that the County shall not be construed or held to be a partner or associate of Mobilitie in the conduct of Mobilitie's business.

**11.15** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably condition, delay or withhold its approval or consent.

**11.16** Nothing in this agreement shall impair, diminish, supersede, or otherwise affect any authority or remedy that the County may have against Mobilitie or any other Person, such as another current or former franchisee. This franchise is granted to Mobilitie subject to any such authority or remedy, even if the exercise of that authority or remedy affects the System. Mobilitie agrees to cooperate with the County in any action to enforce County law or any franchise agreement against another Person.

**WITNESS:**

  
Linda M. Lauer, Clerk of the Council

**MONTGOMERY COUNTY,  
MARYLAND**

  
George Leventhal, President  
Montgomery County Council

The Provisions of this Agreement are agreed to and hereby accepted.

**WITNESS:**



A handwritten signature in blue ink, appearing to read "James Grass", is written over a horizontal line.

**MOBILITIE, LLC**

By:   
A handwritten signature in blue ink, appearing to read "Christos Karmis", is written over a horizontal line.

Name: CHRISTOS KARMIS

Title: PRESIDENT

Approved as to Legal Form

AUG 26 2015

James Grass



**MD - TN**

**TELECOMMUNICATIONS NETWORK SERVICE  
SCHEDULE "TN"**

**AVAILABILITY**

Available for Distribution Service and Standard Offer Service when modified by Rider "SOS" in the Maryland portion of the Company's service area for unmetered electric service to multiple telecommunications network devices, cable television power supply devices or other devices used by government or police organizations with similar load characteristics served directly by the Company and not exceeding 1,800 watts per device.

**CHARACTER OF SERVICE**

The service supplied under this schedule normally will be alternating current, sixty hertz, single phase, 120 volts.

**MONTHLY RATE**

	Summer	Winter
Distribution Service Charge		
Kilowatt-hour Charge	\$ 0.02973 per kwhr	\$ 0.01799 per kwhr

**Generation and Transmission Service Charges** - Customers who do not receive service from an alternative Electric Supplier as defined in the Company's General Terms and Conditions will receive Generation and Transmission Services from the Company under the provisions of Rider "SOS" - Standard Offer Service.

**Billing Credit** - A monthly billing credit in the amount of \$0.74 will be applied to the bill of each customer receiving a consolidated bill from an alternative supplier for services provided both by Pepco and by the alternative supplier.

**MEASUREMENTS OF ELECTRICITY**

At the customer's option monthly kilowatt-hour consumption will be computed on the basis of either the manufacturer's average wattage ratings of installed devices, with no allowance for outages, or on the basis of statistically valid sampling techniques. If the customer chooses the option to use statistically valid sampling techniques, the initial measurement of electricity will be based on the manufacturer's maximum rating. When historical data are available for the customer's devices, that data will be used for the sample estimate. If historical metered data are not available, sample usage data may be obtained by means of a handheld current probe. The charges under this rider are for electricity only.

**GROSS RECEIPTS TAX**

A surcharge of 2.0408% is applied to the transmission and distribution components of the customer's bill to recover the amount attributable to the Gross Receipts Tax.

**GENERAL TERMS AND CONDITIONS**

This schedule is subject in all respects to the Company's "General Terms and Conditions for Furnishing Electric Service" and the Company's "Electric Service Rules and Regulations."

