

RIGHTS-OF-WAY USE AGREEMENT

This Rights-of-Way Use Agreement (the "Agreement") is executed as of the ___ day of _____, 2012, between tw telecom of maryland llc ("TWTC"), a Delaware limited liability company, and THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, (the "City"), a municipal corporation.

WITNESSETH

WHEREAS, TWTC will offer telecommunications services to customers located in Rockville, Maryland; and

WHEREAS, TWTC desires to place communications facilities underground within conduits, ducts, mains and/or pipes and overhead on poles, which communications facilities are or will be located under and on rights-of-way controlled by the City; and

WHEREAS, the City is willing to permit, under certain conditions set forth herein, the construction of a communications system and placement of communications facilities on the rights-of-way controlled by the City.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

1. Before constructing or placing communications facilities on or in the rights-of-way controlled by the City, TWTC shall make application in the form of Exhibit "A" and receive a permit therefor in the form of Exhibit "B." Prior to making application pursuant to this paragraph, TWTC will: A) in the case of construction of new conduits or erection of new poles, provide notice to other utility companies having a right-of-way in the same location in which TWTC wishes to place its telecommunication facilities, or B) in the case of locating new cable in existing conduits or on existing pole space, obtain a conduit occupancy agreement or a pole attachment agreement from the owner of the conduit or poles. TWTC shall construct its facilities so that they do not interfere with the existing facilities of other utility companies. Any cott markers used by TWTC shall be flush-type cott markers and shall be approved by the City's Department of Public Works.
2. The City will use its best efforts to approve or deny any applications within thirty (30) business days after receipt.
3. TWTC will be responsible for all site survey and other engineering costs. TWTC will pay the then current City permit fee at the time of filing the application for any required permit. TWTC shall also comply with all applicable City ordinances with respect to the posting of the surety bond described in Article 14 hereof.
4. Upon application for a permit for installation of underground conduit, TWTC will provide the City with specifications regarding conduit materials, which specifications

shall meet the City's reasonable requirements as to such materials. TWTC will notify the City at least 48 hours in advance whenever work is proposed which will interfere with or cause damage to any portion of the public right-of-way.

5. TWTC will join "Miss Utility;" will comply with the "Miss Utility" notice requirements, and will provide to the City evidence of having joined "Miss Utility" before the City will issue any permit.
6. TWTC will comply with applicable federal, state, county and City laws, including but not limited to any ordinance imposing franchise fees, rental fees, etc.
7. TWTC will maintain all facilities constructed or installed pursuant to the permits issued under this Agreement in safe condition and in good repair.
8. Prior to commencement of construction, TWTC shall post or shall cause to be posted notices of such construction along the City right-of-way where the construction will take place. The notices shall include a local or toll-free telephone number for residents to call with questions or complaints regarding the construction work. TWTC will maintain a log of any complaints received and will provide the City with a copy of such log upon request. During construction TWTC will take all necessary precautions to protect persons and property against injury. After construction, TWTC will restore the rights-of-way to substantially the same condition as existed prior to construction. Upon completion of construction, TWTC shall provide to the City two (2) complete sets of copies of all "as-built" plans for the telecommunications facilities in paper and one set in an electronic format compatible with the City's GIS system.
9. It is expressly understood by TWTC that this Agreement and any permits issued hereunder do not create or vest in TWTC any easement or other ownership of real property rights on the rights-of-way. This Agreement and the permits are in the nature of a non-exclusive license which is revocable by the City to the extent such revocation is necessary to protect the public health, safety and welfare. Except as otherwise provided in Articles 10 and 16 hereof, prior to any such revocation, the City will provide TWTC with as much written notice as possible, but in no event less than ninety (90) days.
10. If TWTC shall be in breach of any provision of this Agreement or a permit issued hereunder, the City will provide TWTC with a written notice of default specifying the alleged breach. TWTC shall have thirty (30) days from receipt of notice to cure such breach, provided that if the breach, by its nature cannot be cured within said thirty (30) days, TWTC shall not be in default if it commences curing within said thirty (30) days and thereafter continuously and diligently pursues the cure to completion. If TWTC fails to so cure the breach, the City may declare TWTC in default and revoke the relevant permit or permits upon ten (10) days advance written notice to TWTC.
11. TWTC shall indemnify and hold harmless the City from and against any and all losses, claims, suits or demands for damages to property or persons arising out of

TWTC's use of the rights-of-way, unless such loss, claim, suit or demand for damages is caused by the gross negligence or willful misconduct of the City, its employees, agents or contractors.

12. TWTC, at its expense, will carry and keep in force and effect during the term of this Agreement including all extensions, commercial general liability insurance, automobile liability insurance and excess/umbrella liability insurance that will name the City as an additional insured and will protect the parties against losses, claims, suits, or demands for damages to property or persons arising out of TWTC's use of the rights-of-way, with a combined single coverage limit of not less than Two Million Dollars (\$2,000,000.00). TWTC also will carry and assign a waiver of subrogation for workers' compensation and employers' liability insurance at statutory minimums.

Endorsements reflecting the Mayor and Council of Rockville as an additional insured are required to be submitted with the insurance certificate. TWTC's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, consultants, agents and employees and any insurance or self-insurance maintained by the City, shall be excess of TWTC's insurance and shall not be called upon to contribute with it. TWTC will provide 30-day written notice of cancellation in insurance coverage.

13. TWTC shall not assign or transfer this Agreement without the written consent of the City, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, TWTC may assign this Agreement without the consent of the City to an entity that controls, is controlled by, or is under common control with, TWTC; however, TWTC shall provide the City notice of such assignment. Furthermore, nothing in this provision shall be construed as prohibiting TWTC from entering into secured financing arrangements involving the communications systems or facilities.
14. In installing its facilities TWTC shall satisfy all of the applicable provisions of Chapter 21 of the Rockville City Code, entitled "Streets and Public Improvements" (the "Road Code"). Prior to the issuance of any permit by the City, TWTC shall furnish a performance bond in form satisfactory to the City, and in an initial amount of Fifty Thousand Dollars (\$50,000.00), until such time as the work performed by TWTC exceeds such amount, in which event an additional bond amount shall be furnished, to be determined in accordance with the Road Code provisions governing such bonds, as security for the commitment of TWTC to satisfy the Road Code and to otherwise perform the installation in compliance with this Agreement. Such bond shall be released upon the expiration of five (5) years (ten (10) years for boring) after completion of construction, final inspection and acceptance of same by the City. Further, although a bond must be maintained in effect until five years after completion of construction for projects involving open trenching or ten year for projects involving boring, final inspection and acceptance of the same by the City, the City will accept a bond with a term of one year, provided the same is renewed annually and that the City receives notice at least ninety (90) days prior to the expiration of any one year term of the bond if the bonding company will not be

renewing such bond for an additional one year term. If the bond is not renewed, TWTC shall obtain a replacement bond in the same amount for an additional one year term. If the bond is not renewed and a replacement bond is not provided, TWTC's rights to use the public right-of-way pursuant to this Agreement shall terminate.

15. Failure of either party to enforce or insist upon compliance with any provision of this Agreement shall not constitute a waiver of such provision by such party.
16. Should a conflict arise between a TWTC facility and an existing or proposed City facility, then TWTC shall at its sole expense, relocate or eliminate said conflicting TWTC facility upon written notice from the City to do so and said relocation or elimination shall be completed as soon as practicable after receipt of said notice, but under no circumstances more than sixty (60) days thereafter, unless an extension of the sixty (60) day limit is specifically granted in writing by the City. The City shall use good faith efforts to designate locations for any relocated facilities that will permit TWTC to continue to serve its existing customers. Notwithstanding the foregoing, TWTC shall not be required to pay to the City any permit fees in connection with a relocation required by the City under this Article 16.
17. As a one-time administrative fee for the granting of the license to use the public rights of way as set forth herein, TWTC will pay the City the sum of seven thousand five hundred and no/100 (\$7,500.00). In the event TWTC chooses to extend its network beyond the initial design, TWTC shall obtain City approval for such extension in accordance with all applicable rules and regulations of the City adopted by ordinance, including but not limited to obtaining a permit for construction.
18. Subject to Article 13 above, this Agreement shall extend to and bind the successors and assigns of the parties hereto.
19. Notice required under this Agreement will be addressed as follows:

If to the City:

City Manager
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

With a copy to:

Telecommunications and IT Operations Manager
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

Director of Public Works
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

If to TWTC: tw telecom of maryland llc
Attn: Sr. VP & Deputy General Counsel
10475 Park Meadows Drive
Littleton, CO 80124
Tel. 303-566-1279

With a copy to:

tw telecom of maryland llc
Attn: Rochelle Jones, SVP – Regulatory
10475 Park Meadows Drive
Littleton, CO 80124
Tel. 212-364-7319

20. Notices shall be mailed to the addressee by registered or certified mail, return receipt requested, with postage prepaid, or delivered by reputable courier service, with signed evidence of receipt, and shall be deemed delivered when received or refused by the addressee.
21. TWTC shall provide to the City's Department of Public Works 24-hour, 7-day per week emergency contact information. This information shall include the emergency contact's name, title, phone number, cellular/mobile phone number, e-mail address, and mailing address. TWTC shall provide updated information whenever it changes. If TWTC fails to provide the information required in this paragraph 21, the City shall be relieved of any liability for any and all reasonable actions it takes to handle emergency situations, and TWTC shall reimburse the City for any and all reasonable additional expenses the City incurs as a result of the failure of TWTC to provide the information require in this paragraph 21.
22. This Agreement shall be governed by the laws of the State of Maryland. The parties agree that any litigation arising from this Agreement shall be brought in the Circuit Court for Montgomery County, Maryland, to the extent such court has jurisdiction, and the parties hereby waive any objection to venue in such court.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST:

tw telecom of maryland llc
By: tw telecom management co. llc
Its sole member

Stephanie Hart

By: *Paul B. Jones*

Name: **Paul B. Jones**

Title: **Executive Vice President
General Counsel & Regulatory Policy**

ATTEST:

THE MAYOR AND COUNCIL OF ROCKVILLE

, City Clerk

By: _____
, City Manager