

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: January 25, 2016

Subject: **Consideration of Pole Attachment Agreement with Mobilitie**

ITEM DESCRIPTION

Consideration of a pole attachment agreement with Mobilitie to allow for installation of small cellular antennae on city owned poles.

BACKGROUND

Representatives of Mobilitie have requested the city's consideration of an agreement to attach microcellular antennae and related equipment to city owned poles. At the council's request the terms and conditions of the Mobilitie agreement have been revised to mirror those of the proposed Crown Castle agreement. Terms of the proposed agreement include:

- Five year initial duration with automatic renewal for three successive five year terms.
- Compensation will be provided to the city in the amount of \$500 per facility per year with an adjustment every 5 years based on the Consumer Price Index.
- Mobilitie is required to obtain city approval prior to installing equipment on any city owned poles.
- The agreement may be terminated for default with 45 days written notice.
- A Construction Timing clause has been added based on the City Council's previous discussion of the agreement.

City of Dunwoody

MUNICIPAL POLE USE AGREEMENT

THIS MUNICIPAL POLE USE AGREEMENT (this "Use Agreement") is dated as of _____, 2016, (the "Effective Date"), and entered into by and between the CITY OF DUNWOODY, a Georgia municipal corporation (the "City"), and MOBILITIE, LLC, a Nevada limited liability company ("Mobilitie" or "Grantee").

Style Definition: Heading 2,RLD
2

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RECITALS

- A. Mobilitie owns, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission and the Georgia Public Service Commission, a fiber-based telecommunications Network or Networks (as defined below) serving Mobilitie's wireless carrier customers and utilizing microcellular optical repeater Equipment (as defined below) certified by the Federal Communications Commission.
- B. The City, owns, operates and maintains Municipal Facilities (as defined below) in the Public Way (as defined below).
- C. For purpose of operating the Network, Mobilitie wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Way (as defined below) on the Municipal Facilities.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and incorporated herein, the parties agree to the following covenants, terms, and conditions:

1 DEFINITIONS. The following definitions shall apply generally to the provisions of this Use Agreement:

1.1 City. ("City") shall mean the City of Dunwoody, including all of its operating departments and divisions.

1.2 Decorative Streetlight Pole. "Decorative Streetlight Pole" shall mean any streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles.

1.3 Equipment. "Equipment" means the optical repeaters, multiplexers, antennae, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by Grantee hereunder. Examples of typical Equipment types and installation configurations are shown in the drawings and photographs attached hereto as **Exhibit A** and incorporated herein by reference.

1.4 Fee. "Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the City lawfully imposed by any governmental body (but excluding any utility users' tax, franchise fees, communications tax, or similar tax or fee).

1.5 Grantee. Grantee means “Mobilitie, LLC” and its successors, transferees or assignees.

1.6 ILEC. “ILEC” means the Incumbent Local Exchange Carrier that provides basic telephone services, among other telecommunications services, to the residents of the City.

1.7 Installation Date. “Installation Date” shall mean the date that the first Equipment is installed by Grantee pursuant to this Use Agreement.

1.8 Laws. “Laws” means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

1.9 Municipal Facilities. “Municipal Facilities” means City-owned Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, electroliers, Traffic Signal Poles, catenary poles, sign posts, or other City-owned structures located within the Public Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

1.10 Network. “Network” or collectively “Networks” means one or more of the neutral-host, protocol-agnostic, fiber-based optical repeater networks operated by Grantee to serve its wireless carrier customers in the City.

1.11 Public Way. “Public Way” means the space in, upon, above, along, across, and over the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include county, state, or federal rights of way or any property owned by any person or entity other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or entity.

1.12 PSC. “PSC” means the Georgia Public Service Commission.

1.13 Services. “Services” means the RF transport and other telecommunications services provided through the Network by Grantee to its wireless carrier customers pursuant to one or more tariffs filed with and regulated by the PUC.

1.14 Streetlight Pole. “Streetlight Pole” shall mean any standard-design concrete, fiberglass, metal, or wooden pole used for streetlighting purposes.

1.15 Traffic Signal Pole. “Traffic Signal Pole” shall mean any standard-design concrete, fiberglass, metal, or wooden pole used to support vehicular or pedestrian traffic signals.

2 TERM. This Use Agreement shall be effective as of the Effective Date and shall extend for a term of five (5) years commencing on the Installation Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Use Agreement shall be renewed automatically for three (3) successive terms of five (5) years each on the same terms and conditions as set forth herein, unless either party notifies the other of its intention not to renew not less than thirty (30) calendar days prior to commencement of the relevant renewal term.

3 SCOPE OF USE AGREEMENT. Any and all rights expressly granted to Grantee under this Use Agreement, which shall be exercised at Grantee’s sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Way exclusively

or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in Grantee a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement shall be subject to the reasonable prior review and approval of the City except that it is agreed that no zoning or planning board permit, variance, conditional use permit or site plan permit, or their equivalent under the City's ordinances, codes or laws, shall be required for the installation of Grantee's Equipment installed on Municipal Facilities, unless such a process has been required for the placement of all communications facilities and equipment on Municipal Facilities in the Public Way by all other telecommunications providers, including but not limited to the ILEC and local cable provider(s).

3.1 Attachment to Municipal Facilities. For installing Telecommunications Equipment on Grantor Facilities, the proposed location(s) of the Telecommunications Equipment on Grantor Equipment shall be approved by Grantor in its sole discretion within thirty days of receiving an Application from Grantee. After the initial approval of this Authorization, any further installations on Grantor Facilities shall first be authorized by the City Manager or designee, but without further need for legislative action. The Application for each of Grantor's facilities must include drawings and diagrams depicting the location(s) and proposed manner of installation. The Grantor may refuse to allow attachment of Telecommunications Equipment to Grantor Facilities only where there is insufficient capacity, or for reasons related to aesthetics, safety, reliability, or generally applicable engineering standards. If Grantee's application is denied, Grantor will send Grantee a denial, in writing, stating the particular aesthetic, safety, capacity, reliability or generally applicable engineering reason for denial. In no event shall the Grantor be obligated to replace any Grantor Facilities to accommodate the Telecommunications Equipment. Grantee must replace, at its sole cost and expense, any replacement pole owned by the Grantor that is needed to accommodate Telecommunications Equipment.

3.2 No Interference. Grantee in the performance and exercise of its rights and obligations under this Use Agreement 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 electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement.

3.3 Compliance with Laws. Grantee shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

4 COMPENSATION; UTILITY CHARGES. Grantee shall be solely responsible for the payment of all lawful Fees in connection with Grantee's performance under this Use Agreement, including those set forth below.

4.1 Annual Fee. In order to compensate the City for Grantee's entry upon and deployment within the Public Way and as compensation for the use of Municipal Facilities, Grantee shall pay to the City an annual fee (the "Annual Fee") in the amount of Five Hundred Dollars (\$500.00) for the use of each Municipal Facility, if any, upon which Equipment has been installed pursuant to this Use Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Equipment installed on Municipal Facilities during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than forty-five (45) days after each anniversary of the Installation Date. The City represents and covenants

that the City owns all Municipal Facilities for the use of which it is collecting from Grantee the Annual Fee pursuant to this § 4.1.

4.1.1 CPI Adjustment. Effective commencing on the fifth (5th) anniversary of the Installation Date and continuing on each fifth (5th) anniversary thereafter during the term, the Annual Fee with respect to the ensuing five-year period shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for the South.

4.2 Accounting Matters. Grantee shall keep accurate books of account at its administrative office, and in electronic format, for the purpose of determining the amounts due to the City under this section. The City may inspect Grantee's books of account relative to the City, or request electronic copies, at any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under this section. The City agrees to hold in confidence any non-public information it learns from Grantee to the fullest extent permitted by Law.

4.3 Electricity Charges. For all electrical power obtained from third party providers, Grantee shall be solely responsible for the payment of all electrical utility charges to the applicable utility provider based upon the Equipment' usage of electricity and applicable tariffs.

5 CONSTRUCTION. Grantee shall comply with all applicable federal, State, and City codes, specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of Grantee's Equipment installed in the Public Way and on Municipal Facilities in the City. Grantee shall not attach, install, maintain, or operate any Equipment in or on the Public Way on Municipal Facilities without the prior approval of the City for each location.

5.1 Obtaining Required Permits. If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Way shall require any permits, Grantee shall, if required under applicable City ordinances, apply for the appropriate permits and pay any standard and customary permit fees, so long as the permit fees and process that the City requests of Grantee are functionally equivalent to the fees and the process that are applied to the ILEC and/or the cable provider(s). The City agrees to use reasonable efforts to review and approve Grantee's applications within thirty (30) days of submission.

5.2 Construction Timing. Upon issuance of all requisite permits in connection with an Equipment installation, Mobilitie shall use commercially reasonable efforts to commence and complete such permitted Equipment installation in a timely manner, and in no event shall such Equipment installation take longer than one hundred twenty (120) days from construction commencement. Notwithstanding the foregoing, there shall be excluded from the computation of such 120-day time period delays due to (i) the wrongful or negligent acts or omissions of the City, its agents, employees, or contractors, (ii) delays caused by third party communications carriers and other third party providers of equipment and services, and (iii) fires or other casualty, inclement or adverse weather of unusual amount or duration for the subject season, strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other causes whatsoever beyond the control of Mobilitie. Mobilitie shall employ reasonable diligence to eliminate the cause of any inability or delay referred to in this Section 4.5. One or more extensions of time for periods of not more than 120 days each may be allowed by the City provided the extension is requested in writing, justifiable cause is demonstrated, and the construction site is not unreasonably unsightly.

5.3 Location of Equipment. The proposed locations of Grantee's planned initial installation of Equipment shall be provided to the City prior to deployment of the Equipment. Upon the completion of installation, Grantee promptly shall furnish to the City a pole list showing the exact location of the Equipment in the Public Way and the date of initial installation. Additional installations during the term of this Use Agreement shall be approved and installed in accordance with this Use Agreement and said "pole" list updated upon each installation.

5.4 Relocation and Displacement of Equipment. Grantee understands and acknowledges that the City may require Grantee to relocate one or more of its Equipment installations. Grantee shall at the City's direction relocate such Equipment at Grantee's sole cost and expense, whenever the City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Equipment is interfering with or adversely affecting proper operation of any City-owned light poles, traffic signals, or other equipment in the Public Way; or (c) to protect or preserve the public health or safety. In any such case, the City shall use its best efforts to afford Grantee a reasonably equivalent alternate location. If Grantee shall fail to relocate any Equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, the City shall be entitled to relocate the Equipment at Grantee's sole cost and expense, without further notice to Grantee. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform Grantee of the displacement or removal of any pole on which any Equipment is located.

5.5 Relocations at Grantee's Request. In the event Grantee desires to relocate any Equipment from one Municipal Facility to another, Grantee shall so advise the City. The City will use its best efforts to accommodate Grantee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Use Agreement.

5.6 Damage to Public Way. Whenever the removal or relocation of Equipment is required or permitted under this Use Agreement, and such removal or relocation shall cause the Public Way or Municipal Facilities to be damaged, Grantee, at its sole cost and expense, shall promptly repair and return the Public Way and Municipal Facilities in and on which the Equipment are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If Grantee does not repair the site as just described, then the City shall have the option, upon fifteen (15) days' prior written notice to Grantee, to perform or cause to be performed such reasonable and necessary work on behalf of Grantee and to charge Grantee for the proposed costs to be incurred or the actual costs incurred by the City at the City's standard rates. Upon the receipt of a demand for payment by the City, Grantee shall promptly reimburse the City for such costs.

6 INDEMNIFICATION AND WAIVER. Grantee agrees to indemnify, defend, protect, and hold harmless the City, its elected officials, council members, officers, agents and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from Grantee's activities undertaken pursuant to this Use Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its council or board members, officers, elected trustees, employees, agents, or contractors.

6.1 Waiver of Claims. Grantee waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the reasonable control of the City.

6.2 Limitation of Liability. The City shall be liable only for the cost of repair to damaged Equipment arising from the negligence or willful misconduct of the City, its employees, agents, or contractors. In no event shall either party be liable for indirect or consequential damages.

7 INSURANCE. Grantee shall obtain and maintain at all times during the term of this Use Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Grantee in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$3,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the City, its elected officials, officers, agents and employees as additional insureds as respects any covered liability arising out of Grantee's performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled without replacement, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. Grantee shall be responsible for notifying the City of such change or cancellation.

7.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Use Agreement, Grantee shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (b) that Grantee's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and
- (c) that Grantee's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

The certificate(s) of insurance with endorsements and notices shall be mailed to the City at the address specified in § 8 below.

7.2 Workers' Compensation Insurance. Mobilite shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage.

7.3 Insurer Criteria. Any insurance provider of Grantee shall be admitted and authorized to do business in the State of Georgia and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (*i.e.*, a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

7.4 Severability of Interest. Any insurance policy deductibles or self-insured retentions shall be the responsibility of Grantee. The City shall have no responsibility to pay or reimburse either. Any self-insured retention shall be listed on the certificate of insurance and be subject to approval by the City. The Commercial General Liability and Automobile Liability policies shall each contain a severability

of interest or separation of insureds clause such that the insurance applies to each insured as if they were the only insured and separately to each insured against whom a claim is made, except for insurance policy limits.

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

if to the City:

CITY OF DUNWOODY
Attn: City Manager
41 Perimeter Center East
Suite 250
Dunwoody, Georgia 30046

if to Grantee:

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

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

9 **TERMINATION.** This Use Agreement may be terminated by either party upon thirty (30) days' prior written notice to the other party following a default of any material covenant or term hereof by the other party, which default is not cured, or if the defaulting party fails to commence such cure within the period stated in Paragraph 9 or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

10 **ASSIGNMENT.** This Use Agreement shall not be assigned by Grantee without the express written consent of the City. Notwithstanding the foregoing, the transfer of the rights and obligations of Grantee to a parent, subsidiary, or other affiliate of Grantee or to any successor in interest or entity acquiring fifty-one percent (51%) or more of Grantee's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the City, provided that Grantee reasonably demonstrates to the City's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of Grantee immediately prior to the transfer; (ii) any such transferee assumes all of Grantee's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with Grantee's management team, in the provision of telecommunications or similar services, evidences an ability to operate the Network. Grantee shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the

Deleted: <#>Remedies¶
<#>Notice of Violation. Grantor shall provide Grantee with a detailed written notice of any Authorization violation upon which it proposes to take action, and a ninety (90) day period within which Grantee may: (1) demonstrate that a violation does not exist or cure an alleged violation, (2) cure the violation, or (3) if the nature of the violation prevents correction of the violation within 90 days, to initiate a reasonable plan of action to correct such violation (including a projected date by which it will be completed) and notify the Grantor of such plan of action.¶
9.2 . Default. If Grantee fails to disprove or correct the violation within ninety (90) days or, in the case of a violation which cannot be corrected in 90 days and Grantee has failed to initiate a reasonable plan of corrective action and to correct the violation within the specified time frame, then Grantor may declare the Grantee in default, which declaration must be in writing. In the event that the Grantor declares Grantee in default, the Grantor shall have the right to institute legal proceedings to collect damages from the date of declaration of default, terminate this Agreement in accordance with Paragraph 10 or to exercise any other rights and remedies afforded to the Grantor in law or equity.¶

City of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why Grantee believes the Exempted Transfer Criteria have been satisfied. The City shall have a period of thirty (30) days (the "Exempted Transfer Evaluation Period") from the date that Grantee gives the City its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the City has received from Grantee any and all additional information the City may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the City gives Grantee notice in writing of the additional information the City requires within fifteen (15) days after the City's receipt of the original Exempted Transfer Notice. If the City fails to act upon Grantee's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City that Grantee has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

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11 MISCELLANEOUS PROVISIONS. The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

Deleted: <#>Amendment. Requests to amend this Agreement, to accommodate a significant change in circumstances or to prevent unreasonable hardship to Grantee, may be made by the Grantee to Grantor. Grantor shall review such request within fourteen (14) calendar days, or earliest meeting of the governing body of Grantor, and act on a request within thirty (30) days. If Grantee cannot reach agreement with the Grantor on the amendment within such time, Grantee may terminate this Agreement.¶

11.1 Nonexclusive Use. Grantee understands that this Use Agreement does not provide Grantee with exclusive use of the Public Way or any Municipal Facility and that the City shall have the right to permit other providers of communications services to install equipment or devices in the Public Way and on Municipal Facilities so long as they shall not interfere with Grantee's installed facilities. In addition, the City agrees to advise other providers of communications services of the presence or planned deployment of the Equipment in the Public Way and/or on Municipal Facilities.

11.2 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Use 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 Use Agreement.

11.3 Severability of Provisions. If any one or more of the provisions of this Use Agreement shall be held by 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 Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

11.4 Contacting Grantee. Grantee shall be available to the staff employees of any City department having jurisdiction over Grantee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The City may contact by telephone the network operations center operator at telephone number _____ regarding such problems or complaints.

11.5 Governing Law; Jurisdiction. This Use Agreement shall be governed and construed by and in accordance with the laws of the State of Georgia. If suit is brought by a party to this Use Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of DeKalb County, Georgia, or in the United States District Court for the Northern District of Georgia.

11.6 Attorneys' Fees. Should any dispute arising out of this Use Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

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

11.8 Representations and Warranties. 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 without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided herein.

11.9 Amendment of Use Agreement. This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

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

In witness whereof, and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the Effective Date.

[Signature Page Follows]

DOCUMENT DISCLOSURE:

It is understood and agreed to by Grantee that this License and all information submitted by Grantee to the City in connection with Grantee's application for this License and all further information that may be submitted in connection with Grantee's rights and duties under this License shall be subject to public disclosure and copying upon request to City Information Systems by any person.

ATTEST:

MOBILITIE, LLC

Sign: _____

Sign: _____

Print: _____

Name: _____
Title: _____

WITNESS:

CITY OF DUNWOODY

Name: _____
Title: _____

WITNESS:

SIGNATURE OF WITNESS

Name: _____
Title: _____

TYPE NAME OF WITNESS

EXAMINED BY:

APPROVED TO FORM:

TITLE

Name: _____
Title: _____

Exhibits:

Exhibit A - Equipment