

§ 3. That the grant of authorization for the above-described encroachment shall also be subject to the following specific conditions:

(a) The Licensee, or any successor or assignee thereof, shall bear all costs for repair, relocation or replacement of the encroachments in the event of damage or movement due to, but not limited to, vehicular travel; alterations “in” or “to” or failure of City utilities; or due to the City’s and the public’s use of the right-of-way.

(b) The Licensee, on the Licensee’s own behalf and on behalf of any successor or assignee, shall acknowledge and assume all responsibility for the permitted use of the public right-of-way with the existing encroachments and the installation, construction, maintenance, repair, operation and removal of the encroachments, which shall be undertaken without risk or liability on the part of the City.

(c) The Licensee shall be subject to an annual Assessor area tax for the encroachment area.

(d) The Licensee shall pay fees and “make-ready” costs to the Department of Public Utilities in accordance with the terms set forth in the Pole Attachment Agreement, a copy of which is attached to and made part of this ordinance.

(e) Subject to the general requirements of section 90-69(a)(5), the Licensee shall furnish the City with evidence of an insurance contract providing commercial general liability coverage in an amount not less than \$1,000,000 combined single limit, naming the City as an additional insured, which shall be maintained for the life of the encroachment.

(f) Subject to the general requirements of section 90-69(a)(6), the Licensee shall require any contractor or contractors to furnish the City with evidence of an insurance contract providing commercial general liability coverage in an amount not less than \$1,000,000 combined coverage for

bodily injuries and property damage resulting from the contractor's activities with regard to the authorized encroachment, naming the City as an additional insured.

(g) Subject to the general requirements of section 90-69(a)(7), the Licensee shall furnish the City a removal bond with corporate surety, an irrevocable letter of credit or other type of financial guarantee, payable to the City and approved by the City Attorney, in the amount of \$5,000.

(h) The Licensee shall be responsible and shall bear all cost for repair of any damage to or movement of the encroachments or to the structure to which any encroachment is attached due to repair, maintenance or failure or collapse of the existing gas, water and sewer lines under or approximately under said encroachment.

(i) The Licensee shall bear all costs incidental to the encroachment, including, without limitation, realignment or replacement of street and sidewalk infrastructure, utilities, signs, and right-of-way "monumentation", as directed by City agencies.

(j) The Licensee shall provide written notification to the City Assessor, the Director of Finance and the Director of Public Works of the new owner's name and mailing address immediately upon transferring ownership or encroachment rights to another party.

(k) The Licensee shall secure all proper permits, and the work shall be performed in a manner satisfactory to the Director of Public Utilities, the Director of Public Works and the Director of Planning and Development Review.

(l) The Licensee shall have the encroachment removed in the event the fiber optic cable becomes inactive for more than thirty (30) days.

(m) The overhead placement of the encroachment shall be temporary, and the Licensee shall move the encroachment underground when directed by the City.

(n) The Licensee shall apply to the “Miss Utility” underground utility prevention program in accordance with sections 56-265.14 through 56-265.32 of the Code of Virginia (1950), as amended.

(o) Upon completion of the project, the Licensee shall provide to the Department of Public Works as-built drawings that include the dimensions showing the specific locations of all encroachments relative to identifiable physical features with depths and numbers of conduits noted.

(p) The Department of Public Works shall be authorized to make adjustments to the locations of nodes, subject to the review and approval of the Director of Planning and Development Review, and the routes of cables and conduit as needed and approve additions to the cable and conduit as needed.

§ 4. This ordinance shall be in force upon adoption and shall become effective only when, within twelve (12) months of the date of adoption, the Licensee furnishes the required insurance and bond forms, files a written statement in a form satisfactory to the City Attorney to the effect that the Licensee agrees to be bound by and to comply with the terms and conditions upon which the encroachment authorization is granted. The Licensee shall be responsible for providing the Division of Permits and Inspections of the Department of Planning and Development Review, the Division of Right of Way Management of the Department of Public Works and the Office of the City Clerk with written evidence that all conditions of the ordinance have been satisfied within the time period established by this ordinance.

AUG 1



CITY OF RICHMOND O & R REQUEST

INTRACITY CORRESPONDENCE

AUG 13 2014

Chief Administration Office
City of Richmond

O & R REQUEST

DATE: August 11, 2014

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor (By Request)

THROUGH: Byron C. Marshall, Chief Administrative Officer

THROUGH: Christopher L. Beschler, Deputy Chief Administrative Officer

THROUGH: Robert Steidel, Director, Department of Public Utilities

THROUGH: Rosemary Green, Deputy Director, Department of Public Utilities

THROUGH: James A. Jackson, Director, Department of Public Works

THROUGH: M.S. Khara, P.E., City Engineer, Department of Public Works

FROM: Doug Mawby, Department of Public Works

RE: **PROPOSED TELECOMMUNICATIONS ENCRoACHMENT IN VARIOUS SECTIONS OF THE CITY FOR NEWPATH NETWORKS, LLC (CROWN CASTLE) AND AUTHORIZATION FOR THE CHIEF ADMINISTRATIVE OFFICER OF THE CITY OF RICHMOND TO ENTER INTO A POLE ATTACHMENT AGREEMENT WITH NEWPATH NETWORKS.**

ORD. OR RES No. _____

PURPOSE: To authorize Crown Castle to encroach in various locations within the City of Richmond Right of Way with overhead and underground fiber optic cable, guy wires, conduit, hand-holes, and short-range cellular transmission nodes mounted on utility poles generally as illustrated on a schematic map prepared by the Department of Public Works, designated as "Exhibit A" and an image designated as "Exhibit B", and to authorize the Chief Administrative Officer to enter into a pole attachment agreement with Newpath Networks, LLC, attached as "Exhibit C".

REASON: Letter of request from Newpath Networks, LLC.

RECOMMENDATIONS: The Departments of Public Works and Public Utilities offer no objections to the proposed encroachment and pole attachment agreement, however the following terms and conditions will apply:

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OFFICE OF CITY ATTORNEY

- ✓1. All cost incidental to the encroachment and pole attachment to City Streetlight poles shall be borne by the applicant, including, but not limited to, realignment of utilities, replacement of street signs, etc., as directed by City Agencies.
- ✓2. Liability insurance as set forth in Section 90-69 of the City Code shall be provided and maintained in effect for the life of the encroachment.
- ✓3. The applicant/owner shall bear all cost for repair, relocation, or replacement of the encroachments in the event of damage or movement due to, but not limited to, vehicular travel, alterations or failure of City utilities, or due to the public's use of the right-of-way.
4. As set forth in the City Code (Section 90-61), the applicant shall be subject to an annual encroachment assessment of \$0.25 per linear foot for cable/conduit/guy wires and anchors *and* \$0.25 per square foot for specific facilities such as handholes and transmission nodes; and \$2.22 per pole attachment.
5. Fees and Make-ready costs for pole attachments shall also be paid to DPU in accordance with the terms of the attached Pole Attachment Agreement.
- ✓6. Applicant shall furnish removal bond.
- ✓7. Applicant shall secure proper permits, and the work shall be performed in a manner satisfactory to the Directors of Public Works, Public Utilities and Planning Development Review.
- ✓8. The ordinance shall authorize DPW staff, in agreement with DPU staff, to make adjustments to the locations of 'nodes' and the routes of cable/conduit administratively based on conditions in the field and to approve additions to the cable/conduit as needed. Detailed plans of all encroachments are on file with DPW in Room 600.
9. The applicant shall apply to "Miss Utility" underground utility prevention program per Virginia Code Sec. 56-265.14 et. seq.
- ✓10. Upon completion of the project, the applicant shall provide as-built drawings to include dimensions showing specific location of all encroachments relative to identifiable physical features with depths and numbers of conduits noted.
- ✓11. The applicant/owner shall provide written notification to the Assessor, Directors of Finance, Public Works and Public Utilities of the new owner's name and mailing address immediately upon transferring ownership or encroachment rights to another party.
12. The applicant(s)/owner(s)/successor(s) is responsible for providing the Law Department with written evidence that all conditions of the ordinance have been satisfied. Should this written evidence not be submitted to the said offices prior to the expiration date, twelve months after final approval of the ordinance, the ordinance will become null and void automatically.

BACKGROUND: The applicant requests permission to install overhead and underground fiber optic lines within the City's public rights of way. The overhead lines will be hung on existing utility poles (a combination of City of Richmond Streetlight poles and other private utility poles). Attachment agreements are required from the owners of these poles, to include the City of Richmond, Department of Public Utilities. The agreement with the City to be authorized by this paper is attached (Exhibit C). Underground fiber will be located in newly installed conduit or possibly in existing conduit as available.

The applicant also desires to install 19 cellular transmission 'nodes' in select locations around the City. These nodes are to be located on top of new, taller utility poles that replace existing utility poles (Exhibit B). The height of these new poles will vary, based on location, between 25 and 50 feet (the average is about 38 feet). The node adds another 5.5 feet. They also intend to place two nodes atop metal poles that are completely new. These two new poles are needed because DPU will not allow the nodes to be mounted on their metal poles. The two poles will be designed to match the metal light poles adjacent to the selected locations. One location is near at the corner of Duval and 7th Streets in the Biotech Park, the other is on Broad Street near MCV.

This system is intended to pick up wireless telecommunication traffic in areas where the major carrier's equipment has inadequate coverage. The nodes are in effect small cell towers that can pick up signals in areas that the larger, higher mounted equipment cannot reach.

The applicant has presented the proposed node locations to the UDC. At their June 5, 2014 meeting the UDC recommended approval subject to the condition that the nodes be placed on existing poles to prevent a proliferation of utility poles wherever possible. DPU will allow cable and node attachments on wooden poles but will not allow nodes on their metal poles.

FISCAL IMPACT/COST: None anticipated.

FISCAL IMPLICATIONS: None anticipated.

BUDGET AMENDMENT NECESSARY: No amendment necessary at this time.

REVENUE TO CITY: \$1,800.00 application fee (original administrative encroachment fee)

- 10,214 ± linear feet encroachment (Underground) @ \$0.25 = \$2,553.50 annual Assessor area tax
- 48,545 ± linear feet encroachment (Overhead) @ \$0.25 = \$12,136.25 annual Assessor area tax
- 5,085 ± linear feet encroachment (Guys Wires and Anchors) @ \$0.25 = \$1,271.25 annual Assessor area tax
- 211.25 ± square feet encroachment (Manholes & handholes) @ \$0.25 = \$52.81 annual Assessor area tax
- 117.04 ± square feet encroachment (Nodes) @ \$0.25 = \$29.26 annual Assessor area tax
- Grand total annual Assessor area tax = \$16,043.07

This total is approximate; actual totals will be calculated once the facilities are installed and proper as-built drawings provided to Public Works.

DESIRED EFFECTIVE DATE: Upon Adoption.

REQUESTED INTRODUCTION DATE: September 8, 2014

CITY COUNCIL PUBLIC HEARING DATE: October 13, 2014

REQUESTED AGENDA: Consent Agenda.

RECOMMENDED COUNCIL COMMITTEE: Land Use Housing and Transportation Standing Committee

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Planning Commission

AFFECTED AGENCIES: Public Works; Law Department; Planning and Community Development; Public Utilities; Economic Development; Assessor; Budget and Strategic Planning; Fire Department; Police Department, Mayor's Office, CAO's Office, Finance

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: Applicant's request letter, node and fiber optic route plan, node example graphic, DPU attachment agreement

STAFF:

Prepared for James Jackson and Bob Steidel

Prepared by Doug Mawby and Rosemary Green

Research and Drawing Coordinated By: Marvin Anderson and James Flannery

Department of Public Works

646-0435



Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317

August 13, 2014

Mr. Doug Mawby
Department of Public Works
City of Richmond
900 E Broad Street
Richmond, VA 23219

RE: Newpath Networks LLC (Crown Castle)
Request for Encroachments in Public Right-of-Way for telecommunications facilities
Request for Attachment Agreement with City of Richmond Department of Public Utilities

Dear Mr. Mawby:

Newpath Networks LLC (Crown Castle) is requesting to encroach in various locations within the City of Richmond Right of Way with overhead and underground fiber optic cable, guy wires, conduit, hand-holes, and telecommunication equipment mounted on utility poles. We further request an attachment agreement be entered into with Newpath Networks with Department of Public Utilities in order to utilize DPU facilities.

Thank you for your time and consideration for our Encroachment applications and Attachment Agreement requests. If there is any further information that you need, please let me know.

Rebecca Hunter

Rebecca Hunter
Government Relations Manager
Crown Castle
3309 23rd Rd N
Arlington, VA 22201
rebecca.hunter@crowncastle.com
425-591-9356 mobile

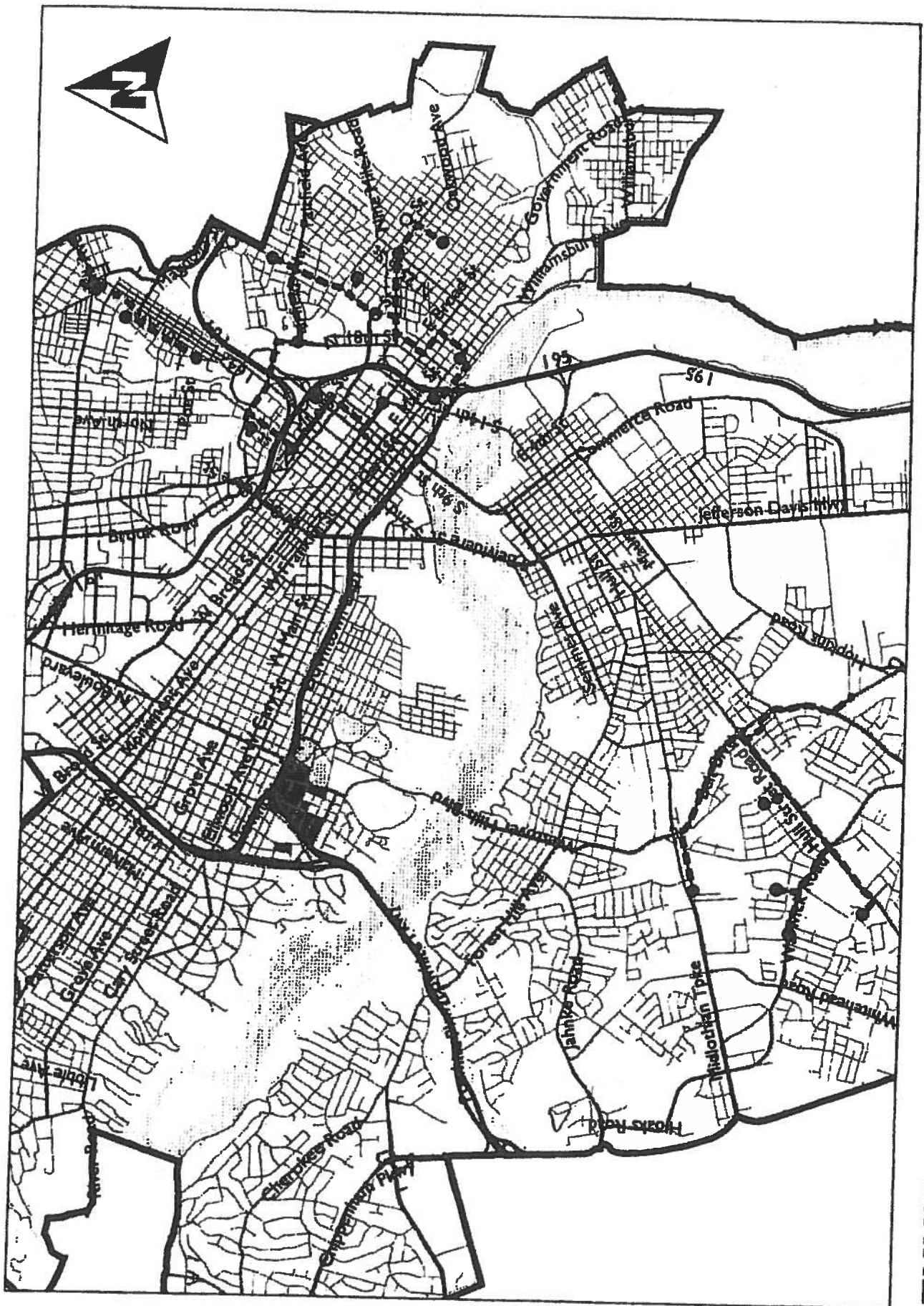
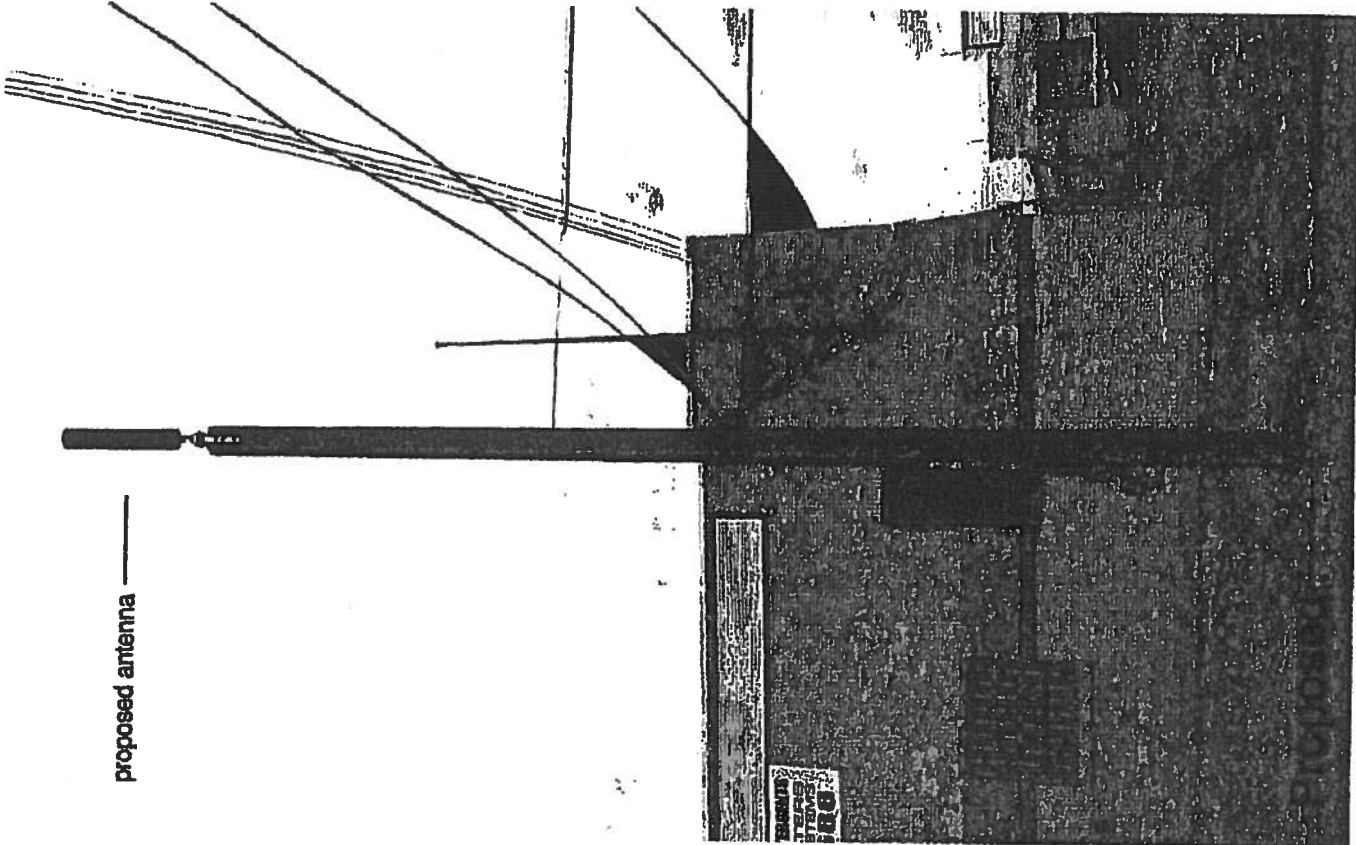


EXHIBIT A



proposed antenna —

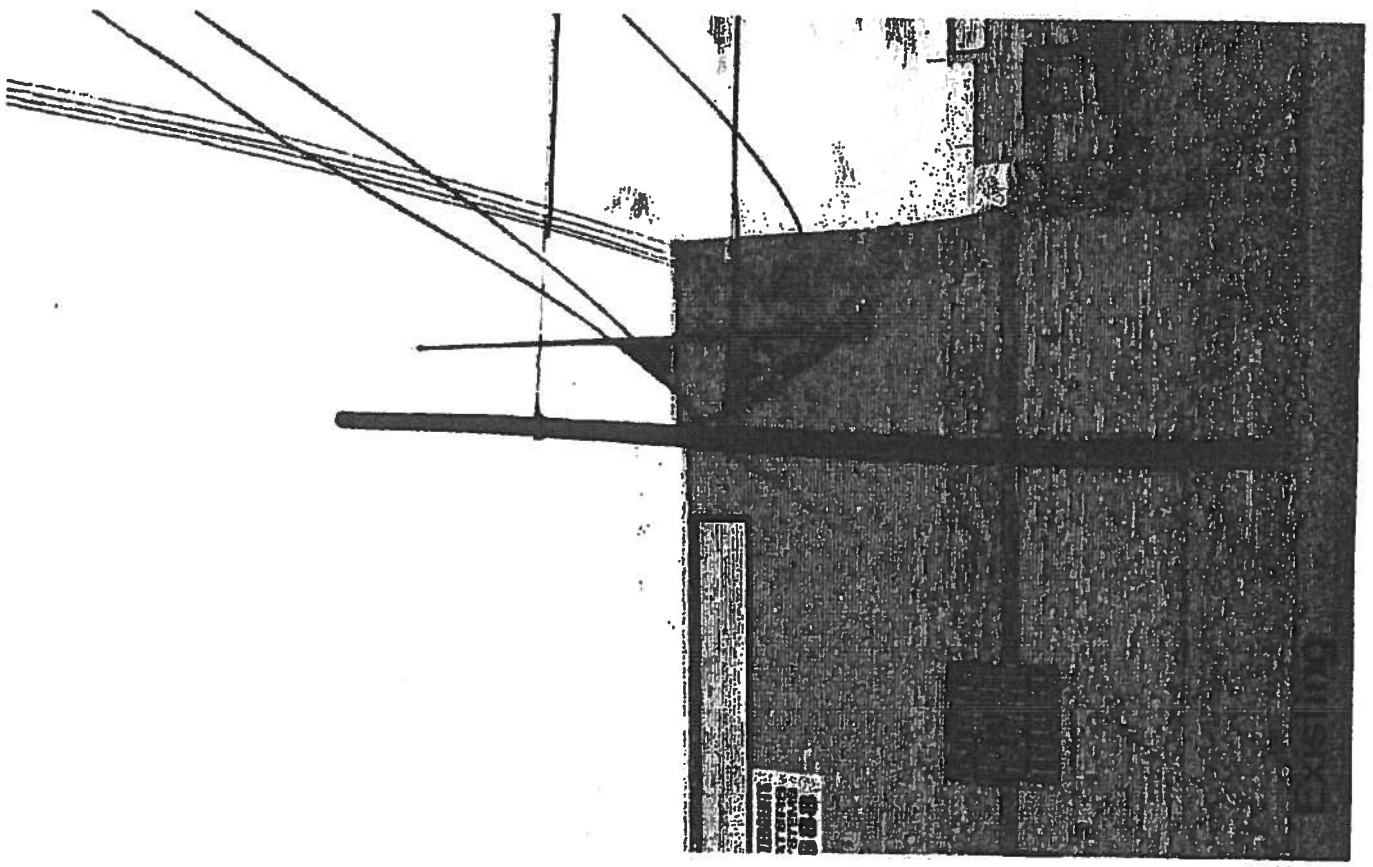


EXHIBIT B

Pole Attachment Agreement

This Pole Attachment Agreement (hereinafter "Agreement") is entered into this _____ day of _____, 2014, by and between NewPath Networks, LLC (hereinafter "Licensee"), and the City of Richmond (hereinafter "the City"). The purpose of this Agreement is to memorialize the understanding of the parties pursuant to the attachment of the Licensee's Facilities to the City's Utility Poles.

WHEREAS, Licensee desires to attach and maintain communication cables, fiber, attachments, equipment and other related facilities on the City's Poles; and

WHEREAS, Licensee acknowledges that the City's Poles are used, and will continue to be used, primarily for the City's public service obligations (street lighting); and

WHEREAS, the City is willing to permit, to the extent it may lawfully do so, the placement of such communications cables, fiber, attachments, equipment and other related facilities on the City's Poles.

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

I. GENERAL TERMS AND CONDITIONS

The execution of this Agreement and the issuance of a license to Licensee by the City bind the parties of this Agreement to the terms set forth herein and create a contractual relationship between the parties. No such relationship exists prior to execution of the Agreement and the issuance of the license.

II. DEFINITIONS

1. Allocated Costs – Labor, material and equipment costs fully loaded with labor and material overheads as defined by DPU's financial system. Costs will be tracked by DPU's existing work order system.
2. Anchor(s) means an assembly secured to a fixed object to support a Guy.
3. Applicable Laws means the Telecommunications Act of 1996, as may be amended, and all related orders and regulations of the Federal Communications Commission (FCC), the laws and regulations of the Commonwealth of Virginia, and all local and municipal ordinances, restrictions, codes and other requirements.
4. Appurtenance(s) mean any article of equipment attached to a point on a Pole.
5. Attaching Entity means a communication company or other entity that provides information or telecommunications services that attaches to a Pole owned or controlled by the City.

6. **Attachment(s)** means the cables and/or associated equipment, hardware, antennas, communication devices and related facilities, which are in any manner supported by the City's Poles for the purposes set forth in this Agreement, whether referred to singly or collectively. The sag of Licensee's Facilities will be included in determining the pole space utilized. Such Attachments do not include items used for signage, banners or security cameras.
7. **City Facilities** means the Department of Public Utilities (DPU) Utility Poles, Anchors, Guys and/or wires owned or controlled by the City, whether referred to singly or collectively.
8. **Guy(s)** means a metal cable attached to a Utility Pole and/or Anchor for the purpose of reducing stress.
9. **Joint User(s)** means any utility (utilities) that has (have) the right to use any of the Utility Poles by virtue of joint usership or a pole attachment agreement.
10. **Licensee's Facilities** means the Attachments, including but not limited to, the communications cables, fiber and all associated equipment and hardware, whether referred to singly or collectively, to be installed for and operated by Licensee. Examples of Licensee's Facilities, as typical and acceptable equipment types and installation configurations, are shown in the drawings attached hereto as Exhibit E and incorporated herein by reference.
11. **Make-Ready Work** means work, if any, to be performed which is required to accommodate Licensee's proposed attachment of Licensee's Facilities, including but not limited to, rearrangement of existing Attachments or City Facilities, Utility Pole replacements, pre-construction surveys and inspections, construction surveys and inspections, and post-construction surveys and inspections. Such Make-Ready work shall be initiated by the City and shall be performed by the owner(s) of the Attachments, unless specifically stated otherwise. Similar work required after initial attachment to a Utility Pole shall be referred to as "Additional Make-Ready". Make-Ready Work shall not include actions required to bring pre-existing Attachments to a Utility Pole into compliance with applicable safety rules, regulations, design standards, or codes.
12. **Non-Usable Space** means the space other than Usable Space occupied by facilities on a Utility Pole.
13. **Usable Space** means the total space on a Utility Pole above the minimum ground clearance level that is usable for Attachments.
14. **Utility Pole(s) or Poles** applies only to those utility poles that carry cable of voltage 240v AC or less for the City owned by the City and used to support the City Facilities, the facilities of a Joint User, and/or the Attachments of authorized Licensees. Distribution pole(s) mean a utility pole(s), excluding towers, used by a pole owner to support mainly

overhead electric distribution wires or cables. In general the following spacing standards apply to Utility Poles:

- i. Average pole height equals 35 feet
- ii. Usable space per Pole equals 11 feet
- iii. Unusable space per Pole equals 24 feet
- iv. Space used by an Attaching Entity:
 1. An electric pole Attachment is 6.5 feet;
 2. A telecommunications pole Attachment is 1.0 foot
 3. A cable television pole Attachment is 1.0 foot; and
 4. An electric, cable or telecommunications secondary pole Attachment is 1.0 foot.

III. ESTABLISHING THE POLE ATTACHMENT RELATIONSHIP

The pole attachment relationship shall be established when the City and the Attaching Entity have executed the approved Agreement and a license associated with the pole attachment request is issued.

IV. PROCEDURES AND REQUIREMENTS

1. Application for Permission to Attach

Prior to Licensee attaching Licensee's Facilities to any Utility Pole owned by the City, Licensee shall make written application for and receive an executed, revocable, non-exclusive License from the City. The application and License shall be on the form attached hereto as Exhibit A and Exhibit A-1, respectively. Licensee may be required by the City to make concurrent application(s) to obtain a license from a Joint User of the Utility Pole. The application must be accompanied by an application fee and, if applicable, a pre-construction survey fee (Exhibit B), which is subject to adjustment by the City on an annual basis. The City must grant permission before Licensee may attach Licensee's Facilities to existing Poles. The City will determine if the Poles are available for such Attachment by conducting a pre-construction survey within forty-five (45) days of the application filing date. The City shall make the results of the pre-construction survey available to the Applicant within five (5) business days of completing the survey.

2. Specifications

Licensee shall install Facilities in accordance with all requirements of the City, the National Electric Safety Code, the Occupational Safety and Health Administration, all applicable laws, and any rules and regulations now in effect or that hereafter may be issued by any other governmental authority whose standards are referenced in this Agreement. This includes, but is not limited to, all requirements for proper bonding, grounding, clearances, guying and anchoring of Licensee's Facilities. Licensee's Facilities shall not physically, electronically, or inductively interfere with the City Facilities or operations. If Licensee's Facilities do not conform to these requirements,

the City may require Licensee to correct the condition at Licensee's expense, and, if Licensee does not do so after thirty (30) days written notice, in addition to such remedies pursuant to this Agreement, the City may perform the work and bill Licensee for the City's actual (fully allocated) costs. The City reserves the right at all times to specify the type and methods of design, construction, and maintenance of Licensee's Facilities on the City Facilities, and Licensee shall comply with such specifications. Notwithstanding, if Licensee's Facilities pose an immediate threat to the physical integrity of the City Facilities or in an emergency situation, the City may perform such work and/or take such action that the City deems necessary without prior written notice to Licensee, the actual (fully allocated) cost for all such work shall be borne by Licensee.

3. Inspections

- A. The City shall have the right to conduct reasonable inspections of Licensee's construction. The City shall require Licensee to submit, on a regular schedule as determined by the parties, the exact locations where Licensee's Facilities are being constructed. The City, at the expense of the Licensee, shall conduct inspections of Licensee's construction in progress, which shall be in addition to post-construction surveys. The City shall bill the Allocated Costs of such inspections to Licensee upon completion of the inspections. Such inspections shall not be performed unnecessarily.
- B. Licensee shall mark near each point of attachment of Licensee's Facilities to the Utility Pole in such a manner as to clearly identify its ownership of that particular facility. Such identifying mark shall be visible and clear so that identification of Licensee's Facility can be made from the ground. The City's inspections of Licensee's Facilities may not be relied upon for any other purpose other than that of the City's requirements for attachment.

4. Make-Ready Work Procedures

- A. Upon receipt of the application for a License and the payment in full to cover the cost of performing a pre-construction survey, the City shall make such survey of the Utility Poles, as listed in the Application Attachment (Exhibit A-1) submitted by Licensee with its application for a License, within forty-five (45) days of the date of receipt.
- B. The City shall notify Licensee in writing of the date and time of the pre-construction survey no less than five (5) business days prior to the commencement of the survey. Licensee shall have the right to be present.
- C. The City shall determine, within fourteen (14) days after completion of the pre-construction survey, whether to accommodate the attachment of Licensee's Facilities, and whether any rearrangements or changes are necessary to the City Facilities (so as to meet DPU's standards, including but not limited to, not less

than the 40-inch clearance between Licensee's Facilities and the nearest conductor, or the 60-inch clearance from a primary conductor, or the 30-inch or more clearance from a conductor at mid-span) or to the facilities of other Joint Users or third parties with attachment rights.

- D. The pre-construction surveys shall determine whether in order to accommodate Licensee's Facilities as proposed: a) any of the Utility Poles proposed to be used by Licensee require strengthening (guying and anchoring); b) any Utility Poles proposed to be used by Licensee require placement or replacement; c) any Attachment(s) are to be relocated; and d) the Licensee's Facilities need to be bonded or grounded to the City Facilities.
- E. The City inspections of Licensee's Facilities may not be relied upon by Licensee for any purpose other than satisfying the City's own requirements and in no way diminish Licensee's obligations under the specifications of this Agreement. The inspection only applies to Utility Poles.
- F. The City, in its sole discretion, may elect not to perform any pre-construction survey.
- G. If the City rejects during the pre-construction survey any application(s), the City shall state in writing the reasons for the rejection. Licensee may appeal to the Director of the Department of Public Utilities in the event Licensee does not agree that the City's reason(s) is (are) sufficient grounds for rejection. The appeal shall be submitted within thirty (30) days of the receipt of notice of the rejection by the City, and the Director of the Department of Public Utilities shall act on the appeal within thirty (30) business days of submittal.

5. Performance

- A. The City will make reasonable efforts to perform Make-Ready Work in a timely manner; provided that, the Licensee's application gives the City a minimum of sixty (60) days prior notice of its desired attachment schedule; and provided that, such Make-Ready Work does not interfere with the City's power delivery to street lights obligations, which in all events, shall take priority over any such Make-Ready Work. If the application(s) for attachment requires more Make-Ready Work than can be handled by the City, or the City cannot meet Licensee's proposed time frame for the completion of Make-Ready Work, then the City shall make all reasonable attempts to use contractors, as far as practical, to supplement its available resources. If the City cannot use a contractor, then, with prior written approval of the City, Licensee, at its sole cost, may complete the Make-Ready Work using a contractor approved in advance by the City. The City shall notify Licensee in writing if the City determines that the proposed schedule for performing Make-Ready Work cannot be met.

- B. Pursuant to Licensee's application(s), should Make-Ready Work be required, the City shall provide a cost estimate and a construction timeline in writing to Licensee. For all approved application(s), the Licensee shall provide the City written notice of acceptance or rejection of the Make-Ready Work estimate and Make-Ready construction time line within five (5) business days of receipt of the same.

6. Issuance of License

Upon completion of the City's Make-Ready Work, the City will: a) inform Licensee of such completion within five (5) business days; and b) issue any applicable License to the Licensee. Licensee shall not commence attachment to any pole until all Make-Ready work has been completed and the license has been issued.

7. Post Construction Survey

The City may, at its discretion, perform a post-construction survey on completed Attachments. The City shall notify Licensee of such survey no less than five (5) business days prior to the start of the survey. Licensee shall have the right to be present. The purpose of the survey is to inspect for compliance with prior agreed-to Attachment locations and compliance with the requirements of this Agreement. The City shall inform Licensee in writing within five (5) business days after completion of post-construction survey, as to any additional work which the City identifies needs to be performed. Any post-construction work required as a result of such survey will be completed at Licensee's expense, for actual (fully allocated) costs incurred, within thirty (30) days of written notification. All work to be performed as a result of violations of power line clearance requirement(s) shall be performed by qualified high voltage line personnel.

8. Operations and Maintenance

- A. Licensee agrees, at its sole cost and expense, at all times, to operate and maintain its Facilities safely and in good repair consistent with the terms of this Agreement and the specifications of the City.
- B. No tree trimming shall be performed by Licensee in connection with its Facilities unless a written request has been submitted to the City and its Urban Forestry Division within the Department of Public Works, and the Licensee has received written approval from the Urban Forestry Division and DPU.
- C. The City reserves the right to maintain the Poles and its Facilities in such a manner that will enable the City to fulfill its public service requirements.
- D. The City does not make any representation or warranty as to present or future strength, condition, or state of repair to any Pole, Guy, Anchor or related equipment. If Licensee determines the integrity or safety of any Pole is in question,

Licensee will notify the City verbally and in writing. Until such conditions are addressed, Licensee will refrain from: a) ascending the Pole, b) making any attachment to that Pole or c) attaching any equipment to any cable attached to the Pole.

V. RATES, CHARGES AND REQUIREMENTS

1. Fees

Fees associated with this Agreement, including but not limited to, application, pre-construction survey, Make-Ready Work, and post-construction survey, are attached hereto as Exhibit B, Fee Structure. The annual Pole Attachment Rental Rate to be charged is described in Exhibit C, Pole Attachment Rental Rate.

2. Summary of Fees, Rates and Charges

Licensee shall pay the City the following rates and charges for attaching Licensee's Facilities to the City Facilities.

- A. Attachment Rates and Billing – The annual attachment rate for the first year of the Agreement shall be prorated for the remaining time commencing with the date of issuance of the License until December 31 of that calendar year. For every year, thereafter, the City shall bill Licensee on December 31 of that calendar year.
- B. Make-Ready Charges and Billing – The City shall issue in writing an invoice or an estimate to Licensee for any Make-Ready Work within fifteen (15) days of completion of the pre-construction survey. The City shall provide Licensee with an official schedule of fees related to any such Make-Ready Work. Upon completion of construction, the actual (fully allocated) cost for Make-Ready Work will be determined, and an adjustment invoice or a credit shall be issued in writing.
- C. Unauthorized Attachments – If the City determines that Licensee has made unauthorized attachment to the City Facilities, in addition to remedies to correct unauthorized attachment, Licensee shall pay the City a one-time unauthorized attachment fee equal to five (5) times the current Pole Attachment Rental Rate.
- D. Performance Security – Prior to attaching Licensee's Facilities to any Pole, the City may require Licensee to furnish a performance bond or other satisfactory evidence of financial security in the amount specified to guarantee the payment of any sum which may become due to the City for attachment fees or other charges of work performed for Licensee by the City, including the removal of Licensee's Facilities or termination of any license.
- E. Payment – Unless otherwise communicated to Licensee by the City, all invoices are payable by Licensee within thirty (30) days from the date of the invoice. In the event Licensee fails to pay the amount due within the period of time set forth for

payment, interest shall accrue on the unpaid balance at the rate of one and one-half percent (1.5%) per month until payment is received.

VI. PERMITS AND EASEMENTS

1. Permits

Prior to making any attachment to the City's Poles, Licensee must obtain all required permits, permissions and/or consents to attach Licensee's Facilities to the City's Poles, and Licensee shall comply with the terms of such permits, permissions and/or consents.

2. Easements

Licensee's access to the City's Poles pursuant to this Agreement is subject to any agreements or easements that would prohibit the City from providing Licensee access to any specific pole space, easement, or right-of-way. If the City determines that access to specific pole space, easement, or right-of-way is precluded by an agreement or easement, Licensee shall have the right to review the pertinent provisions of the agreement or easement.

VII. LIABILITY AND INDEMNIFICATION

- 1. Licensee shall indemnify and hold harmless the City against third party claims for any disruption in service and/or use of a Utility Pole, whether that disruption affects the City's or a Joint User's customers, that results from any Make-Ready Work or attachment of Licensee's Facilities, unless the City is grossly negligent in the conduct of said Make-Ready Work or attachment.**
- 2. Licensee further agrees that, in the course of maintaining a Utility Pole which Licensee has attached its Facilities to, if the City causes a disruption to Licensee's network or business operation, that Licensee shall assume all risk and assume liability and indemnify the City against any potential claim of a third party, except where the disruption was due to the City's gross negligence.**
- 3. Subject to the above terms and limitations, and other limitations provided by the laws of the Commonwealth of Virginia and the City, neither party shall indemnify or hold harmless the other for ordinary negligence.**
- 4. Both parties hereby waive the right to recover punitive or consequential damages from the other party.**
- 5. Licensee, at its sole cost and expense, shall carry and maintain a policy or policies of commercial general liability insurance insuring Licensee against liability for injury to persons or property occurring in or about the Premises. Licensee shall provide a Certificate of Insurance to the City that lists the City as an Additional Insured. The Certificate shall indicate that general liability insurance coverage with at least one million dollars**

(\$1,000,000) Combined Single Limit coverage on an occurrence basis is in force prior to any exercise of Licensee's rights under this License. Licensee agrees to maintain such insurance for five (5) years from the date of expiration or termination of this License.

- 6. Any contractor, licensee, or other party engaged by Licensee to assist with Licensee's activities permitted under this License shall likewise provide the City with a Certificate of Insurance listing the City as an Additional Insured as a condition precedent to entering the Property. The Certificate shall indicate that general liability insurance coverage with at least one million dollars (\$1,000,000) Combined Single Limit coverage on an occurrence basis is in force prior to any exercise of rights under this or any other License. The contractor, licensee, or other party engaged by Licensee to whom this paragraph pertains shall maintain such insurance for five (5) years from the date of expiration or termination of this License.**

VIII. TERMINATION AND REMOVAL

- 1. This Agreement shall have an initial term of two (2) years. Upon the expiration of the initial term, the Agreement shall automatically renew from year to year from the date of the issuance of the License. Either party can terminate this Agreement prior to the expiration of the then-current term by delivering written notice to the other party, at a minimum, thirty (30) days prior to the end of the then-current term. The termination shall become effective upon the expiration of the then-current term. Should the Agreement be terminated by either party, Licensee shall have 60 days from the expiration of the Agreement to remove its Facilities from the City's Poles. Notwithstanding anything to the contrary, the City shall not terminate this Agreement absent good cause.**
- 2. Licensee may at any time remove its Facilities from the City's Utility Poles, but it shall give the City clear written notice of its intention to remove its Facilities ten (10) days prior to beginning such work. Such notification shall include completing and submitting the Notification Attachment Removal Sheet (Appendix D) attached hereto. No credit or refund of any rate, fee or charge shall be allowed to Licensee for removal.**
- 3. In the event of relocation and displacement, Licensee understands and acknowledges that the City may require Licensee to relocate Licensee's Facilities on one or more of the City Facilities. Upon forty-five (45) days written notice to Licensee, Licensee, at the City's direction, shall relocate such Licensee's Facilities, 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 project by the City; (b) because the Licensee's Facilities are reasonably considered to be interfering with or adversely affecting proper operation of the City Facilities; or (c) to protect or preserve the public health or safety. In any such case, the City shall use its best efforts to afford Licensee a reasonably equivalent alternate location. If Licensee shall fail to relocate Licensee's Facilities as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, the City shall be entitled to remove or relocate Licensee's Facilities, without further notice to Licensee. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform Licensee in**

writing of the displacement or removal of any Pole on which any Licensee's Facilities are located.

4. In the event Licensee desires to relocate any of its Facilities from one Pole to another, Licensee shall so advise the City. The City will use its best efforts to accommodate Licensee by making another reasonably equivalent Pole available for use in accordance with and subject to the terms and conditions of this Agreement.

IX. MISCELLANEOUS PROVISIONS

1. No Interference

Licensee, in the performance and exercise of its rights and obligations under this Agreement, shall not interfere in any manner with the existence and operation of any and all Utility Poles, City Facilities, or the Attachments of another telecommunications provider or utility, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable laws or this Agreement. The City agrees to require the inclusion of the same or a similar prohibition on interference as that stated above in all agreements the City may enter into after the effective date with other communications or information providers and carriers.

2. Contacting Licensee

Licensee shall be available to the staff employees of the City having jurisdiction over Licensee'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 Licensee's Facilities. The City may contact Licensee's network control center operator at telephone number 1-866-639-8460 regarding such problems or complaints.

X. NOTICES

All written notices to be given by the City or Licensee shall be sent via fax and regular mail, overnight delivery service, hand delivery, or certified or registered mail to the following addresses:

If to the City:

City of Richmond, Department of Public Utilities
400 Jefferson Davis Highway
Richmond, Virginia 23224
Telephone: (804) 646-3000
Fax: (804) 646-8595
Attention: Technical Services, Street Lights

With a copy to:

Robert C Steidel
City of Richmond Virginia
Director Department of Public Utilities
730 E. Broad Street, 6th Floor
Richmond, Virginia 23219
804-646-1378

If to Licensee:

NewPath Networks, LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317-8534
Telephone: (724) 416-2000
Fax: (724) 416-2353
Attention: E. Blake Hawk, General Counsel, Legal Department

With copy which shall not constitute legal notice to:

NewPath Networks, LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317-8534
Attention: SCN Contract Management

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

**Byron C. Marshall, Chief Administrative Officer
City of Richmond, Virginia**

Date

Signature

Date

Name

**Title
NewPath Networks, LLC, as Licensee**

Approved as to Form:

Assistant City Attorney, City of Richmond

EXHIBIT A
POLE ATTACHMENT LICENSE APPLICATION
License #: 201__ - _____

To: City of Richmond, Department of Public Utilities
400 Jefferson Davis Highway
Richmond, VA 23224

In accordance with the terms and conditions of the POLE ATTACHMENT AGREEMENT ("Agreement") by and between the City and Licensee, executed as of _____, 2014, this application is hereby made for a licensed Attachment(s) to the City's Utility Poles. The Attachment(s) is (are) as indicated on the attached Application Attachment (Exhibit A-1 of the Agreement). Each application, limited to a maximum of 100 poles, requires a location, a pole identification number, and a description of all facilities, including quantities, sizes and types of cable, fiber and equipment to be installed. The application(s) shall be prioritized to reflect the order in which each application should be processed.

The enclosed payment shall include the application fee, which reflects the application fee per attached pole, and the amount for the pre-construction survey fees, which reflects the Licensee unit price for each pole listed.

In accordance with the Agreement, each Pole will be subject to an annual Pole Attachment Rental Rate to be prorated as necessary at the time of the licensing. Each Pole may also be subject to a Make-Ready Work fee which shall be invoiced in writing to Licensee.

All referenced fees, with the exception of the Make Ready Work Fee, are listed in Exhibit B, Fee Structure, of the Agreement and are subject to annual adjustments that must be approved by the Richmond City Council. The Make Ready Work Fee will be determined following the pre-construction survey and adjusted after completion of Make Ready Work.

THE LICENSEE AGREES TO NOT ATTACH TO THE CITY'S POLES UNTIL THE MAKE-READY WORK IS COMPLETE.

NewPath Networks, LLC
Licensee

By: _____

Title: _____

Date: _____

EXHIBIT A
POLE ATTACHMENT LICENSE APPLICATION
License #: 201 _____ - _____

This revocable and non-exclusive License (License Number _____) is hereby granted for Attachment(s) to the Poles listed on the attached Application Attachment with revisions as noted. This License is issued under the terms and conditions of the above referenced Pole Attachment Agreement.

City of Richmond
Department of Public Utilities

By: _____

Title: _____

Date: _____

EXHIBIT A-1
APPLICATION ATTACHMENT – LICENSE #: 201__-xxxx

ATTACHMENT: NEW _____ MODIFICATION _____
APPLICANT INFORMATION: [Licensee]

Name: _____
 Address _____
 City/State/Zip code _____
 Contact Person Name/Title _____
 Contact Person Phone # [office/mobile/Fax] _____
 Email Address _____

Licensee: _____ Licensor: _____ Date: _____

Item	Pole Number	Address of the Attachment [Location]	Space Req'd	Number & Type of Attachment		Description of Installation	Attachment Location on Pole	Proposed Route	Proposed schedule	Physical Characteristics of Attachments
				Pole	Conduit					
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										

**EXHIBIT B
FEE STRUCTURE**

This exhibit establishes a fee structure for the Pole Attachment Agreement by and between the City (as pole owner) and the attaching Licensee. The City, in its sole discretion, may elect to modify the rates and charges pertinent to the Pole Attachment Agreement.

Fees due at the time a Pole Attachment License Application (to include Exhibits A and A-1) is submitted:

- 1. Application fee, established at \$1.00 per attached pole.**
- 2. Pre-Construction survey fee, established at \$32.00 per attached pole.**

Fees due prior to the start of any Make-Ready Work by the City of Richmond (the City) shall establish an internal work order for tracking costs related to this work):

- 1. Post-Construction fee, established at \$1.00 per attached pole.**
- 2. Inspection costs, to be billed by the City at the hourly labor rate for DPU Street Light Inspectors as established in the City's Schedule of Fees.**
- 3. Make-Ready Work, to be billed by the City to cover labor, equipment and materials cost as established by the City's Schedule of Fees.**

Fees to be billed annually:

- 1. The Annual Pole Attachment Rental Rate shall be billed as determined under the Annual Pole Attachment Rental Rate (Exhibit C).**

EXHIBIT C
ANNUAL POLE ATTACHMENT RENTAL RATE

RENTAL RATES

Cable television companies and telecommunications carriers have federal rights of access to a utility's poles, ducts, conduits or right-of-way. Moreover the Federal Communications Commission (FCC) has promulgated regulations that establish formulas for determining just and reasonable rates for Attachments to poles and placements in conduits.

Electric cooperatives and federal, state and municipal entities providing utility services are specially exempted from the definition of electric utility and thus are not subject to FCC pole attachment jurisdiction.

In general rates must be just and reasonable. A rate is just and reasonable if it assures a utility the recovery of its incremental costs (additional costs of providing Attachments) plus its fully allocated costs (that is, an amount determined by multiplying the percentage of usable pole space which is occupied by the Attachment, by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole).

The pole attachment rental rate is the Attaching Entity's share of the actual (fully allocated) costs, which include:

1. That portion of operating expenses and capital costs that a utility incurs in owning and maintaining poles and right-of-way.
2. Pole cost is the depreciated original installed cost of an average bare pole minus accumulated deferred taxes. The FCC allows a means of determining pole cost.
 - a. Gross cost means the original investment (purchase price of poles and fixtures excluding cross-arms and appurtenances) divided by the number of poles represented in the investment.
 - b. Net cost means original investment, less depreciation, deferred taxes associated with the pole investment, and the cost of appurtenance not used or useful for pole Attachments (such as cross arms) (presumed to be 15% of gross investment), divided by the number of poles in the investment amount. If net cost is a negative value, then the pole owner may use gross cost.
3. The carrying charge is expressed as a percentage of the following expense elements for the most current calendar year.
 - a. Administrative – total general and administrative expenses expressed as a percent of net investment in plant in service
Maintenance – maintenance of pole expense as a percent of net investment in poles and related accounts
 - b. Depreciation – pole-related depreciation expense which equals depreciation rate adjusted for net pole investment

- c. Taxes – taxes as a percent of net plant in service
- d. Cost of money – rate of return on investment allowed or cost of debt

MAXIMUM RENTAL RATE

MAXIMUM RATE = \$4.44

APPENDIX D - NOTIFICATION ATTACHMENT REMOVAL SHEET

LICENSE NUMBER: _____ **Licensee:** _____ **Date** _____
Licensee Contact information: **Name:** _____ **Name/Title** _____
Address _____ **City/State/Zip Code** _____
Phone #: _____ **office/mobile/Fax** _____ **Email Address:** _____

Item	Pole Number	Address of the Attachment [Location]	Attachment Removal [Description]	Remarks
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				

EXHIBIT E
LICENSEE'S FACILITIES/ATTACHMENTS/EQUIPMENT

Note: Meter attachment not allowed on City Poles.