

**RIGHT-OF-WAY USE AGREEMENT BY AND BETWEEN
THE CITY OF CAMDEN AND _____**

This Right-of-Way Use Agreement, (the "Agreement" or "Authorization") is made and entered into this ____ day of _____, ____ (the "Effective Date"), by and between the City of Camden, New Jersey, a municipal corporation of the State of New Jersey ("City") and _____, a _____ with its principal office at: _____ ("Grantee"). Capitalized terms herein shall have the meaning specified in Section 1, below.

WHEREAS, the City, under Section 48:17-10 of the New Jersey Statutes Annotated, requires consent for the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the Streets within the City; and

WHEREAS, it is the practice of the City to permit entry into the corporate limits and such use of the Streets for the provision of communication services and facilities subject to the duty and authority of the City to manage its Street and public property for public use, and to require payment of fees in connection with the use thereof in a manner consistent with Applicable Law; and

WHEREAS, Grantee desires to obtain from City as permitted by law, and City desires to grant to Grantee, an Authorization for the right to construct, install, maintain, repair, operate, relocate, replace and remove Facilities for the provision of communications service, within the City, in a manner consistent with this Agreement, which Facilities may consist of fiber optic cable, strand, conduit, supporting structures, Communications Facilities, and other equipment necessary to the functioning of the same, subject to the control of the City, as may be provided herein, and in applicable state and local law as now in force or as hereafter amended;

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

1. Definitions

For the purpose of this Agreement, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Terms not defined herein shall have the same meaning as in the Camden Municipal Code of Ordinances, and otherwise their ordinary meaning. References to regulations or statutory provisions include those provisions as the same may be renumbered.

1.1. "Agreement" or "Authorization" means this non-exclusive Agreement for use of the Rights-of-Way, together with Appendices and Exhibits attached this Agreement, if any, and any amendments or modifications.

1.2. "Applicable Law" or "Law" means all applicable federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations, as now in force or as hereafter amended.

1.3. "Approvals" means the permissions Grantee must have in addition to this Authorization to deploy Facilities and/or provide Services, which may include licenses, permits, zoning approvals; variances, exemptions; grants of authority to use private rights of way and/or easements or facilities; agreements to make attachments to poles, ducts, conduits, Towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use

of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

1.4. “Authorized Area” shall mean the boundaries of the City of Camden.

1.5. “Authorized Facilities” means Facilities that comply with the requirements of this Agreement, and Applicable Law, including but not limited to Sections 600-2, 600-4, 601-3, 601-11, and 601-12 of the City Code and any regulations adopted thereunder, as amended from time to time (“Regulation”); and for which all necessary Authorizations are in full force and effect.

1.6. “Central Communications Hub Site” refers to a site that receives signals from DAS Communications Facilities, and includes equipment that propagates and/or converts, processes or controls the communications signals transmitted and received from the DAS Communications Facilities.

1.7. “Construction and Maintenance” and variations of those terms refer to any activity performed in the Streets with respect to the Facilities, including construction, modification, replacement, repair, operation, maintenance, removal or relocation.

1.8. “Distributed Antenna System” or “DAS” means multiple, spatially separate antenna Communications Facilities connected to a Central Communications Hub Site via a high capacity transport medium (such as fiber optic cable), for the purpose of providing wireless service within a geographic area.

1.9. “Facility” or “Facilities” means any and all equipment and installations of any kind owned by Grantee or by Grantee’s customers and under the control of Grantee that are reasonably necessary and appropriate for the provision of Services including, but not limited to any optical repeaters, converters, power amplifiers, radios, multiplexers, remote radio heads, antenna, aboveground and underground fiber optic and coaxial cable, conduit, wires, meters, pedestals, power switches, cabinets, enclosures, and control boxes, utility poles and supporting structures, whether new, existing or replacement structures, and whether referred to singly or collectively. This does not include facilities of an electric utility used solely in connection with the provision or management of electrical services or facilities.

1.10. “Emergency” means any situation that the City determines poses an immediate threat of harm to persons or property.

1.11. “Party” means either Grantee or City, and “Parties” means Grantee and City collectively.

1.12. “Person” means any natural or corporate person, business association or business entity including, but not limited to, an individual, a partnership, a sole proprietorship, a political subdivision, a public or private agency or any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

1.13. “Services” means any telecommunications service provided by means of the Facilities installed by Grantee in accordance with this Agreement, for which Facilities Grantee holds a valid authorization issued by the New Jersey Board of Public Utilities, or (in the case of Communications Facilities), the FCC; or the leasing, operation or maintenance of the same by Grantee in accordance with this Agreement. Without limitation, the term Services does not include cable service, open video services or other video services, whether provided by Grantee or its customers.

1.14. “Street” means the full width of the area dedicated to public use, extending from the property line on one side to the property line on the other side, including the roadway and sidewalk, of any public street, avenue, road, alley, lane, highway, boulevard, concourse, driveway, culvert or bridge, and shall also include any right-of-way as defined in N.J. Stat. 48:3-17.9 under the

jurisdiction of the City. This term shall not include (a) any county, state or federal rights of way or any property owned by any person or entity other than the City, public utility easements or public improvement easements, whether owned by the City or others, except as provided by applicable Laws or pursuant to any agreement between the City and any such person or entity under which the City may grant access to that easement, or to which access is granted by virtue of this agreement; or (b) any property owned by the City, such as a park or property on which City buildings are located, that is not a Street, even if the City may authorize the Grantee to use the property for placement of the Facilities. By way of example and not limitation, the term does not include structures, buildings, or other improvements, regardless of whether they are situated in a Street.

1.15. “Support Structure” or “Supporting Structure” means any structure which can be used to support an antenna including : (1) An “existing supporting structure,” which is a supporting structure that can support an antenna in place at the time of an application which is neither a replacement or new support structure, (2) a “replacement support structure,” which is a support structure that would replace an existing vertical structure, and a (3) “new support structure,” which is a vertical structure that would be an installed in the streets for the purpose of supporting an antenna without replacing another structure.

1.16. “Small Cell” has the same meaning as the term “small wireless facilities” in 47 C.F.R. 1.6002.

1.17. “Tower” shall have the same meaning as the term tower as defined at 47 C.F.R. §1.6100. This definition does not include Utility Poles, street light, or traffic signal poles that support Communications Facilities.

1.18. “Utility Pole” means a free-standing mast, pole that supports or is designed to support the wire lines of a public utility; that is not built for sole for the sole or primary purpose of supporting FCC licensed or authorized antennas and their associated facilities; and that is subject to regulation pursuant to 47 U.S.C. § 224, or New Jersey laws that may regulate utility poles in lieu of 47 U.S.C. § 224.

1.19. “Communications Facility” shall mean all elements of a facility at a fixed location used in connection with the provision of any wireless service to the public, but excluding the supporting structure to which the base station is attached or within which it is enclosed. Provided that, the term does not include a Communications Facility owned and operated by the City or any governmental agency for its use, or public safety uses.

2. Grant of Authorization

2.1. Grant. The City authorizes Grantee, on a nonexclusive basis, to perform Construction and Maintenance of Facilities. Grantee operates on its own behalf or on behalf of its customers for the purpose of providing Services, which Authorization shall be exercised at Grantee’s sole cost and expense, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Streets. The City, by this grant, does not guarantee or represent that it may grant access to any particular easement, or to any property, it being the responsibility of Grantee to identify any limitations on the use of particular locations. Such grant shall be subject to all City Code and Regulation provisions and requirements that may apply to the Facilities and that may affect, without limitation, the location of the Facilities within the Authorized Area. The Authorization does not grant Grantee any property interest in the Streets, or provide it a right to occupy or continue to occupy any particular location within the Streets. The Authorization is not divisible, and Grantee may not grant any person the right to use or occupy the Streets. The grant does not extend to any other service, and Grantee may be required to obtain an additional Authorization,

franchise, or an amendment to this Agreement before using and occupying the Streets to provide additional services. Likewise, Grantee's customers will require an Authorization or franchise should they provide other services in the City.

2.2. Special Conditions on Grant.

2.2.1. Grantee may place Communications Facilities and wireline Facilities, and the Facilities immediately associated with the same (but not Central Communications Hub Sites) in the Streets.

2.2.2. Each Communications Facility and all wireline Facilities shall be placed subject to such conditions as the City may establish pursuant to the City Code and Regulation provisions and requirements. In all cases, the City may require that the installed Facility be designed, painted, set back and landscaped appropriately for the location approved. Ground-mounted cabinets associated with the Facilities are not permitted other than with the express review and approval of the City, unless Grantee demonstrates that denial of an application for ground-mounted cabinets, would violate Applicable Law. In approving locations, the City may ensure that Facilities are placed to minimize impacts on adjoining property owners, and other Street users.

2.2.3. A Communications Facility Site will not be approved in an area prohibited by state law, the City Code and associated regulations or where the lines of the incumbent local exchange carrier are underground, except where the Facilities can be concealed within or on an existing structure to the reasonable satisfaction of the City, or an existing structure may be replaced with a structure of a design satisfactory to the City; unless Grantee demonstrates that denial of the application would violate Applicable Law.

2.2.4. Grantee need not own all components of a Communications Facility placed in the Street, and may permit its customers to maintain ownership of Facilities. However, (1) the Communications Facility must be wholly under the control and management of Grantee; and Grantee shall be liable for all acts or omissions, and all harms associated with the Communications Facility and all its components whether the same are its acts or omissions, or the acts or omissions of the owner of the Communications Facility components; and (2) Grantee acknowledges and agrees that, unless the customer is party to an Agreement with the City no rights of ownership by Grantee's customers shall permit any such customer to enter upon, or use the Streets, in any other manner or at any other place, including to add to, or modify or install Facilities at a Communications Facility site, which shall be Grantee's sole responsibility. Notwithstanding the foregoing, Grantee may install facilities that it does not own at a Communications Facility site provided the entity on whose behalf the equipment has been installed holds a franchise or other authorization from the City that authorizes use and occupancy of the Streets for installation of wireless facilities, and such entity, or Grantee, has obtained any required Authorizations from the City to place the Facilities at the site. No Communications Facility Site will be approved until Grantee provides proof that Facilities it will not own satisfy the requirements of this paragraph. To remove any doubt, if Grantee proposes to build Support Structures, it may only do so if an application for a Wireless Communications Facility has been submitted to, and approved by the City.

2.2.5. Subject to the City's permitting requirements, Grantee may repair and install like-kind replacements of Facilities, so long as the appearance of the Facilities or property affected by the repair or replacement does not change.

2.2.6. Except as provided in this Section, Grantee's aboveground Facilities (other than ground-mounted cabinets that comply with the requirements of this Section 2.2) shall be placed on, or replace, existing structures in the Streets, which structures include strand. Unless otherwise agreed, any such replacement structure shall be substantially similar in size and appearance to the structure being replaced. If placement would affect a street light pole which the City owns, the City shall require Grantee to provide City title to any replacement street light pole as a condition of use. If placement would affect a street light pole for which the City paid or pays a fee for installation or service, ownership of the street light pole must remain with the electric utility, or, if the City and electric utility agree, be transferred to the City. Lines and associated Facilities may be placed aboveground in areas to the extent comparable distribution facilities of the incumbent local exchange carrier are aboveground, and below ground where comparable distribution facilities are below ground, provided that the size and quantity of Facilities are similar.

2.2.7. No Towers may be placed in the Streets, except as otherwise permitted under this Agreement.

2.3. Compliance with Law. The exercise of rights under this Agreement by Grantee is subject to, and strictly conditioned upon:

2.3.1. compliance with the terms of this Agreement and Applicable Law now existing or hereinafter enacted; and

2.3.2. Grantee must be, and continue to be, a telecommunications company within the meaning of NJ Rev. Stat. 54:30A-124.

2.3.3. Without limiting the foregoing Grantee understands that the City may amend its ordinance and adopt regulations with respect to placement of Communications Facilities and Supporting Structures. City may require that Grantee modify any Communications Facility or Supporting Structure installed pursuant to this Agreement so that in all respects, Grantee's Facilities are consistent with Communications Facility or Supporting Structures that may be installed pursuant to ordinance and regulations. Except in emergencies, or as may be required to comply with state or federal law, Grantee shall be given no less than six (6) months following such an amendment to modify existing facilities.

2.4. No Waiver of Other Permits and Authorizations. All work upon the streets and public places of the City shall be in accordance with all applicable standards, regulations codes, and ordinances, and will be done under the general supervision of the Director of Engineering or designee. Nothing in this Agreement shall be construed as a waiver of any laws, regulations or rules of the City or of the City's right to require the Grantee to secure the appropriate permits or Authorizations, or to pay the applicable fees associated with the same. Nothing in this Agreement shall act as a waiver of the City's police powers. Nothing herein prevents Grantee from challenging the applicability of a particular fee or regulation to it on the ground that it is unduly discriminatory or preempted by state or federal law.

2.5. Conditions Precedent. The Authorization shall commence upon the Effective Date, provided that the Grantee shall have met each of the conditions precedent set forth below and otherwise in this Agreement (unless the City agrees to waive any of the conditions precedent), at

which time it shall become effective: The Grantee shall have secured its insurance policies as set forth in Section 12 of this Agreement and delivered the certificate of insurance to the Director of Engineering that the policies will be in effect on or before the Effective Date, and that the policies are in accordance with this Agreement.

2.6. **Conditions Subsequent:** Without limiting the other provisions of this Agreement, Grantee must cease its operations if it is not in compliance with applicable regulations governing the safe operation of its Facilities (including, in the case of Communications Facilities, FCC regulations governing RF emissions), as the same may be amended from time to time, except to the extent that Applicable Law permits it to continue to operate. The issuance of this Authorization is not intended to insulate Grantee from any claim or any remedy based on a failure to safely Construct and Maintain its Facilities. On request by the City, or to the extent that Grantee is aware of any non-conformance, Grantee shall submit a report identifying applicable standards, and any area where it has Facilities that do not comply with applicable standards.

2.7. **Other Approvals.** As a condition of this grant, Grantee is required to obtain and is responsible for any Approvals that may be required for the installation, operation or maintenance of the Facilities.

2.8. **Grantee's Expense.** Except as specifically provided otherwise, all costs incurred by Grantee in connection with its compliance with, or enjoyment of, this Agreement shall be borne by Grantee and not by City, and all work that must be performed in order to permit the placement of Facilities at particular locations (including work required to comply with applicable law relating to persons with disabilities) shall be paid for by Grantee.

2.9. **Application to Subcontractors.** Grantee is responsible for ensuring that all contractors and subcontractors comply with the requirements of this Agreement and applicable law when performing work on behalf of Grantee, and is jointly and severally responsible for their acts and omissions.

2.10. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any person (other than the City and Grantee), including, but by no means limited to, Grantee's customers, any right, benefit or remedy under this Agreement of any nature whatsoever.

3. Relation to Attachment Rights and Placement of Facilities.

This Agreement does not confer upon Grantee any right to place or attach Facilities directly upon or to structures that are owned by the City or by a third party, which rights must be obtained through a separate agreement with the appropriate entities.

4. Term.

This Agreement shall be in force and effect for an initial term of ten (10) years, and shall automatically be renewed for (2) two (5) five year terms, unless properly terminated by either party. Either party may terminate the Agreement at the end of its initial five-year term, or at any time thereafter, by giving written notice of its intention to do so no less than ninety (90) days before the proposed date of termination. Upon termination, all of City's consents granted to Grantee to use and occupy the Streets, and Grantee's rights to use and occupy the Streets will terminate. Notwithstanding the foregoing, all Grantee's duties related to use of the Streets, and its duties to indemnify the City, shall survive termination until the Facilities are removed and the affected property is restored in accordance with the City Code and Regulation, or Grantee's obligations terminate by agreement of the parties. It is understood and agreed that the decision whether to renew or to terminate this Agreement pursuant to this Section shall be made

by those elected officials then in office under such circumstances as may then exist, and that the Grantee has no reasonable expectation of renewal or non-termination.

5. Compensation

5.1. In addition to paying such other fees as may be required by the City, Grantee will pay a fee of \$270 per Small Cell per year, subject to Section 5.4, below, but it may not permit any other person to place equipment it owns or controls as part of that Small Cell without agreement of, and payment of an additional fee to the City. If Grantee places Communications Facilities other than Small Cells in the Streets, the fee per Communications Facility will be established by negotiation prior to installation.

5.2. If Grantee places lines, wires, conduit, or fiber in the Streets, Grantee shall pay an annual fee established by City for use of the rights-of-way, subject to any limits established by State or Federal law. Nothing in this agreement prevents Grantee from challenging the validity under state or federal law of any fee so established, but Grantee may be required to pay the maximum fee permitted by law.

5.3. Nothing in this Agreement limits the City's authority to charge additional fees for use of the Streets in connection with the Construction or Maintenance of Facilities to provide other Services. Likewise, Grantee's customers may use and occupy the Streets to provide additional services only with the agreement and consent of the City. Without limitation, for example, should a customer of Grantee wish to provide cable services, it would be required to obtain an appropriate franchise or license, and to pay a franchise fee therefore.

5.4. The City reserves the right to adjust the fee established in Section 5.1 if, based on a study of its actual costs, an adjusted fee is a reasonable approximate of costs, the costs are reasonable, and are non-discriminatory; or to account for annual increases in the CPI-U, New York-Newark-Jersey City from calendar year 2020 (base year). In the event the City conducts a study prior to any fee adjustment, the City must provide any study and a breakdown of actual costs considered resulting in a fee adjustment and Grantee shall reimburse the City for a proportional share of the costs of conducting such study, based on the number of similarly situated grantees whose compensation for use of the rights-of-way is based on cost. Should Applicable Law permit City to charge a fee that is not cost-based, City may adopt any lawful fee, and apply it to Grantee at any time on or after the initial five-year term.

5.5. In addition to the fees specified above, Grantee shall reimburse the City for costs of negotiating this Agreement.

5.6. Any fee owed under Section 5.1 for any Communications Facility will be paid within thirty (15) days of the date placement of the Communications Facility is approved by the City, pro-rated for the remaining period from approval through and including the following June 30, and thereafter due and owing on July 1 of each calendar year for the following 12 months. Any other fee shall be owing and paid in a manner provided in the City Code and associated regulations. Interest will be charged on any late payment at the maximum rate permitted under State law, or if there is no such rate, the prime rate charged by the bank the City uses as its main depository at the time of the late payment, plus 1.5%.

5.7. The fees provided in this Section are in addition to fees associated with obtaining permits, and nothing herein in this Agreement requires the City to act on any application or permits Grantee to install any Facility where fees have not been paid and a permit issued.

6. Work in the Streets.

6.1. No Limitation on Obligation to Comply with Applicable Laws. Without limiting its obligations under Section 2, Grantee shall comply with the requirements of this Section, which are minimum requirements for work in the Streets.

6.2. No Interference.

6.2.1. No Street or other public place shall be obstructed longer than necessary during Grantee's work of Construction or Maintenance, and shall be restored to the same condition existing prior to the commencement of the Work. No part of any Street, or other public place of the City, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be damaged. However, should any such damage occur, the Grantee shall repair the same as promptly as possible, and, in default thereof, the City may make such repairs and charge the reasonable cost thereof to and collect the same from the Grantee. In no event may Facilities be constructed or maintained in a manner that creates a hazardous condition, or a condition that is inconsistent with applicable law protecting persons with disabilities.

6.2.2. To minimize disruption of the Streets, or overuse of, or damage to the Streets, City, after providing Grantee and other affected entities an opportunity for comment, may require consolidation of Facilities or develop a non-discriminatory means of allocating sites or establishing rules for routes and placement of Facilities, and for opening and sharing trenches. Without limitation, City may require Grantee to provide City and publish plans for opening Streets, and for construction in the Streets; and to coordinate and share costs of trenching with others, including the City.

6.2.3. Grantee may be required to place conduit for the City upon City's request in locations where Grantee is trenching or is installing conduit on its own behalf, provided City bears the costs of placing the conduit on its behalf. Grantee may be required to use existing conduit where economically and technically feasible to avoid undue disruption of the Streets, provided use of the conduit will not effectively prohibit the provision of telecommunications or personal wireless services.

6.3. Closing of Streets. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Streets. In the event that all or part of the Streets within the Authorized Area are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services comparable to Services; or (2) vacated or abandoned or if ownership of the land in, under or over the affected Streets is otherwise transferred to another Person, all rights and privileges granted pursuant to this Agreement with respect to such Streets, or any part of such Streets so abandoned, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and Grantee shall remove its Facilities from such Streets. Nothing herein is meant to preclude Grantee from pursuing any rights it may have under state law against a private Person if the Street is vacated for the benefit of that Person. The City shall provide prior written notice of no less than ninety (90) days, except when an emergency situation exists, to Grantee of any such closing, vacation, or transfer to allow Grantee to remove its Facilities where the right to continue to occupy and use such Street is not reserved for Grantee.

6.4. Relocation of Facilities.

6.4.1. Grantee may be required to remove and relocate its Facilities, subject to prior notice which is not less than one hundred and eighty (180) days, except when an emergency situation exists, or as may be required to comply with state or federal

law if: the structures to which they are attached or located within are to be removed, ordered to be removed or relocated; or to accommodate the use of the Street by other entities; or to ensure that the facilities or structures to which they are attached or located within do not interfere with the use of the Street by the public, or present a risk to public health or safety. To the extent that Grantee is required to remove or relocate its Facilities to accommodate the use of the Street by a third party (other than the City, the State of New Jersey, or a department, agency or subdivision of the State of New Jersey), nothing herein prevents Grantee from seeking compensation from that third party. The City agrees to reasonably assist Grantee in finding a suitable alternative location.

6.4.2. If Grantee's Facilities are located aboveground in the Street and the distribution lines of the incumbent local exchange carrier or electric utility subsequently are placed underground, Grantee's aboveground Facilities (other than those comparable to any Facilities of the incumbent local exchange carrier which are permitted to remain aboveground) shall be placed underground at the same time, except for such Facilities as may be permitted to remain aboveground pursuant to Section 2.2.2.

6.4.3. The rights and privileges granted hereby shall not be in preference or hindrance to the right of the City, or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works, public improvements or public projects. In the event that the Facilities interfere in any way with the construction, maintenance or repair of such public works, public improvements, or public projects, the Grantee shall (a) immediately commence work to remove or relocate the object of such interference if emergency circumstances exist or (b) otherwise, within ten (10) days of notice of such interference, protect or relocate its Facilities, as may be directed by the relevant authority.

6.4.4. The City shall cooperate with Grantee in finding a suitable alternative location for any relocated Facilities removed pursuant to this Section in a manner that, to the extent reasonably consistent with other provisions of this Agreement, and which allows Grantee to continue to provide Service to its customers, including, but not limited to, expediting approval of any necessary Permits required for the relocation of Facilities.

6.4.5. If Grantee defaults in its obligations hereunder and fails to remove or relocate Facilities after the notice period provided in this section, or, in the event of an emergency, the City may remove or relocate the Facilities and charge the reasonable cost thereof to and collect the same from the Grantee.

6.5. All Work Performed Safely. Construction and Maintenance shall be done in a workmanlike manner. All work involved in the Construction and Maintenance of the Facilities shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. The Grantee shall comply with applicable codes, regulations and industry standards, as amended from time to time. The Grantee shall employ ordinary care at all times and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public. In addition, the Grantee shall, at its sole cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, and to comply with safety requirements of all permits, licenses, and other forms of approval or authorization. Grantee will comply with City requirements for identification of the Facilities and

for identification of employees, subcontractors, vehicles and equipment when performing work within the Street.

6.6. Maintenance.

6.6.1. Grantee shall maintain the Facilities in good condition and neat and orderly appearance, and in compliance with all applicable laws, permits, Authorizations and site licenses.

6.6.2. Grantee shall keep the Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the City gives Grantee written notice of a failure by Grantee to maintain the Facilities, Grantee shall use its best efforts to remedy such failure within twenty-four (24) hours after receipt of such written notice. If Grantee defaults in its obligations hereunder, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Grantee.

6.6.3. Grantee shall at all times keep and maintain the Facilities free of all graffiti located thereon. If City notifies Grantee that graffiti is located on Facilities, Grantee shall remove the graffiti within three (3) days of the written notice. If Grantee defaults in its obligations hereunder as provided for in Section 9, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Grantee.

6.7. Emergency Notification. The Grantee shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the Grantee, not voice mail or a recording, can be contacted in the event of an emergency. The City shall contact Grantee’s Network Operations Center by calling _____ or emailing _____. At City’s request, a contact number will also be placed on Grantee’s Facilities in such manner as the City may reasonably direct. The Grantee shall respond immediately to address a reported emergency. The City’s emergency contact number is:

City of Camden, Department of Planning and Development
Emergency Rep: Dr. Edward C. Williams, Dir., PP, AICP, CSI
(856) 757 7124

6.8. Excavation Notices. Grantee must contact Dr, Edward C. Williams, or successor association, and comply with the requirements for excavation notification.

6.9. Inspection by City. The City shall have commercially reasonable access to inspect any work conducted by Grantee during the Construction or Maintenance of Facilities.

7. Removal Due to Termination or Abandonment.

Following the termination of the Agreement for any reason, or in the event Grantee ceases to operate and abandons any Facilities, Grantee shall, within sixty (60) days, remove such Facilities from the Street and restore the Street in accordance with the Regulations. In the event Grantee’s improvements materially altered or replaced any structure, Grantee shall restore the structure to its condition at the commencement of this Agreement, including replacing the structure with a replacement matching existing City inventory if necessary. Alternatively, the City may allow Grantee, in the City’s sole and absolute discretion, to abandon Facilities in place and convey the Facilities to the City free and clear. If Grantee defaults in its obligations hereunder, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Grantee.

8. Required Reports.

8.1. Upon request, the Grantee shall provide City an “as-built” map clearly indicating the location of the Facilities in the Street, which maps shall identify the owner of any structure on or within which Grantee’s Facilities are located.

8.2. Upon request, and to the extent not expressly required under a permit, Grantee will keep City apprised of the status of any work in the Streets.

8.3. Upon request, Grantee shall provide proof that it has authority to Construct and Maintain the Facilities, and provide Services.

9. Default and Remedies

9.1. Defaults. The following are defaults under this Agreement:

9.1.1. If either Party fails to perform or comply with any of the conditions or covenants of this Agreement and such failure continues for a period of thirty (30) calendar days after written notice thereof, unless the performance cannot be reasonably completed within the thirty (30) day period, and the Party has commenced good faith efforts to perform and is diligently proceeding to complete performance to the satisfaction of the other Party; or

9.1.2. If Grantee fails to pay any sums herein specified when due and does not pay within fifteen (15) calendar days after receipt of written notice of said default; or

9.1.3. Grantee’s acts or omissions create an imminent hazard to persons or properties which Grantee cannot or does not immediately correct, unless the performance cannot be reasonably completed immediately, and Grantee has commenced good faith efforts to perform and is diligently proceeding to complete performance to the satisfaction of the City;

9.1.4. Grantee repeatedly fails to comply with conditions of permits issued to it pursuant to this Agreement and applicable law, or regulations governing applications for permits.

9.2. Default by Grantee. In the event of default by Grantee as specified in the preceding section, the City shall have the right to terminate this Agreement, by giving thirty (30) calendar days written notice to Grantee, and in addition may pursue any other remedies available to it at law or equity. The thirty-day notice period is not an additional cure period.

9.3. Default by City. In the event of default by the City, Grantee shall have the right to terminate this Agreement while any default continues, beyond any applicable cure period, by giving thirty (30) calendar days written notice to Grantee, and in addition may pursue any other remedies available to it for injunctive relief. Grantee shall have no recourse for damages against the City except as required by state law, whether resulting from enforcement or non-enforcement of this Agreement or any provision of applicable law.

10. City Termination Right.

City shall have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the Streets; or (ii) if Grantee’s licenses to Construct and Maintain the Facilities and/or provide Service are terminated, revoked, expired, or otherwise abandoned; or (iii) if any term related to the design or placement of the Facilities is unenforceable. Notwithstanding subsection (iii), the parties agree to diligently commence and continue good faith efforts to agree on an enforceable terms for design or placement for at least one hundred eighty (180) days after a term is declared

unenforceable, provided that during that negotiation period, Grantee complies with the unenforceable term(s) related to design or placement.

11. Indemnification

The Grantee shall save the City, its officers, employees, contractors and agents harmless from all liability or damage (including judgments, decrees, court costs, and defense costs) arising out of or related in any manner to the Grantee's operations within the corporate limits of the City, the exercise of the privileges granted to the Grantee by City, or the acts or omissions of the Grantee, its officers, employees, contractors, or agents, except to the extent such liability or damage (including judgments, decrees, court costs, and defense costs) arises out of the willful misconduct or negligence of the City, its officers, employees, or contractors.

12. Insurance and Performance Bond.

12.1. Insurance. Grantee shall procure and maintain insurance for the duration of this Agreement against any and all claims for injuries to persons or damages to property which may in any way arise from, or in connection with, the Construction or Maintenance of Facilities or activities Grantee, its agents, representatives or employees may perform pursuant to this Agreement (the "Work"). Such insurance shall be in the following amounts and may be met by any combination of primary and excess or umbrella insurance, which assume that no hazardous materials will be associated with any of the Facilities, and that the Facilities will be of a kind and type regularly installed in the Street. The City may once every five years and with 60 days written notice to Grantee require additional insurance if, in the City's reasonable view, the Facilities present additional risks to it, the public or property.

12.2. Coverages and Limits:

12.2.1. Insurance Permittee obtain and maintain throughout the term of the permit commercial general liability insurance of \$5,000,000 minimum aggregate with a minimum of \$1, 000,000 per occurrence for bodily injury and property damage and including premises operations, contractual liability, personal injury, products completed operations, commercial auto liability of \$1, 000, 000; Workers Compensation –Statutory Limits, Employers Liability \$500,000/\$500,000/\$500,000 as currently established and periodically reviewed by the City Risk Manager, in consultation with the City Engineer.

12.3. Certificates. Certificates showing proof of such insurance shall be submitted to City prior to commencement of any Work. Grantee shall provide written notice advising City at least 30 days' prior to cancellation, a reduction or change in coverage rendering the insurance inconsistent with this Section 12, or non-renewal of any required coverage that is not replaced. Coverage must be replaced before cancellation, adverse change, or before the term of the policy ends, and may not result in any lapse in coverage for any period.

12.4. Endorsements. The required General Liability policy shall include City, its officers, officials, agents and employees as additional, named insureds as respects the liability to the extent arising out of the Work. Such coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

12.5. Workers' Compensation. Grantee shall maintain Workers' Compensation Insurance for all of Grantee's employees who are in any way connected with the Work. Such insurance shall comply with all applicable state laws and to the extent allowed by law provide a waiver of subrogation against the City, its officers, officials, agents and employees.

12.6. Liability. Grantee and/or its insurers are responsible for payment of any liability arising out of Workers' Compensation, unemployment or employee benefits offered to its employees. Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A-VII and eligible to do business in the State of New Jersey, unless otherwise approved by City; and Grantee shall not self-insure in satisfaction of any of the insurance requirements set out herein without the express written consent of City.

12.7. Performance Bond. Grantee shall, as a material condition of its Agreement, and prior to the commencement of any Work in the Streets, deliver to the City a performance bond to cover costs

13. Transfer

13.1. The Agreement, or control of the Agreement or of Facilities within the Street may not be assigned or transferred directly or indirectly by any means without the prior written consent of City which consent shall not be unreasonably withheld, conditioned or delayed; if Grantee is in compliance with this Agreement and provided, that the transfer or assignment does not create any additional burden upon the Street, or adversely affect the City's interests under this Agreement. Grantee may, with notice to City, but without prior consent, assign, sell or transfer its interest under this Agreement, in whole or in part, to Grantee's wholly owned affiliate, provided that there is no change of control of the parent of the Grantee in connection with that transaction. An assignee or transferee must accept all obligations of the Grantee, and responsibility for all acts and omissions of Agreement known and unknown, if the transaction results in a change in Grantee. A license or lease of capacity on Facilities owned or controlled by Grantee is not a Transfer under this Section.

13.2. Grantee may mortgage, pledge, or hypothecate its interest in Facilities without consent to any financing entity, or agent on behalf of any financing entity to whom Grantee (1) has obligations for borrowed money or in respect of guaranties thereof, (2) has obligations evidenced by bonds, debentures, notes or similar instruments, or (3) has obligations under or with respect to letters of credit, bankers' acceptances and similar facilities or in respect of guaranties thereof. Any such assignment to a financing entity or its agent shall be subordinate to the terms of this Agreement, will not permit any person to succeed to the rights of Grantee under the Agreement without the City's consent, and will not result in any lien extending to municipal property or the Agreement itself.

14. Notices

14.1. All notices, requests, demands, and other communications hereunder which are required to be in writing shall be deemed given if personally delivered or by sent to the following addresses by certified mail, return receipt requested; or by an overnight delivery service providing proof of delivery:

City of Camden:

Attn: Dr. Edward C. Williams, Dir., PP, AICP, CSI.
City of Camden, Department of Planning and Development
520 Market Street, Camden, NJ 08101-5120
Camden, NJ 08101

RE: (_____) AGREEMENT

With a copy to (which shall not constitute notice):

[OPTIONAL FOR CITY – Example: City Clerk]

RE: _____ AGREEMENT

[OPTIONAL FOR CITY – Example: City Attorney]

RE: _____ AGREEMENT

Grantee:

With a copy to (same address):

All invoicing to Grantee may be made to _____

14.2. Other Notices. The entity to which notice may be provided by email or telephone call, twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the Construction or Maintenance of Facilities, or conditions affecting the safety or integrity of the Facilities (downed poles or lines, for example), including matters that may require immediate relocation or removal of Facilities shall be: Dr. Edward C. Williams, Dir., PP, AICP, CSI

14.3. Changing Notice. Either party may change the person, address, email or telephone to which notice may be provided by written notice to the other party. Each party must ensure that the other has accurate information as to where notices are to be provided.

15. Miscellaneous

15.1. Materials and Claims. All materials furnished for any work done in the Authorized Area by Grantee shall be at Grantee's sole cost and expense. Grantee agrees to protect the Facilities installed in the Streets and property of the City, and City, from all claims of contractors, laborers and material men. Grantee shall promptly pay all contractors and materialmen, so as to minimize the possibility of a lien attaching to the any property of the City or the Facilities in the Streets. Should any such lien be made or filed, Grantee shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

15.2. No Advertisement. Grantee shall not place any advertisement or other notice on or about the Facilities which identifies the Grantee in any way (except for emergency notification postings or such other postings required by applicable law).

15.3. Merger. This document contains the entire Agreements of the Parties hereto with respect to the Agreement. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or respective successors in interest.

15.4. Non-Waiver. Failure of a Party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights

hereunder shall not waive such rights, but the other Party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Grantee to City after a breach of this Agreement shall not be deemed a waiver of such breach unless expressly set forth in writing.

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

15.6. Governing Law; Jurisdiction.

This Agreement shall be construed in accordance with the laws of the State of New Jersey, without reference to its conflicts of law principles. If suit is brought by a Party to this Agreement, the Parties agree that trial of such action shall be vested exclusively in the Circuit Court for Camden County New Jersey or the United States District Court for the District of New Jersey.

15.7. Change in Law and Severability.

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

15.7.2. In the event that any legislative, regulatory, judicial, or other action binding upon the City of Camden and which would materially affect any of the terms of this Agreement issues after the effective date of this Agreement, then either Party may, upon thirty (30) days written notice, require that such terms be renegotiated, and the Parties expressly agree that they shall renegotiate in good faith mutually agreeable new terms to maintain, as far as possible, the benefits and burdens of this Agreement. In the event that the Parties are unable to agree upon such new terms within a reasonable time period, then either Party may seek appropriate relief with the FCC, state regulatory commission, if appropriate, or a court of competent jurisdiction, and shall, until and unless relief is granted (either on a final or interlocutory basis), comply with the terms hereof. Unless the parties agree otherwise, a reasonable time period for the purposes of this provision is sixty (60) days.

15.8. Representations.

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

15.8.2. Grantee represents that it is validly existing and in good standing under the laws of the State of New Jersey, that it is qualified to do business under the laws of the State of New Jersey, and that it has the power and authority to own its properties, to carry on its business as now being conducted, to enter into this

Agreement and carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

INTENTIONALLY LEFT BLANK

IN WITNESS THEREOF, the parties hereby bind themselves legally to the terms and conditions set forth in this Agreement, as evidenced by the signature of their duly authorized representatives.

WITNESS:

THE CITY OF CAMDEN

By: _____
Name: _____
Title: _____
Date: _____

WITNESS:

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Form:

City Attorney