

FRANCHISE AGREEMENT
BETWEEN
THE CITY OF GREENSBORO, NORTH CAROLINA
AND
MOBILITIE, LLC
2220 University Drive
Newport Beach, CA 92660
ATTN: Asset Management
-and-
2220 University Drive
Newport Beach, CA 92660
ATTN: Legal Department
FOR
TELECOMMUNICATION SERVICE

December 20th, 2016

First Council Reading December 20th, 2016
Second Council Reading January 17th, 2016

RETURN TO:

John Gribble, Franchise & Right of Way Manager
City of Greensboro, Information Technology Department
PO Box 3136
Greensboro, NC 27402-3136
336-373-2464
Email: john.gribble@greensboro-nc.gov

Overnight packages should be sent to the following address instead of the PO Box:

John Gribble, Franchise & Right of Way Manager
City of Greensboro, Information Technology Department
300 W. Washington Street
Greensboro, NC 27402-3136

TABLE OF CONTENTS

I.	Grant of franchise.	1
II.	Effective date of Franchise, effect upon existing Franchise.	2
III.	Term	2
IV.	Franchise nonexclusive	4
V.	Incorporation of the Telecommunications Ordinance by reference and resolution of conflicts	4
VI.	Definitions	4
VII.	Service area.....	4
VIII.	System and capacity.....	4
IX.	Construction.....	6
X.	Franchise renewal.....	7
XI.	Police powers.....	8
XII.	Franchise fee and performance bond.	8
XIII.	Regulation.....	9
XIV.	Remedies.....	9
XV.	E-Verify.....	9
XVI.	Iran Divestment Act Certification.....	10
XVII.	Cooperation	10
XVIII.	Waiver.....	10
XIX.	Cumulative provision.....	10
XX.	Captions.....	11

XXI. No joint venture.....	11
XXII. Entire agreement.	11
XXIII. Severability.	11
XXIV. Notice.....	11

FRANCHISE AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of December, 2016, by and between the City of Greensboro, North Carolina, hereinafter referred to as "City" and MOBILITIE, LLC ("Franchisee"), a Limited Liability Corporation, with its principal place of business in 2220 University Drive Newport Beach, CA 92660, hereinafter referred to as "Franchisee".

WHEREAS the City is authorized to grant one or more nonexclusive, revocable, franchises to construct, operate, and maintain a telecommunications system within the City to provide long distance network service;

WHEREAS Franchisee will construct and operate a telecommunications system as set forth herein;

WHEREAS the City, after due evaluation, has determined that it is in the best interest of the City and its residents to grant a franchise to Franchisee for a ten (10) year term.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

I. Grant of franchise.

- (a) Franchisee is hereby granted for itself and its successors and assignees, subject to the terms and conditions of this Franchise, the right, privilege, and authority to construct, operate, maintain, and reconstruct a telecommunications system within the streets, alleys, and public rights-of-way of the City for the purpose of providing telecommunications service. Franchisee shall provide a modern telecommunications system in accordance with this Franchise.
- (b) This Franchise is subject to the Chapter 28.1 of the Greensboro Code of Ordinances, (hereafter referred to as the "Telecommunications Ordinance"), as amended and in effect from time to time. Except as expressly stated herein, nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid, or manner of construction.
- (c) For the purpose of operating and maintaining a telecommunications system in the City, Franchisee may erect, in, over, under, or upon, across, and along the public streets, alleys, and rights-of-way within the City such wires, cables,

fiber optics, conductors, ducts, conduits, vaults, manholes, poles, amplifiers, antennas, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the telecommunications system in the City and in accordance with this Franchise and the Telecommunications Ordinance.

- (d) Franchisee is authorized to provide only telecommunications services under the terms of this Franchise Agreement with the City. This includes telecommunications services within the local service area which either originate or terminate in the City of Greensboro or both.
- (e) Franchisee may provide capacity across Franchisee's telecommunications system to a third party without the consent of and/or notification to the City, so long as Franchisee retains control over and remains solely responsible for, such telecommunications system. The use of Franchisee's telecommunications system by third parties (including, but not limited to, leases of dark fiber) that involves no additional attachment is not considered a transfer of ownership or control subject to the provisions of Section 28.1-16 of the Telecommunications Ordinance.

II. Effective date of Franchise, effect upon existing Franchise.

The effective date of this Franchise shall be the date of second passage of this Franchise by the Greensboro City Council.

III. Term.

- (a) *Term.* The term of the franchise shall be for a period of ten (10) years from the effective date, unless sooner terminated as provided in the Telecommunications Ordinance, at which time it shall expire and be of no further force and effect. The term of said franchise shall be extended for five (5) years from the end of the ten (10) year term in the event Franchisee has substantially complied with the material terms and conditions of this franchise and the ordinance over the term prior to action by Council in this matter. At the end of any such extension of the term, the franchise shall be extended for an additional five (5) years only in the event Franchisee has substantially complied with the material terms and conditions of this franchise and the ordinance over the term prior to action by Council in this matter.
- (b) *Option notice.* Within ninety (90) days after the first day of the seventh year of the franchise term, Franchisee shall provide notice by certified letter to the City that it seeks the five (5) year extension. If such extension is granted, within ninety (90) days after the first day of the fourth year of such extension, Franchisee shall provide notice by certified letter to the City that it seeks the

five (5) year extension. Such notices shall include Franchisee's statement that it has substantially complied with the material terms and conditions of the franchise and ordinance and any information Franchisee may provide in support of its request.

- (c) *Compliance notice.* Within ninety (90) days of receipt from Franchisee, the City shall review the notice and supporting information provided by Franchisee and shall notify Franchisee in writing of its intention to either grant the extension or to contend Franchisee has substantially failed to comply with the material terms and conditions of this franchise or ordinance. If the City fails to notify Franchisee within the 90-day period, the five (5) year extension shall be deemed to be granted and no further action by the City or Franchisee shall be required.
- (d) *Public hearing.* If the City contends that Franchisee has failed to comply with said franchise or ordinance, it shall present written documentation to Franchisee. If Franchisee does not come into compliance with said franchise or ordinance within sixty (60) days or commence to cure said non-compliance as soon as reasonably practicable (if such non-compliance cannot be cured within sixty (60) days), the City shall present written documentation and evidence to the City Council, (including, but not limited to, the information supplied by Franchisee), no later than one hundred and twenty (120) days after notification to Franchisee that the City contends that Franchisee has not substantially complied with the material terms and conditions of this franchise as specified in (c) above. Upon receipt of the documentation and evidence, the City Council shall schedule a public hearing. At such public hearing, Franchisee shall have the right to present its documentation and evidence in support of its position.
- (e) *Decision.* If after reviewing all documentation and evidence, the City Council decides Franchisee has substantially complied with the material terms and conditions of this franchise and ordinance, the five (5) year extension shall be awarded by the first day of the eighth year of this franchise. If the City Council decides Franchisee has not substantially complied with the material terms and conditions of this franchise and the ordinance, it shall adopt a resolution stating the same. If such a resolution is adopted, Franchisee has the right to contest in a court of appropriate jurisdiction, the City Council's action.

IV. Franchise nonexclusive

Franchise nonexclusive. Consistent with the requirements of the Telecommunications Ordinance, this Franchise shall not be construed as any limitation upon the right of the City to grant to other persons, rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public rights-of-way. The City specifically reserves the right to grant at any time during the term of this Franchise or renewal thereof, if any, such additional franchises for a telecommunications system as it deems appropriate.

V. Incorporation of the Telecommunications Ordinance by reference and resolution of conflicts.

All terms, conditions and provisions of Chapter 28.1 of the Greensboro Code of Ordinances shall be deemed to be embodied in this Franchise, and the express terms of said Chapter 28.1 shall prevail over conflicting or inconsistent provisions of this Franchise, unless this Franchise specifically and expressly modifies the terms of the Chapter 28.1. This Franchise Agreement shall prevail over any conflicting or inconsistent provisions of the Appendices attached hereto.

VI. Definitions.

All definitions set forth by City Telecommunications Ordinance pertain to this Franchise and shall be relevant to the purposes and meaning of this Franchise.

VII. Service area.

- (a) *Service area.* The service area of the Franchisee shall be as specified in **Appendix A**, attached hereto and incorporated by reference. The service area may be extended upon the approval of the City. Such approval to extend the service area shall not be unreasonably withheld.

VIII. System and capacity.

- (a) *System.* Franchisee's system will generally consist of fiber optic cabling and associated equipment, attached to existing utility poles or run through underground conduit. Franchisee's system may also include "small cell" equipment (including antenna, radio equipment, battery backup and other necessary appurtenances), mounted on existing poles or other suitable structures or, where necessary (and with the approval of the City through its

permitting process), on new poles or structures placed by Franchisee. The system shall be constructed in accordance with industry-standard specifications, including the National Electric Safety Code. The system shall be constructed in accordance with the specifications in **Appendix B**, attached hereto and incorporated by reference.

- (b) *Construction oversight.* Franchisee shall provide necessary supervision to construct the system in a workmanlike manner as specified in **Appendix C**, attached hereto and incorporated by reference. Franchisee shall provide contact numbers for supervisors of construction to the City.
- (c) *Compliance with applicable law.* In constructing, operating and maintaining the system, Franchisee shall at all times comply with ordinance and all applicable laws and regulations.
- (d) *Drops.* Franchisee shall construct all customer drops to meet the standards of the National Electric Code.
- (e) *Equipment quality.* Equipment used for the telecommunications system shall be of good and durable quality and be serviced and repaired on a regular basis and shall at all times be of equal or better quality than the equipment and/or specifications listed in **Appendix D**, attached hereto and incorporated by reference.
- (f) *City Co-Location Opportunities on Structures.* During the term of the franchise, and upon Franchisee's prior written approval, Franchisee will provide the City with access to and a non-exclusive license to use and occupy poles installed pursuant to this Franchise Agreement in the public right-of-way and owned by Franchisee in order for the City to install, operate and maintain facilities and/or equipment owned by the City used to assist in the provision of the City's communications and/or public safety services ("City Equipment"). Such City Equipment shall be installed, operated and maintained in a manner consistent with all applicable laws. All City Equipment on Franchisee's poles shall be dedicated to governmental use and shall not be for any other use unless otherwise agreed to by Franchisee. Prior to installing such City Equipment, the proposed location(s) of the City Equipment on Franchisee's poles shall be disclosed in writing to Franchisee by City at least thirty (30) days prior to the proposed installation date. The written disclosure must include drawings and diagrams depicting the location(s) and manner of installation of such City Equipment and a load bearing survey to confirm such poles can carry the load of the proposed City Equipment. Franchisee may refuse to allow the City Equipment to be installed on its poles where there is insufficient capacity, where such installation will interfere with Franchisee's telecommunication system, equipment or the use thereof, where such installation will result in any additional or increased costs on the part of Franchisee, or for reasons related to

safety, reliability, or generally applicable engineering standards. The City shall promptly remove all City Equipment from Franchisee's poles upon the termination or expiration of this franchise or the abandonment or removal by Franchisee of a pole on which such City Equipment is attached. All costs and expenses in connection with the City Equipment, including, but not limited to, fees, costs and expenses incurred for the installation, operation, maintenance, and removal of the City Equipment, a load bearing survey, and electric service for such City Equipment, shall be borne by the City. Neither Franchisee nor any of its agents or employees shall be liable for any damage to property, personal or bodily injury, or death caused by the installation, operation, or maintenance of the City Equipment or by the acts or omissions of the City or any officer, board, commission, agent or employee of the City in connection with the City Equipment.

- (g) *Technical standards.* The telecommunications system permitted to be operated hereunder shall be installed and operated in conformance with the ordinance, this franchise, and Federal and State rules and regulations.
- (h) *Employee identification.* Franchisee shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. Such documents shall include a telephone number that can be used to verify identification. In addition, Franchisee shall use its best efforts to clearly identify all field personnel, vehicles, and other major equipment that are operating under the authority of Franchisee.
- (i) *Underground Drops.* The cost for replacing aerial drops with underground placement will be determined by the location of the utility drops. If the customer is served underground for power, there will be no charge for the replacement. If the customer has imminent plans to change the placement of the power drop, the cable drop will be replaced at no charge upon completion. There will be a time and material charge assessed only if underground replacement is requested though power is served aurally.

IX. Construction.

- (a) *Construction manual.* Franchisee shall construct the telecommunications system in accordance with industry-standard practices.
- (b) *Underground construction.* Franchisee shall participate in and use The North Carolina 811 One-Call Center. In City designated urban areas where open trench construction methods are utilized, warning tapes shall be installed in newly constructed areas directly above pipe and conduit at a depth of 6 inches below finished grade unless otherwise indicated. Where directional boring installations are utilized, a tracer wire or other acceptable industry means must be applied to permit location of the newly

installed facility. Types and locations of all underground markers must be in accordance with current City policies and construction standards. All new manholes and handholes, and existing handholes and manholes that involve new work must have all lines in the holes labeled with the company's identification as well as all manhole and handhole tops. Temporary underground drops shall be buried within one month of installation.

- (c) *Erection, Maintenance and Repairs.* All lines overhead and underground, and poles used by the said company shall be erected in accordance with current City policies and construction standards. All highways, roads, streets, sidewalks, avenues, lanes, alleys, bridges, and other public places that may be disturbed or damaged in the construction or maintenance of said lines, poles, and appurtenances shall be repaired or replaced, within 48 hours, unless a written variance is granted. All repairs shall be by the said company at their own expense, in accordance with applicable City construction standards and policies. All poles, overhead and underground installations and appurtenances shall be substantial and located as not to interfere with the public use and maintenance of the said highways, roads, streets, sidewalks, avenues, lanes, alleys, bridges, and other public places, or to endanger the property or citizens of the City. All overhead lines must be tagged at each pole tie with a City approved tag for purposes of line identification as observed from the ground below. The tag must be manufactured to withstand the elements of weathering and ultraviolet ray deterioration.
- (d) *Relocation of Lines and Appurtenances.* At the direction of the City, the company will at their own expense, move and relocate any of their lines, or other property or structures as necessary for the construction, widening, relocating, extending, or otherwise improving of streets, public ways, and utilities of the City as located within or outside the City limits, upon which the said property is located. The time line for relocates must be in accordance with reasonable City directives.
- (e) *Reservation of Fiber for City.* Franchisee agrees that, at all times during the term of the franchise, with respect to any site where Franchisee uses fiber, it shall reserve, at no cost to the City, two (2) strands of fiber owned by Franchisee for the City's exclusive use. Any use of such fiber by the City shall be dedicated to governmental use and shall not be for any other use unless otherwise agreed to by Franchisee.

X. Franchise renewal.

This Franchise may be renewed by the City in accordance with Federal law and the Telecommunications Ordinance.

XI. Police powers.

In accepting this Franchise, Franchisee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power, as provided by ordinance.

XII. Franchise fee and performance bond.

(a) *Franchise fee payments.* The City and Franchisee recognize that a franchise fee or privilege tax may not be imposed on the Franchisee as a result of the North Carolina General Statutes, section §160A-296 beginning on July 1, 2017. Until this date, Franchisee shall be charged \$.30 per linear foot annually. If at any time North Carolina law is revised by an agency or court of competent jurisdiction after final appeal, then this will change the charging mechanism. In the event Franchise does not pay the aforementioned tax, as compensation for the use of the rights-of-way for a telecommunications system, Franchisee shall pay to the City an annual franchise fee of thirty cents (\$.30) per linear foot of public right-of-way for the system during the period of its operation under the Franchise, such compensation being subject to amendment by an ordinance of general applicability. Such fee shall be paid in advance annually to the City thirty (30) days prior to the effective date of this Franchise. Each payment shall be accompanied by a brief report showing the basis for re-computation and such other relevant facts as may be required by the City and such report shall be certified as true by a financial officer of the Franchisee.

(b) *Bonds.* Franchisee shall furnish a performance bond to City of \$50,000 starting on the effective date of this Franchise and for the life of the Franchise, to guarantee the faithful performance of all the Franchisee's obligations under the Franchise and the Telecommunications Ordinance.

XIII. Regulation.

(a) *Authority.* The City shall exercise appropriate regulatory authority under the provisions of the Telecommunications Ordinance and this Franchise. Regulation may be exercised through any duly designated City office or duly established Board or Commission or other body of the City.

(b) *Waiver.* Franchisee, by accepting the rights hereby granted, agrees that it will perform and keep all acts and obligations imposed, represented or promised by the provisions of this Franchise and the Telecommunications Ordinance.

XIV. Remedies.

- (a) *Schedule of liquidated damages.* Because Franchisee's failure to comply with material provisions of this Franchise and Telecommunications Ordinance will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and Franchisee hereby agree that the liquidated damages and penalties stated below represent both parties' best estimate of the damages resulting from the specified injury.
- (b) *Violations.* For the violation of any of the following, the City shall notify Franchisee in writing of the violation. The City shall provide Franchisee with a detailed written notice of any franchise violation upon which it proposes to take action, and a ninety (90) day period within which Franchisee may demonstrate that a violation does not exist or to cure an alleged violation or, if the violation cannot be corrected in 90 days, to submit a plan satisfactory to the City to correct the violation. If an alleged violation is proven to exist, and no cure or action on a plan acceptable to the City has been received by the City within ninety (90) days, such liquidated damages shall be chargeable to the performance bond as set forth in the Telecommunications Ordinance if not tendered by Franchisee within thirty (30) days. Franchisee may petition the City Council for relief with just cause. The imposition of liquidated damages shall not preclude the City from exercising the other enforcement provisions of Telecommunications Ordinance, including revocation, or other statutory or judicially imposed penalties. For violation of material provisions of this Franchise or the Telecommunications Ordinance, liquidated damages may be imposed of up to \$500/day for each day the violation continues.
- (c) *Force majeure.* In the event that Franchisee shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of unusually severe weather, Acts of God, strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, war or other reason of a like nature not the fault of Franchisee or delayed in performing work or doing acts required under the terms of this agreement, then performance of such act shall be excused for the period of the delay and the period for the performance of any act shall be extended for a period equivalent to the period of such delay.

XV. E-Verify.

Franchisee certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Franchise Agreement, it will continue to comply with these requirements. Franchisee also certifies that it will require that all of its subcontractors that perform any

work pursuant to this Franchise Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Violation of this section shall be deemed a material breach of this Franchise Agreement.

XVI. Iran Divestment Act Certification.

As of the date of this Franchise Agreement, Franchisee certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to North Carolina General Statutes 147-86.58 and that Franchisee will not utilize any subcontractor found on the State Treasurer's Final Divestment List. All individuals signing this Franchise Agreement on behalf of Franchisee certify that they are authorized by Franchisee to make this certification.

XVII. Cooperation.

The parties recognize that it is within their mutual best interests for the telecommunications system to be operated as efficiently as possible in accordance with the requirements set forth in this Franchise. To achieve this, parties agree to cooperate with each other in accordance with the terms and provisions of this Franchise. Should either party believe that the other is not acting timely or reasonably within the confines of applicable regulations and procedures in responding to a request for action, that party shall notify the appropriate person or agents.

XVIII. Waiver.

The failure of the City at any time to require performance by Franchisee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself.

XIX. Cumulative provision.

The rights and remedies reserved to the City by this Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City may have with respect to the subject matter of this Franchise, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time.

XX. Captions.

Captions to sections throughout this Franchise are solely to facilitate the reading and reference to the sections and provisions of the Franchise. Such captions shall not affect the meaning or interpretation of the Franchise.

XXI. No joint venture.

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public, in any manner which would indicate any such relationship with the other.

XXII. Entire agreement.

This Agreement and all attachments hereto, and Telecommunications Ordinance and all attachments thereto, as incorporated herein, represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersede all prior oral negotiations between the parties, and can be amended, supplemented, modified, or changed only by a written document executed by the parties.

XXIII. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement, except as provided for in the Telecommunications Ordinance.

XXIV. Notice.

Notices required by this Agreement may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered to the addresses set forth on the cover page of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

CITY OF GREENSBORO, NORTH CAROLINA

City Clerk

Mayor

Information Technology

Assistant City Manager

(This Instrument has been preaudited in the manner
Required by the Local Government Budget
and Fiscal Control Act.)

Approved as to form and legality.

Finance Officer

Associate City Attorney

MOBILITIE, LLC

By: _____

Name: _____

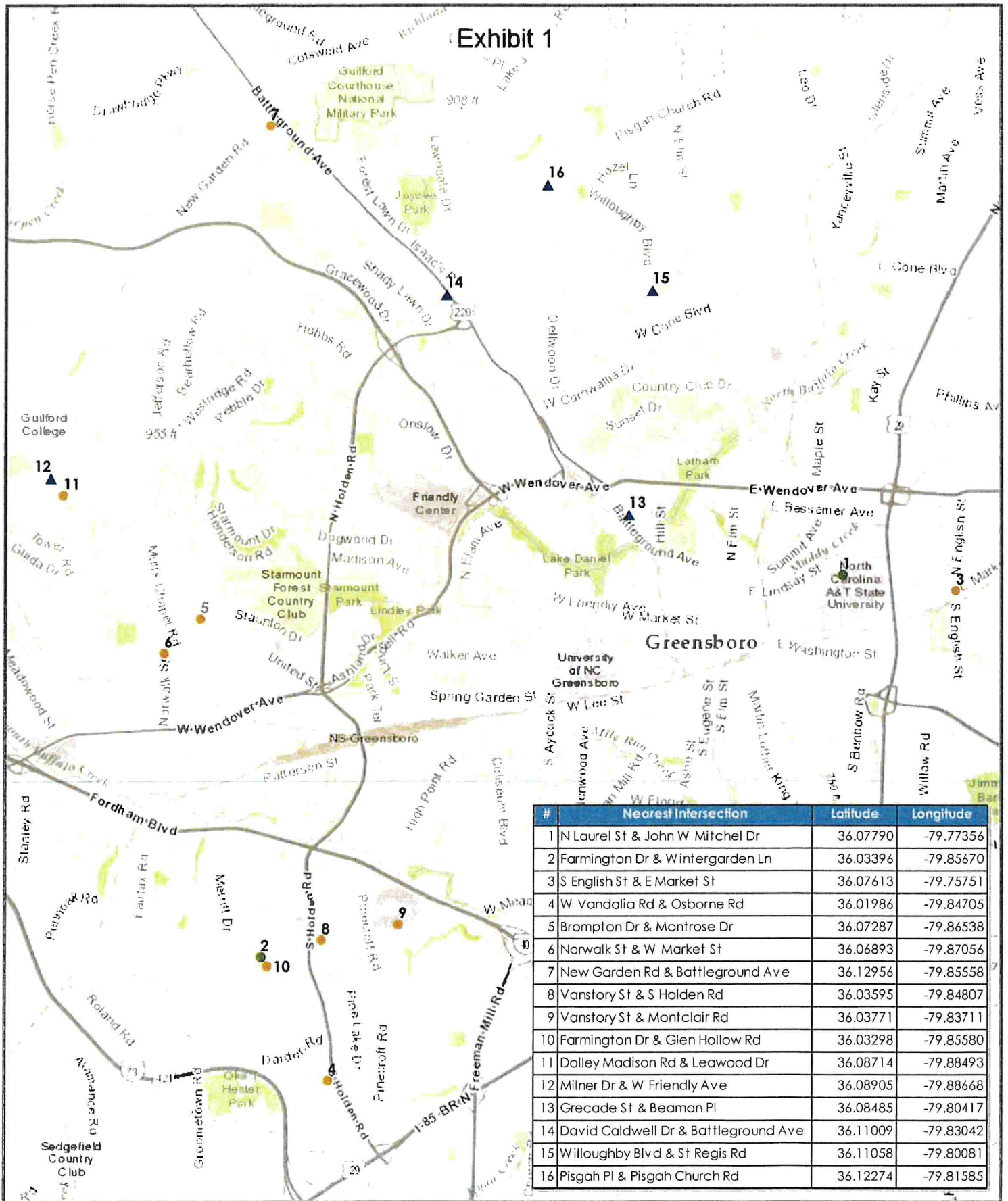
Title: _____

Witness: _____

Name: _____

SEAL

Exhibit 1



Greensboro, NC

mobilitie
intelligent infrastructure

Oct. 19, 2016

- ▲ Transport
- Small Cell
- Small Cell, Attachment

0 1 2
Miles

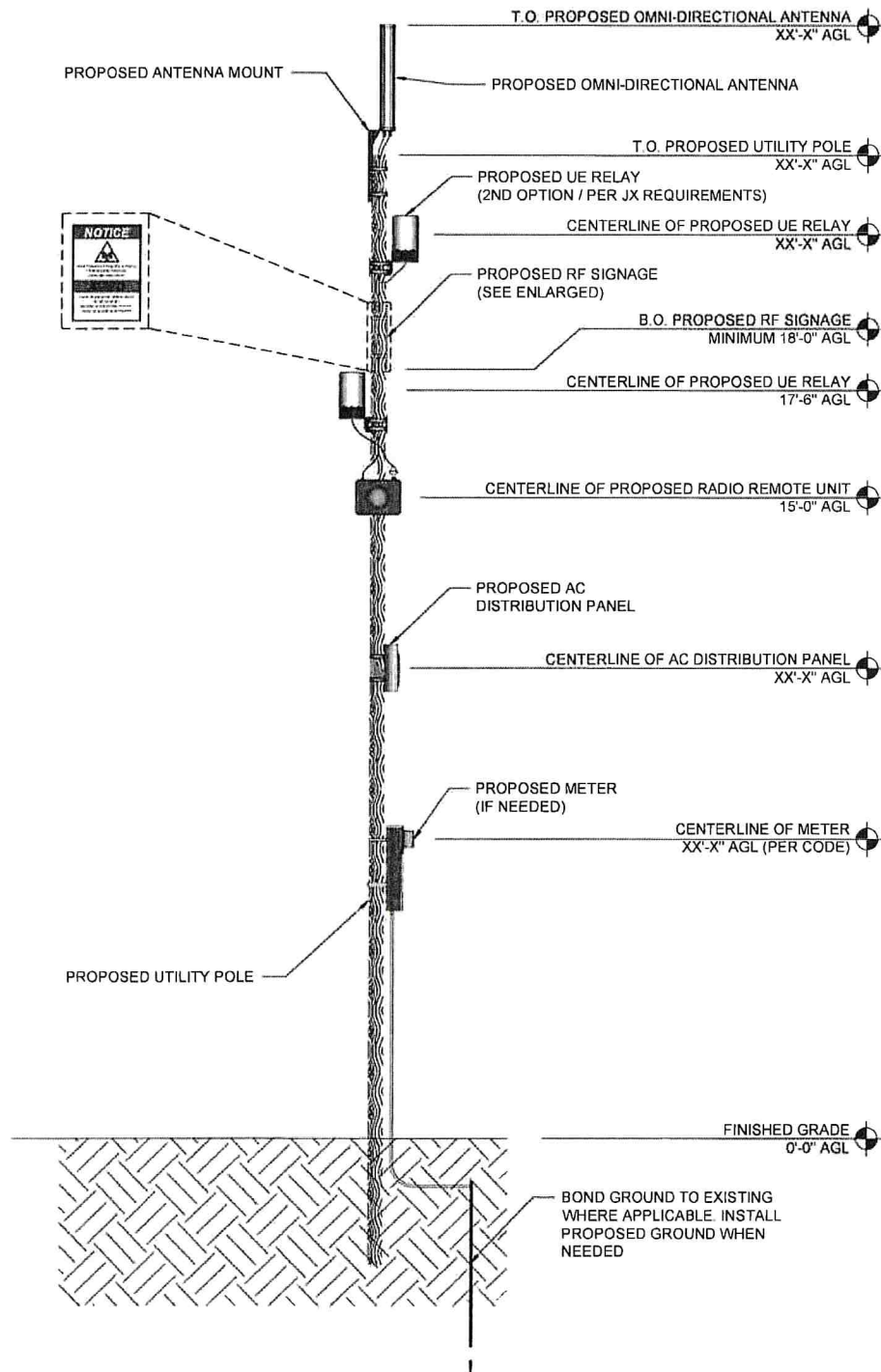


APPENDIX B

SYSTEM SPECIFICATIONS

See Attached Design Labeled as Exhibit 2

Exhibit 2



PROPOSED UTILITY POLE

APPENDIX C

CONSTRUCTION OVERSIGHT

Mobilitie, LLC
Attn: Network Operations Center
2220 University Drive
Newport Beach, CA 92660
(877) 338-1287
Noc.mobilitie@mobilitie.com

APPENDIX D

EQUIPMENT QUALITY

Mobilitie, LLC's network shall consist of fiber optic cabling meeting or exceeding the following technical parameters:

Fiber type: Enhanced Single Mode Fiber (ESMF) - Matched Clad Complies with or exceeds ITU-T Recommendation G.652.D

Buffer Type: Loose Buffer Tube Single Fibers or Loose Buffer Tube Ribbon Fibers Gel Filled and/or Dry Block

Operating Wavelength: 1260nm to 1625nm

Fiber Maximum Attenuation: 0.35 dB/km at 1310nm
0.25 dB/km at 1550nm
0.30 dB/splice (bi-directional average)
0.50 dB/mated connector pair

Small cell equipment, where provided, will consist of state-of-the-art antennas, radio and battery backup equipment as specified by Mobilitie, LLC's wireless carrier customer.