



**WIRELINE TELECOMMUNICATIONS FRANCHISE
AGREEMENT FOR
TELECOMMUNICATIONS SERVICES & FACILITIES
IN THE RIGHT-OF-WAY**

Dated as of _____, 2019

Between

THE CITY OF FORT MITCHELL

and

TABLE OF CONTENTS

SECTION 1. DEFINITIONS	5
SECTION 2. AUTHORIZATION TO USE RIGHT OF WAY	12
2.1 Grant of Permission	12
2.2 No Macro or Small Cell Installations Authorized	13
2.3 Franchisee Poles	13
2.4 Traffic Signals and Infrastructure	13
2.5 Co-Location	13
2.6 Continuation of Existing Facilities and Expansion.....	13
2.7 Notice of Other Users.....	14
2.8 Liability of Franchisee	15
SECTION 3. SCOPE OF AUTHORITY	15
3.1 Non-Exclusive	15
3.2 No Usage Transfer	15
3.3 Franchisee Poles	15
3.4 Use of Existing Utility Poles	16
3.5 Retention of Powers by City.....	16
3.6 No Priority of Use or Interest in Property	16
3.7 Eminent Domain	16
SECTION 4. SITE APPROVAL AND COMPLIANCE.....	16
4.1 Application and Process	16
4.2 Compliance with City Conditions.....	17
4.3 Reimbursement of Costs	17
4.4 Material Alteration.....	18
4.5 Permits.....	18
4.6 FCC Regulations and Compliance.....	18
SECTION 5. SITE ACCEPTANCE	18
5.1 Acceptance	18
5.2 Acceptance Conclusive Evidence	19
5.3 No Warranty	19
SECTION 6. TERM.....	19
6.1 Initial Term.....	19
6.2 Renewal.....	19
6.3 End of Term Renewal and Negotiation.....	19
SECTION 7. CONDITIONS OF USE OF STREETS AND PUBLIC WAYS.....	20
7.1 Requirement.....	20
7.2 Information Required	20
7.3 Permit Fees	21
7.4 Time of Completion	21
7.5 Right-of-Way Restoration	21
7.6 Failure to Restore.....	22

7.7	Timeframe for Issuance of Permit	22
7.8	Emergency Conditions	22
7.9	Erection of Additional Poles	22
7.10	Cooperation	22
7.11	Additional Conditions	23
7.12	Inspections	23
7.13	Access to Detailed Plans	23
7.14	Confidentiality	23
SECTION 8. CONSTRUCTION REQUIREMENTS AND MAINTENANCE.....		24
8.1	Quality and Specifications.....	24
8.2	Minimum Interference and Safety Compliance.....	24
8.3	Compliance with Building and Zoning Codes and Ordinances	24
8.4	Construction Standards	24
8.5	Maintenance of Equipment and Stealth Technology	25
8.6	Graffiti Abatement	25
8.7	Authority to Stop Work.....	25
8.8	Generators.....	25
SECTION 9. CONSTRUCTION CONDUIT AND POLE ATTACHMENT ACTIVITIES		25
9.1	Determination of Pole and Conduit Availability	25
9.2	Location.....	26
9.3	Required Movement; Right of Authority	26
9.4	Common Use of Facilities	26
9.5	Compliance with FCC and PSC Regulations	26
SECTION 10. NECESSITY FOR UNDERGROUND FACILITIES		27
10.1	Requirement for Underground Facilities.....	27
10.2	Procedure to Bury Existing Overhead Facilities	27
SECTION 11. TREE TRIMMING		27
SECTION 12. RELOCATION OF FACILITIES.....		27
12.1	Requirement to Relocate	28
12.2	Notice	28
12.3	Additional Time	28
12.4	Authority to Perform.....	28
12.5	Right to Remove	28
12.6	Emergency	28
SECTION 13. LIABILITY INSURANCE.....		29
13.1	Insurance Requirements, Scope and Limits	29
13.2	Endorsements and Acceptability of Insurers	29
13.3	Self-Insurance - Workers' Compensation	29
13.4	Increase of Insurance Limits.....	30
13.5	No Limitation on Liability	30
13.6	Subrogation.....	30
SECTION 14. INDEMNITY.....		30

14.1	Scope of Indemnity	30
14.2	Franchisee’s Duty to Employ Counsel.....	30
14.3	Indemnitees’ Right to Employ Own Counsel.....	31
14.4	Duty to Give Notice and Tender Defense	31
14.5	Disclaimer.....	31
14.6	Non-Liability of City Officials, Employees and Agents.....	31
14.7	No Liability for Damage, Death or Bodily Injury	31
14.8	Waiver of Claims regarding Fitness of Poles and Structures Located on Public Ways.....	31
SECTION 15. REMOVAL AND RESTORATION.....		32
SECTION 16. PAYMENT OF FEES FOR USE OF THE RIGHT-OF-WAY		32
16.1	Nature of Payment	32
16.2	Application Fee.....	33
16.3	Franchise Fee	33
16.4	Reserved	33
16.5	Definition of Gross Receipts	33
16.6	Gross Receipts Linked Tariff	34
16.7	Reserved	34
16.8	Quarterly Payments.....	34
16.9	Late Payments.....	34
16.10	Right of Audit of Franchisee’s Books and Records.....	34
16.11	Right of Inspection of Franchisee’s Facilities	35
16.12	Other Payments.....	35
16.13	Not in Lieu of Other Fees.....	35
16.14	Acceptance Not to be Construed as Accord	35
16.15	Transition to Payment of Franchise Fees	35
SECTION 17. TRANSFER OF OWNERSHIP.....		36
17.1	Valid Transfer Required.....	36
17.2	No Rights Transferred.....	36
17.3	Notice	36
17.4	Transfer Application	36
17.5	Failure to Comply	37
17.6	Continuation of Liability.....	37
SECTION 18. PERFORMANCE BOND		37
18.1	Bond Required	37
18.2	Conditions.....	37
18.3	Replenishment	38
18.4	Maintenance of Suit	38
18.5	Drawing upon Bond.....	38
18.6	Requirements for Surety.....	38
18.7	Endorsement	38
18.8	Grounds for Revocation	38
SECTION 19. RESERVED.....		38

SECTION 20. ENVIRONMENTAL LAWS	38
20.1 Compliance	38
20.2 Hazardous Materials	39
SECTION 21. FORFEITURE AND REVOCATION	39
21.1 Default and Right to Revoke	39
21.2 Force Majeure	40
21.3 Procedure Prior to Revocation	40
21.4 Disposition of Facilities	41
SECTION 22. MISCELLANEOUS PROVISIONS	42
22.1 Acceptance and Approval; Consent	42
22.2 Representations and Warranties	42
22.3 Statement of Acceptance	42
22.4 Relationship of the Parties	42
22.5 Severability	42
22.6 Entire Agreement	42
22.7 Written Amendment	43
22.8 Applicable Law and Venue	43
22.9 Notices	43
22.10 Captions	43
22.11 Non-Waiver	43
22.12 Enforcement	43
22.13 Ambiguities	44
22.14 Survival	44
22.15 Parties in Interest	44
22.16 Remedies Cumulative	44
22.17 Counterparts	44
22.18 Authority	44
22.19 Liens	44
22.20 Timely Response	44
22.21 Subordination	44
22.22 Competitive Neutrality	45
22.23 Reservation of Rights	45
EXHIBIT A [Application of Franchisee]	i
EXHIBIT B Description of Telecommunications Services	ii

THIS WIRELINE TELECOMMUNICATIONS FRANCHISE AGREEMENT FOR TELECOMMUNICATIONS SERVICES AND FACILITIES IN THE RIGHT-OF-WAY (“**Agreement**” or “**Franchise**”), dated as of [_____], 2019, is made by and between the City of Fort Mitchell, Kentucky, a municipal corporation and home rule city (“**City**”), as franchisor, and _____, with its principal offices at _____ (“**Franchisee**”). The City of Fort Mitchell and Franchisee may be referred to, where appropriate, individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

WHEREAS, Franchisee, a provider of Telecommunications Services, as such services are specifically described in the Application and Exhibit B, desires to obtain a non-exclusive franchise to use certain portions of the City of Fort Mitchell’s Rights-of-Way for purposes of Constructing, Installing, Operating, Maintaining, repairing, replacing, and removing its Telecommunications Facilities in order to provide and/or improve Telecommunications Services coverage and meet increased demand for its services; and

WHEREAS, the City owns and controls the Rights-of-Way throughout the Franchise Area and Section 253 of the Telecommunications Act, including 47 U.S.C. § 253, acknowledges that the City has the authority to control and manage access to and use of the Rights-of-Way within its jurisdictional limits; and

WHEREAS, Section 163 of the Kentucky Constitution provides that: (1) a utility, including communications providers, may not utilize public rights-of-way of a city or county without obtaining the consent of the city or county, and (2) Section 164 of the Kentucky Constitution (a) authorizes cities and counties to grant franchises for a term not to exceed twenty (20) years and (b) requires a city or county to first publicly advertise and receive bids for a franchise or license before granting the same; and

WHEREAS, the City considers it to be in the best interest of the City and in furtherance of the health, safety and welfare of the public, to grant a franchise to Franchisee providing for the non-exclusive use of its Rights-of-Way at Approved Locations subject, however, to Applicable Law and the terms and conditions set forth in this Franchise, and pursuant to Permits issued by the City’s Public Works Department, PDS and/or other government agencies or departments of the City, as applicable or appropriate; and

WHEREAS, the City and Franchisee desire by this Agreement to set forth their understanding of such matters.

NOW THEREFORE, in consideration of the material covenants contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

SECTION 1. DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words and their abbreviations shall have the meaning as set forth below. Unless otherwise expressly stated, capitalized terms not defined in this Agreement shall be given the meaning set forth in the FCC Regulations and Applicable Law.

“Abandon” (and its derivatives) mean the Telecommunications System, Facilities, Franchise Poles or any portion of the foregoing that has been left by Franchisee in an unused or non-functioning condition for more than 120 consecutive days unless, after notice to Franchisee, Franchisee has established to the reasonable satisfaction of the City that the Telecommunications System, the Facilities, Franchise Poles and related equipment thereof has the ability to provide Telecommunications Services.

“Affiliate” has the meaning as set forth in 47 U.S.C. § 153, namely, a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent.

“Applicable Law” has the meaning ascribed to it in Section 22.8 (Applicable Law and Venue).

“Application” means the document of Franchisee in Exhibit A, which exhibit is attached hereto and made a part of this Agreement, and accepted by the City.

“Approved Location” means the specific location(s) or site(s) in the Right-of-Way as identified in Franchisee’s Application and any subsequently approved location or site further identified or specifically described in Permits issued by the Public Works Department and/or PDS, as applicable, in connection with any Permit Application submitted by Franchisee pursuant to Section 2.6 (Continuation of Existing Facilities and Expansion) and 4 (Site Approval and Compliance).

“Authorized City Official” means that individual employee of the City who has responsibility or oversight for Work done in, and usage of, the Right-of-Way, as designated by the Mayor.”

“City” means the City of Fort Mitchell, its Mayor, its Council, its Council members, officers, agencies, departments, committees, boards, agents and employees acting within the scope of their respective authorities or responsibilities.

“Conduit” means a pipe, tube or channel of either metal, ceramic, plastic, tile, or other material that is designed to protect buried cables or wires.

“Conduit System” means any combination of Ducts, Conduits, manholes and handholes joined to form an integrated whole.

“Cell Tower Regulations” means the Regulations for Cellular Antenna Towers and Small Cell Towers promulgated and administered by the Planning Commission and its subdivision, PDS.

“Commercial Mobile Radio Services” means two-way voice commercial mobile radio service as defined by the FCC and/or in 47 U.S.C. § 157.

“Contractor” means any Person, or a combination of any of Person, that performs services or provides goods relating to this Agreement. Contractor shall also include any subcontractor hired

and/or used by Franchisee or any Contractor for the performance of services or provision of goods relating to this Agreement.

“Co-Location” means the mounting or installation of two (2) or more Facilities of any carrier or telecommunications provider on the same existing Utility Pole, structure or other improvement.

“Construct” (and any derivation thereof) means constructing, reconstructing, installing, reinstalling, erecting, upgrading, altering, modifying, extending, replacing, relocating, removing any part of the Telecommunications System, the Facilities, Franchisee Poles and/or any related equipment.

“County” means Kenton County, its County/Judge Executive, its Fiscal Court and the members of Fiscal Court, its agencies, departments, committees, boards, agents and employees acting within the scope of their respective authorities.

“Dark Fiber” means fiber optic strands through which no light is being transmitted (i.e., unused fiber optic communications capacity).

“Duct” means a single enclosed tube, pipe or channel for enclosing and carrying cables, wires, and other facilities.

“Effective Date” has the meaning ascribed to it in Section 6.1 (Initial Term) of this Agreement.

“Facilities” means the plant, equipment, fixtures, appurtenances and other facilities in the public Rights-of-Way necessary to furnish and deliver, and used in the provision of, Telecommunication Services and not owned by the City, including but not limited to cables, wires, poles, pipe, Conduits, Ducts, Conduit Systems, pedestals, communication and signal lines and equipment, vaults, and all attachments, appurtenances, and appliances placed in the Rights-of-Way and necessary or incidental to the distribution, transmission and/or use of Telecommunications Services. For purposes of this Franchise the term Facilities excludes “small cell towers,” “small cell systems,” “wireless communications facilities,” “cellular antenna towers,” “transmission equipment” authorized for wireless communications services, or “antennas or related equipment,” all as such terms are defined in the Cell Tower Regulations which address and regulate Personal Communications Services and Commercial Mobile Radio Services.

“FCC Regulations” means the rules and regulations promulgated by the FCC under the Telecommunications Act.

“FCC” or the **“Federal Communications Commission”** means the federal administrative agency, or lawful successor, authorized by the United States Congress to oversee and regulate interstate and international communications by telephone, radio, television, satellite and cable.

“Fiber Optic Network” is a communication system consisting of an optical transmitter to convert an electrical signal into an optical signal to send into the optical fiber, a cable containing bundles of multiple optical fibers that is routed through underground conduits and buildings, multiple kinds of amplifiers, and an optical receiver to recover the signal as an electrical signal.

“**Franchise**” means the legal, revocable right to occupy the Rights-of-Way as reflected in a franchise agreement or other agreement issued by the City according to the provisions of the Kentucky Constitution. “**Franchise**” also means and includes this Agreement, including any modifications, amendments and exhibits or schedules thereto.

“**Franchise Area**” means, with respect to a city, the incorporated area of that city and such additional areas as may be included in the corporate or territorial limits of the city by way of annexation or other legal means.

“**Franchise Fee**” means the payment in the nature of rent made by Franchisee according to the terms of this Agreement, including Section 16 (Payment of Fees for Use of the Right-of- Way).

“**Franchisee**” means the Person identified in the preamble of this Agreement or its duly authorized successor or transferee.

“**Franchisee Pole**” means or includes a Utility Pole that is Constructed or Installed and owned by Franchisee and approved by the City, as provided in this Agreement, including Section 7.9 (Erection of Additional Poles).

“**Gross Receipts**” has the meaning ascribed to it in Section 16.5 (Definition of Gross Receipts) of this Agreement.

“**In**” when used in or with the phrase “in the Right-of-Way” means in, over, under, underneath, above, and beneath and on the surface of.

“**Include**” and “**including,**” and words of similar impact, shall be deemed to be followed with the words “without limitation.”

“**Indemnitee**” or “**Indemnitees**” has the meaning ascribed to it in Section 14.1 (Scope of Indemnity) of this Agreement.

“**Information Service**” means “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”

“**Initial System**” means the Telecommunications System and/or associated Facilities initially Constructed and/or Installed at the outset and depicted or described in Franchisee’s Application, a copy of which is attached hereto as Exhibit A and made a part of this Agreement.

“**Install**” (**and any derivation thereof**) means installing, reinstalling, placing, replacing, locating, relocating, attaching, affixing, and/or putting in or placing any equipment, machinery, facilities, pipes, property and/or other apparatus relating to, associated with, or comprising the Telecommunications System, Facilities, Franchisees Poles and/or related equipment.

“**Maintain**” (**and any derivation thereof**) means to maintain, repair, restore, service, preserve, conserve and keep in good repair and operating condition any and all parts of the Telecommunications System, Facilities, Franchisees Poles and related equipment.

“**Multichannel Video System**” includes:

- a “**Cable System**,” as the term is defined in the Telecommunications Act (47 U.S.C. §522(7)), providing service within the Franchise Area;
- an “**Open Video System**,” as the term is defined in the Telecommunications Act and implementing regulations (47 U.S.C. §§571 and 573), providing service within the Franchise Area;
- any other system providing Multichannel Video Services within the Franchise Area, where the service is transmitted in whole or in part via wires or lines that are in or cross any Right-of-way within the Franchise Area. The preceding sentence shall apply whether the provider owns, leases or otherwise obtains the right to use the wires or lines, including wires or lines of a Telecommunications provider used pursuant to tariff or otherwise for that purpose; and/or
- any other system providing Multichannel Video Services within the Franchise Area where a franchise, license or similar permission or approval from the City is required under Applicable Law.

For purposes of this Franchise, “**Multichannel Video Services**” means multiple channels of video programming where some or all of the video programming is generally considered comparable to programming provided by a television broadcast station or by a direct to home satellite service. Multichannel Video Services specifically includes, but is not limited to, “**Cable Service**” as the term is used in Telecommunications Act (47 U.S.C. §522(6)).

“**Operate**” (and any derivation thereof) means to operate, run, superintend, control, utilize, keep and/or manage the Telecommunications System, Facilities and/or Franchisee Poles, or to interrupt or restore Telecommunications Services, in a safe and reliable manner.

“**Other Party**” or “**Other Parties**” means a Telecommunications Services provider or a User who is not a Party to this Agreement.

“**Performance Bond**” has the meaning ascribed to it in Section 18 (Performance Bond) of this Agreement.

“**Permit Application**” means the application and other documents specified or required by PDS and/or the Public Works Department, as applicable, for any extension, expansion, a material alteration of, or the addition of new Facilities.

“**Permit**” or “**Permits**” mean a document issued by: (a) the City’s Public Works Department authorizing the Construction or Installation of Facilities and/or related equipment, or authorizing any kind of Work at an Approved Location that will impact or otherwise affect the Right-of-Way, especially any public street, road, highway, sidewalk or any curb thereof; (b) the City’s Building Department authorizing the Construction or Installation of buildings or other structures wherever located; and (c) PDS or the Public Works Department, as applicable, authorizing or approving any Construction, Installation, modification, alteration and/or expansion of Franchisee’s Telecommunications System, Facilities and/or Franchisee Poles, at an Approved Location or other place(s) within the Right-of-Way in compliance with all zoning and building regulations.

“**Person**” means an individual, partnership, association, limited liability partnership, limited liability company, corporation, joint venture, or any other legally recognized entity, whether for profit or not for profit, but shall not mean the City.

“**Personal Communication Services**” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined in 47 U.S.C. § 332(c).

“**PDS**” means either (a) the Planning and Development Services of Kenton County, Kentucky, which is administered to by the Planning Commission or (b) the Planning and Zoning Commission/Staff of the City as may be applicable.

“**Planning Commission**” means the Kenton County Planning Commission in the Commonwealth of Kentucky.

“**Public Works Department**” means the City’s public works department, including any successor agency, department, board or other designee formed, appointed or otherwise designated by the City, which is responsible for multiple services, including without limitation City infrastructure, public buildings, Rights-of-Way, and Maintenance and repair of public sidewalks, streets, street lights and traffic signals.

“**Right-of-Way**” or “**Rights-of-Way**” means the surface, the space above the surface, and the space below the surface of any public street, road, highway, avenue, lane, path, alley, public way or place, sidewalk, court, boulevard, drive, utility easements or other public right-of-way now or hereafter held or owned by the City including public or Utility easements established, dedicated, platted, improved or devoted for Utility purposes, which shall, within their proper use and meaning, entitle the City and its franchisees or licensees to the use thereof for the purpose of Constructing, Installing, Maintaining, Operating, replacing and/or removing the Telecommunications System, Facilities and/or Franchisee Poles. No reference herein or in any franchise or license shall be deemed to be a representation, warranty or guarantee by the City that its title to any property is sufficient to permit its use for such purpose, and Franchisee shall, by its use of such terms, be deemed to gain only such rights to use property in the City as the City may have the undisputed right and power to give. The term “**Right-of-Way**” or “**Rights-of-Way**” does not include any (a) park or recreational area of the City (b) public buildings, structures or infrastructure, or (c) public land upon which any government or public building, fire station, police station or school may or may not be situated. The use of such City owned property or facilities by Franchisee shall be considered by the City on a case by case basis and shall be subject to payment of additional compensation to the City and a separate agreement.

“**Shall**” is always mandatory and not merely permissive.

“**Staff**” means those employees of PDS or the Public Works Department assigned to support and/or administer the powers and duties proscribed to the Planning Commission or the Public Works Department, as applicable.

“**Telecommunications**” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, as provided in 47 U.S.C. §153(43). However, the term does not include

Commercial Mobile Radio Services, Personal Communications Services, pay phone services, Cable Services, Multichannel Video Services, Information Services, (or the leasing of dark fiber for transmission purposes, except as otherwise provided herein).

“Telecommunications Act” means the Communications Act of 1934, Cable Communications Policy Act of 1984 (Public Law No. 98-549), the Cable Television Consumer Protection and Competition Act of 1992 (Public Law No. 102-385), as amended by the Telecommunications Act of 1996 (Public Law No. 104-104), together with current federal legislation governing Telecommunications, Telecommunications Services and the Operation thereof, in the United States and any subsequent amendments thereto.

“Telecommunications Services” means the offering of those Telecommunications Services specifically described in the Application and Exhibit B, attached hereto and made a part hereof, for a fee directly to the public, or to such users or customers as to be effectively available directly to the public, regardless of the Facilities used, as provided in 47 U.S.C. §153(46). However, as provided elsewhere in this Agreement, Telecommunications Services do not include Commercial Mobile Radio Services, Personal Communications Services, pay phone services, Cable Services, or Multichannel Video Services.

“Telecommunications System” or **“Systems”** means the telecommunications system that is to be Constructed, Installed, Operated and Maintained by Franchisee pursuant to this Agreement, including the Fiber Optic Network, all real property and interests in real property, all tangible and intangible personal property, and other necessary Facilities owned or used by Franchisee for the purpose of providing Telecommunications Services and located in the Right-of-Way, excluding Ducts, Conduits or Conduit System leased from any other franchisees, licensees or permittees.

“Term” means the Initial Term and any Renewal Term, as such terms are defined in Section 6 (Term), collectively, during which this Agreement is in effect.

“Transfer” has the meaning ascribed to it in Section 17.1 (Valid Transfer Required) of this Agreement.

“User” or **“Users”** has the meaning ascribed to it in Section 2.7 (Notice of Other Users) of this Agreement.

“User Contract” has the meaning ascribed to it in Section 2.7 (Notice of Other Users) of this Agreement.

“Utility” means that entity as defined in KRS 278.010 plus Persons who provide Cable Services, Multichannel Video Services or OVS providers as defined in this Section 1 (Definitions).

“Utility Overhead” means utility infrastructure that is located primarily above ground as determined by Staff or an Authorized City Official and, as described in the Cell Tower Regulations. Overhead Utilities include but are not limited to power lines, Telecommunications lines, communications lines, cables, fiber optic lines, and other wire line systems, services or appurtenances.

“Utility Pole” means a structure originally Constructed and/or Installed for the support of electrical, telephone, cable television, telecommunications, or video services, street lighting, or

other similar cables or wires and located within the public Rights-of-Way or Utility easements. A pole originally Installed for the primary purpose of supporting Personal Communications Services or Commercial Mobile Radio Services in accordance with the Cell Tower Regulations, regardless of the timeframe between pole installation and Connection/implementation is considered as a “small cell tower,” as defined in the Cell Tower Regulations, and is not a Utility Pole.

“**Utility Underground**” means Utility infrastructure that is located primarily underground as determined by Staff or an Authorized City Official. For purposes of this Agreement and the Cell Tower Regulations, utilities include but are not limited to waterlines, sanitary sewer lines, storm water sewer lines, culverts, natural gas lines, power lines, and communications lines. This definition does not include electric transformers, switch boxes, telephone pedestals and telephone boxes, traffic boxes and similar devices which are ground mounted.

“**Work**” means to Construct, Install, Maintain, repair, replace and/or remove the Telecommunications System, the Facilities or Franchisee Poles and/or any extension, addition, expansion, or material alteration thereof, and/or the Construction and Installation of new Facilities specified in Section 2.6.2 (New Facilities).

SECTION 2. AUTHORIZATION TO USE RIGHT OF WAY

2.1 Grant of Permission.

2.1.1 **Non-Exclusive Franchise.** Subject to the terms and conditions contained in this Agreement, the City hereby grants Franchisee, a non-exclusive Franchise and right to enter and to make reasonable and lawful use of that portion of, or specific locations in, the Right-of- Way identified and described in Franchisee’s Application (but subject to the City’s approval) and any Permit issued by PDS and/or or the Public Works Department, as applicable, pursuant to Section 4 (Site Approval and Compliance) for purposes of Constructing, Installing, Maintaining, Operating, replacing and/or removing Franchisee’s Telecommunications System and, with all necessary Facilities for the provisioning of Telecommunications Services, but subject to and conditioned upon Franchisee’s full, timely, complete and faithful performance of all obligations to be performed or required hereunder by Franchisee, and Franchisee hereby accepts the terms and conditions this Franchise.

2.1.2 **Limitation of Rights.** This Agreement does not confer any other rights not described herein nor does it permit Franchisee or any User contracted to use Franchisee’s Telecommunications System, Facilities, the Fiber Optic Network or Franchisee Poles for purposes not specified in this Agreement. By way of example, and not limitation, this Franchise does not and shall not authorize Franchisee, its Affiliates, or any third-party User to use the Telecommunication System, Facilities or the Fiber Optic Network for:

2.1.2.1 the provision or distribution of Multichannel Video Services or any other type of video programming or other programming or transmission that may be subject to a cable television license or franchise;

2.1.2.2 a Multichannel Video System, which, as provided elsewhere in this Agreement includes a cable system or an open video system; or

2.1.2.3 Commercial Mobile Radio Services or Personal Communications Services, other than providing for cell site front-haul and back-haul services therefor.

Should Franchisee or any User, as permitted in Section 2.7 (Notice of Other Users), or an Affiliate of Franchisee desire to provide Multichannel Video Services, Cable Services, a Multichannel Video System, Personal Communications Services, or Commercial Mobile Radio Services, Franchisee, Franchisee's Affiliate and/or any User shall be required to obtain a franchise or license from the City in order to provide, or allow for the provision of such services over the Telecommunications System, the Fiber Optic Network, or any of the Facilities.

2.2 No Macro or Small Cell Installations Authorized. This Agreement does not authorize Franchisee to Construct, Install, Operate, place or attach any equipment and/or Facilities associated with or for "cellular antenna towers," "small cell towers," or "small cell systems" or any other equipment and Facilities excluded from the definition of Facilities and specifically addressed or covered in the Cell Tower Regulations. Should Franchisee desire to Install, Construct, Maintain and Operate such towers, cell systems, or equipment and facilities, Franchisee shall be required to make application with PDS, as required by the Cell Tower Regulations, and obtain a franchise or license from the City as required by Applicable Law.

2.3 Franchisee Poles. References to Franchisee Poles throughout this Agreement shall not be construed as permission to install Franchisee Poles in the Right-of-Way absent the issuance of a Permit or approval by the Public Works Department, as applicable.

2.4 Traffic Signals and Infrastructure. Unless specifically approved by the City in advance in writing and evidenced by a separate franchise, license or other agreement and provide additional compensation, as provided in the definition of "Right-of-Way", Franchisee shall neither allow nor place: (1) Facilities on a Traffic-Control Device, Traffic Signal, City Poles or any structure supporting a Traffic Control Device, Traffic Signal or City Poles, or (2) Facilities or Franchisee Poles on any part of a City bridge, overpass, tunnel or other public structure. For purposes of this Section 2.4, the term "**Traffic Signal**" means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed; the term "**Traffic-Control Device(s)**" means all signs, signals, markings, or devices placed or erected by the City or a public body having jurisdiction for the purpose of regulating, warning, or guiding traffic; and the term "**City Poles**" means City owned poles such as street light poles, Utility poles, decorative or signage poles or other structures owned and operated by the City. City Poles do not mean or include poles or other structures owned by a City contractor or poles or infrastructure owned by a Utility.

2.5 Co-Location. Subject to Section 9.4 (Condition on Installation of Conduit) Franchisee shall permit Co-Location of other Telecommunications or communications facilities and equipment provided, however, that such third-party user is authorized to be in the Right-of- Way and that any such third-party Facilities and equipment shall be approved by PDS and/or the Public Works Department, as applicable, and in accordance with Applicable Law and as provided by this Section 2.5. All franchise, annual and other fees resulting from such Co-Location shall be included in the Gross Receipts of Franchisee and subject to the Franchise Fee.

2.6 Continuation of Existing Facilities and Expansion. While the Franchise established hereby is and remains effective, Franchisee may, in addition to the rights set forth in this Agreement, including Section 2.1 (Non-Exclusive Franchise) hereof, engage in the following activities, but

always subject to the rights reserved by the City pursuant to Section 3.5 (Retention of Powers by City) and the terms and conditions of this Franchise:

2.6.1 **Construction of Facilities.** Franchisee is authorized to Construct and Install the Initial System at the Approved Location(s) in the Right-of-Way, as noted or depicted in Franchisee's Application and in accordance with the Plans and Specifications specified therein. Such Construction or Installation shall commence within three (3) months following the Effective Date and, in any event, no later than six (6) months after the Effective Date, subject to the timely issuance of necessary Permits, which will be diligently pursued by Franchisee. Franchisee agrees to substantially complete the Construction and/or Installation of the Initial System within twelve (12) months after the commencement of Construction or Installation of the Initial System, subject to the timely issuance of necessary Permits and licenses, which will be diligently pursued by Franchisee.

2.6.2 **New Facilities.** Franchisee shall provide: (a) commercially reasonable notice ("**Expansion Notice**") of any non-emergency extension, addition or expansion of any existing portion or portions of the Initial System, or the Construction or Installation of new Facilities, equipment, Conduits and other installations within the Franchise Area comprising, or becoming part of, the Telecommunications System and Facilities; and (b) the Plans and Specifications for such extension, addition or expansion or new Facilities. Franchisee shall abide by the City permitting process and Applicable Law and shall receive necessary approval thereof by the Public Works Department, which approval shall not be unreasonably withheld unless the extension, addition, expansion, Construction or Installation described in such Plans and Specifications is contrary to the public health, safety, welfare, and convenience or further City Right-of-Way plans. In the event that any request for the extension, addition or expansion of any existing Telecommunications System, or the Construction or Installation of new Facilities of Franchisee is denied by the Public Works Department for reasons stated herein, such denial shall be set forth in writing with the basis of the denial set forth therein within ninety (90) days following the receipt of Franchisee's Expansion Notice, or if written approval is not received within said ninety (90) days of Franchisee's Expansion Notice, or if written approval is provided to Franchisee before ninety (90) days, the extension, addition expansion, Construction or Installation of new Facilities request shall be deemed approved. The City acknowledges that Franchisee has a statutory duty to provide adequate, efficient and reasonable service and that Franchisee shall not be prevented from fulfilling that statutory obligation due to any unfounded or groundless delay by the Public Works Department in giving, or failing to give, any approval described herein. Any denial may be appealed to the City Council by Franchisee within sixty (60) days after date of the denial.

2.7 **Notice of Other Users.** Franchisee may enter contracts or leases with unrelated third-parties ("**Users**") in ordinary course of Franchisee's business for use of the Conduit Systems and/or Fiber Optic Networks and/or other portions of the Telecommunications System within the Right-of-Way subject to this Agreement. Such described contracts or leases ("**User Contract**" or "**User Contracts**") shall be subject to all requirements and provisions of this Agreement and the following:

2.7.1 No Person shall transmit Telecommunication Services, data, or other services or products over the Fiber Optic Networks or other portions of the Telecommunications System or otherwise use the Conduit System(s) except under a User Contract.

2.7.2 Such User(s) shall not perform any Construction, Installation, Maintenance, Operations or other Work of any kind in the Right-of-Way related to the Fiber Optic Networks, the Telecommunications System or the Conduit System(s), and the identity of such User(s)

must be disclosed to the City upon request, but such information will be considered Confidential and Proprietary under Applicable Law. All User Contracts shall prohibit User(s) from performing any Construction, Installation, Maintenance, Operation or other Work of any description in the Right-of-Way related to the Telecommunications System, the Fiber Optic Network or Conduit System(s), unless such User(s) have an agreement or franchise with the City.

2.7.3 In the event the User Contract provides for the User to Construct, Install, Operate or Maintain any portion of the Telecommunications System, the Fiber Optic Network or the Conduit System(s) within the route in the Right-of-Way, no such arrangement shall proceed until the User enters into an agreement or franchise with the City for use of the City's Right-of- Way.

2.8 Liability of Franchisee. Franchisee shall cause to comply with this Agreement all Persons, including Users and Contractors, using the Right-of-Way through or under Franchisee or this Agreement. Franchisee is responsible for any violations of this Agreement by any Person, including Users and Contractors, using the Right-of-Way through or under Franchisee or this Agreement. Nothing in this Agreement creates any liability or obligation on the part of Franchisee with respect to any User's failure to comply with terms or conditions arising under any standalone agreement or franchise between User and the City.

SECTION 3. SCOPE OF AUTHORITY

3.1 Non-Exclusive. This Agreement and the Franchise herein granted shall be non-exclusive. The City expressly reserves the right to grant one or more similar franchises or licenses on a competitively neutral and nondiscriminatory basis as required by the Telecommunications Act. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to Franchisee under this Agreement shall be subject and subordinate to: (1) the City's right to use, control and manage City Poles, Traffic Signals and Traffic-Control Devices (as such terms are defined in Section 2.4) for their intended or other uses, notwithstanding any right and approval granted to Franchisee, if any, installed; (2) the continuing right of the City to use, and to allow any other Person or Persons to use, any and all parts of the Rights-of-Way, concurrently with any other Person or Persons entitled to do so; and (3) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "**Encumbrances**") which may affect the Public Rights-of-Way now or at any time during the Term of this Agreement, including any Encumbrances granted, created or allowed by the City at any time, provided that any such Encumbrances granted after the date of this Agreement shall not materially interfere with the Telecommunications System or Facilities installed pursuant to this Agreement, or with Franchisee's rights to access, maintain, modify and use such Telecommunications System and Facilities in accordance with this Agreement.

3.2 No Usage Transfer. Except as expressly provided herein, this Agreement does not grant Franchisee the authority and right to grant any rights whatsoever under this Agreement to any Other Party or User without the prior written consent of the City, all as provided in Section 2.7 (Notice of Other Users).

3.3 Franchisee Poles. Franchisee and City agree that Franchisee Poles once installed with the prior approval of the Public Works Department shall be considered "Utility Poles" within the definition of this Agreement, and that third-party wireline attachments (unrelated to Franchisee's Telecommunications System and Facilities) shall be permitted to be on Franchisee Poles in accordance with Applicable Law and, subject to Sections 9.4 (Common Use of Facilities) and 9.5

(Compliance with FCC and PSC Regulations), Franchisee's standard practices and requirements for such activity.

3.4 Use of Existing Utility Poles. This Agreement only authorizes permission to use the Right-of-Way and does not confer any rights or permission to install Facilities or related equipment on a Utility Pole or City Pole in the Right-of-Way. Franchisee must use its best efforts to obtain permission from the owner of the Utility Pole and the City Pole, as the case may be, to use such poles. Franchisee is strongly encouraged to use existing Utility Poles or other cable/wire- holding structures.

3.5 Retention of Powers by City. All rights and privileges granted in this Agreement shall, at all times during the Term of this Agreement, be subject to all lawful exercises of the police and legislative powers of the City and Franchisee shall comply with all Applicable Law. No course of dealing between Franchisee on the one hand, and the City on the other hand, any failure of the City on any one (1) or more occasions to seek, or insist upon, compliance with such requirements or provisions nor any delay on the part of the City in exercising any rights hereunder, shall operate as a waiver of any such rights or operate as an acquiescence in the actions of Franchisee, except to the extent expressly agreed in writing. Franchisee shall comply with all Applicable Law, including all ordinances, regulations, policies or guidelines which the City has adopted or shall adopt in the future applying to the public, carriers, utility providers, or other licensees or franchisees generally.

3.6 No Priority of Use or Interest in Property. The grant of this Franchise pursuant to this Agreement does not establish priority for use over existing or future franchise, license or permittee holders, or the City's own use of the Rights-of-Way. The City shall at all times control the distribution of space in the Rights-of-Way occupied by a franchisee, licensee or permittee. Neither Franchisee's use of the Rights-of-Way or other City-owned property nor anything contained in this Agreement, shall be deemed to grant, convey, create or vest in Franchisee a real property interest in any portion of the Rights-of-Way, including Approved Locations, or any other City property, including any fee, leasehold or easement interest therein or in any laws. All City owned property and infrastructure, including City Poles, Traffic Signals and/or Traffic-Control Devices shall remain the property of the City. All Installed approved Facilities, Franchisee Poles and related equipment shall remain the property of Franchisee on behalf of itself and any permitted successor or assign, recognizes and understands that this Agreement may, subject to Applicable Law, create an interest subject to taxation and that Franchisee, its Users, successors, lessees, or assigns may be subject to the payment of such taxes.

3.7 Eminent Domain. Nothing in this Agreement shall be deemed or construed to impair or affect any right the City may have to acquire the property of Franchisee through the exercise of the power of eminent domain or condemnation or to alter in any way the interest the City may have in any Right-of-Way, easement or other property which the Telecommunications System and/or Facilities may be placed.

SECTION 4. SITE APPROVAL AND COMPLIANCE

4.1 Application and Process. As provided in this Agreement, Franchisee has the right, at its sole cost and expense, to Construct, Install, Maintain, and Operate a Telecommunications System, Facilities, Franchisee Poles and related equipment, including any extension, addition and expansion thereof, including new Facilities, approved or authorized by the Public Works Department, as specified in Franchisee's Application for the Initial System or any subsequently issued Permit, as provided in Sections 2.6.2 (New Facilities) and 4.4 (Material Alteration). Prior to commencing any

Construction, Installation, expansion or material alteration of the Telecommunications System, Facilities or any part thereof, Franchisee must first obtain from the Public Works Department, as applicable, written approval (or disapproval as the case may be), provided that such approval or disapproval shall be granted only after Franchisee has: (a) filed a Permit Application, together with the Plans and Specifications specified in Sections 2.6.2 (New Facilities) and 4.4 (Material Alteration), with the Public Works Department, as the case may be, pursuant to the terms of this Agreement and Applicable Law, including planning, zoning, and building codes of the City; (b) notified and coordinated its Permit Application process with PDS and/or the Public Works Department, as applicable; and (c) received from the Public Works Department, as applicable, a Permit, approval or authorization of such Permit Application for such Telecommunications System, Facilities, Franchisee Poles and/or any related equipment and any extension, addition, expansion or new Facilities thereof.

4.2 Compliance with City Conditions. In the event the Public Works Department, approve(s) a Permit Application for the extension, expansion or material change of, or the addition of new Facilities to, the Telecommunications System, Facilities and Franchisee Poles, Franchisee shall Construct, Install, Maintain and Operate the Telecommunications System, Facilities, and all parts thereof in strict accordance with:

- (a) The Permit Application, as approved or authorized by the Public Works Department;
- (b) Any conditions, requirements or qualifications specified by the Public Works Department in their approval order and consent, respectively;
- (c) The provisions of this Agreement;
- (d) Regulations, directives and policies of the City engineer or other managers of the applicable department or section;
- (e) The planning, zoning, building and other regulations and/or ordinances of the City as the case may be; and
- (f) Right-of-Way management or encroachment ordinances, regulations or policies of the City.

4.3 Reimbursement of Costs. Franchisee shall reimburse the Public Works Department for any and all reasonable costs and expenses reasonably incurred by the Public Works Department in connection with services performed by the Public Works Department, at the request of the Public Works Department, within thirty (30) days after submittal of a statement of such reasonable costs and expenses and reasonable supporting documentation. Without limiting the generality of the foregoing, amounts recoverable by the Public Works Department, as applicable, hereunder shall consist of reasonable and satisfactorily documented applicable engineering, supervision, and administrative overheads, transportation, employee expenses, reproduction and/or graphic services, supplies, telephone service and other reasonable and satisfactorily documented expenses, including Permit Application fees. To be recoverable by the City under this Section, all such cost categories shall be reflected in the City's rate sheet schedules and policies lawfully promulgated or determined by the Public Works Department and the Authorized City Official, from time to time, and such rates and policies shall be applied by the City on a competitively neutral and nondiscriminatory basis.

4.4 Material Alteration. Any structural Work on a structure or Facilities located in the Right-of-Way, or any Work involving a material alteration of any portion of the (a) Telecommunications System or Facilities or (b) the Right-of-Way itself, such as any significant excavation or deviation thereof, must be approved in advance by: (1) a licensed structural engineer at Franchisee's sole cost and expense; (2) the Public Works Department, and any other applicable department or agency of the City; and (3) the building or codes department of the Planning Commission. For purposes of the foregoing, Franchisee's subsequent changing out of equipment previously installed in the Right-of-Way with equipment of substantially the same size, function and operation in the course of repairs or upgrading of the Telecommunications System and Facilities will not be deemed to be a material alteration; provided, however, that any extension or expansion of or addition to the Telecommunications System and/or the Facilities, or the Construction or Installation of new Facilities, as specified in Sections 2.6.2 (New Facilities) and 4.1 (Application and Process) hereof, shall be deemed a "**material alteration**".

4.5 Permits.

4.5.1 No Installation without Permit. Franchisee shall not (a) Construct, Install, Maintain or Operate the Telecommunications System, Facilities, Franchisee Poles or any related or associated equipment or (b) make any material alteration of the Telecommunications System, Facilities or Franchisee Poles as provided in Sections 2.6.2 (New Facilities) and 4.4 (Material Alteration), without the requisite Permits and approvals.

4.5.2 Timing of Permit Applications. Upon approval of the Permit Application by the Public Works Department, and receipt of the consents provided in this Section 4, Franchisee is authorized to apply for such other Permits required by the City.

4.6 FCC Regulations and Compliance. Franchisee shall comply fully with all FCC Regulations, including regulations addressing or pertaining to (a) radio spectrum or radio frequencies generally, (b) radio frequency safety and exposure, (c) limits for radio frequency energy, (d) radio frequency or spectrum management, and (e) technical requirements. Franchisee shall use its best efforts to resolve, as promptly as possible, technical interference problems caused by Franchisee's Telecommunications System, Facilities, Franchisee Poles and related equipment with respect to (a) any City owned or operated equipment, whether installed prior to or after the Effective Date; and (b) any third-party or User equipment legally installed as of the Effective Date or, with respect to additional Franchisee equipment. If such interference is disruptive (as defined by FCC Regulations), such interference must be resolved as soon as possible and if such interference cannot be resolved within 24 hours, Franchisee shall discontinue its signal until the interference is corrected, even if operating in compliance with FCC Regulations. Nondisruptive, intermittent interferences must be corrected within thirty (30) calendar days or Franchisee's signal shall be disconnected until the interference is resolved. Additionally, Franchisee shall also comply fully with all regulations and rules of the Public Service Commission and secure, obtain and maintain during the Term of this Agreement all necessary and appropriate certificates, tariffs, and permits needed for the Construction, Installation, Maintenance and Operation of a Telecommunications System and the offering or sale of Telecommunications Services.

SECTION 5. SITE ACCEPTANCE

5.1 Acceptance. For purposes of Section 5.2 (Acceptance Conclusive Evidence) below, Franchisee will be deemed to have accepted an Approved Location at the time Franchisee receives

the Permit for the same or commences Installation or Construction of the Telecommunications System, Facilities, Franchisee Poles, and related equipment at the Approved Location, whichever occurs first.

5.2 Acceptance Conclusive Evidence. Acceptance of the Approved Location by Franchisee is conclusive evidence that Franchisee:

5.2.1 Accepts the Approved Location, or any other portion of the Right-of-Way wherein Franchisee's Telecommunications System, Facilities and/or Franchised Poles are situated, as being suitable for the purpose for which it is franchised;

5.2.2 Accepts the Approved Location and all other portions of the Right-of-way wherein the Telecommunications System, Facilities and Franchisee Poles are situated, and any structure on the Approved Location or in the Right-of-Way and every part and appurtenance thereof AS IS, with all faults; and

5.2.3 Waives all claims against the City in respect of defects in the Approved Location or any portion of the Right-of-Way and its structures and appurtenances, their habitability or suitability for any permitted purposes.

5.3 No Warranty. The City does not warrant the suitability of any particular Approved Location or any portion of the Rights-of-Way for the purposes for which Franchisee may desire to use it; nor does City warrant the adequacy of any Approved Location, its condition, or the condition of any City structure, infrastructure or appurtenances for any purpose whatsoever. Franchisee takes each Approved Location and all other portions of the Rights-of-Way and all public owned buildings, structures and infrastructure "AS IS," "WHERE IS" and "WITH ALL FAULTS."

SECTION 6. TERM

6.1 Initial Term. The initial term of this Agreement shall be for a period of ten (10) years ("Initial Term") commencing on the date specified on page 1 of this Agreement (the "Effective Date"), but contingent upon: (a) the issuance by the PSC and FCC of all approvals and certificates required by Applicable Law and Franchisee maintaining and keeping such approvals and certificates in full force and effect; and (b) the award of this Franchise by the City to Franchisee, unless otherwise terminated or revoked sooner under the terms of this Agreement. Franchisee represents and warrants that no PSC or FCC approvals are required to be issued in connection with Franchisee entering into this Agreement.

6.2 Renewal. The Term of this Agreement will be automatically renewed for two (2) additional terms of five (5) years (each a "Renewal Term"), unless (the City/County) or Franchisee provides the other Party notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term; provided, however, the total length or duration of this Agreement shall not exceed twenty (20) years, as provided under Section 164 of the Kentucky Constitution.

6.3 End of Term Renewal and Negotiation. In the event (a) the Term of this Agreement is renewed pursuant to Section 6.2 (Renewal) for the maximum duration of twenty (20) years (as restricted or limited under Section 164 of the Kentucky Constitution) and (b) Franchisee desires to Maintain and Operate the Telecommunications System and Facilities in the Right-of-Way and to

provide Telecommunications Services beyond the aforesaid twenty (20) year period, Franchisee shall provide or submit to the City: (a) written notice of this desire or intent no less than twelve (12) months prior to the end of the Term or the twentieth (20th) year; and (b) an Application for a franchise pursuant to the rules, regulations or policies of the City that are in effect at that time. Upon receipt of the notice and Application, the City will evaluate the past performance of the Franchisee under this Agreement and commence discussions or a proceeding that may lead to the issuance of another franchise pursuant to Section 164 of the Kentucky Constitution and other Applicable Law. Franchisee shall not be permitted to Operate or Maintain in the Right-of-Way its Telecommunications Systems and Facilities or provide Telecommunications Services without a franchise that is in full force and effect.

SECTION 7. CONDITIONS OF USE OF STREETS AND PUBLIC WAYS

7.1 Requirement. Prior to the Construction and/or Installation of the Telecommunications System, any Facilities or Franchisee Poles in the Right-of-Way, or prior to any Work being performed as to any extension, addition, expansion or material alteration of any such Facilities and/or related equipment requiring a pavement cut, trenching, movement or Installation of pole or physical alteration of the Right-of-Way, Franchisee shall: (a) obtain a Permit from the Public Works Department, pursuant to this Section 7, Applicable Law and other requirements, policies or ordinances of the City, if any; and (b) coordinate and manage all Work and activities in the Right-of-Way through the “**Accela Right of Way Management**” program (or any successor program), which is a dynamic, cloud-based right-of-way management solution that flows through GIS Administration and that provides for project coordination utilizing map-based software and providing pertinent geographic data (the “**Accela Platform**”). The Accela Platform is managed by PDS in partnership with the cities of Kenton County and is designed to manage roadway and utility construction and maintenance projects throughout jurisdictions of Kenton County and the cities thereof. Additionally, the program will aid to increase communication and coordination among Utility companies, franchisees, licensees, permittees and developers for street cuts, trenching, paving projects, Conduit or Duct construction, and placement of facilities and equipment in the Right-of-Way. Accordingly, prior to (1) performing any Work, Construction or Installation activities in the Right-of-Way or (2) making any repairs or restoration of any Facilities, equipment, poles, structure, cable, wire, fiber and/or other apparatus requiring a pavement cut, trenching, movement or installation of poles or physical alteration of the Right-of-Way, Franchisee shall coordinate and manage all such Work and activities in the Right-of-Way through the Accela Platform. Franchisee shall not be required to obtain a Permit for routine repair or Maintenance of Franchisee’s Telecommunications System and/or Facilities not requiring a pavement cut, trenching, movement of pole or physical alteration of the Right-of-Way, unless such repair, Maintenance or Work is expected to result in a substantial disruption to traffic or commerce, or would otherwise constitute a material alteration as provided in Section 4.4 (Material Alteration) of this Agreement.

7.2 Information Required. In requesting a Permit, the Franchisee shall provide the following information to the Public Works Department, as applicable:

- 7.2.1 a description of the proposed project;
- 7.2.2 the precise location of the proposed project;
- 7.2.3 the precise duration of the proposed project (the time in which the Right-of- Way will be excavated or obstructed);

7.2.4 the Plans and Specifications of the proposed project in a format acceptable to the Public Works Department, as applicable, or other designated official, and, if desired by the Authorized City Official, drawings in an electronic format capable of being entered into the City's Geographical Information System ("GIS") mapping system, if any;

7.2.5 such other information as the Public Works Department shall require to properly manage the Rights-of-Way; and

7.2.6 proof of public liability and property damage insurance to cover any loss or liability to Franchisee and to the City that could arise out of (1) Work to be done in the Right-of-Way and (2) Operation of the Telecommunications System and Facilities in an amount provided in Section 13 (Liability Insurance) of this Agreement.

7.3 Permit Fees. As provided in Section 4.3 (Reimbursement of Costs) of this Agreement, Franchisee shall pay or reimburse the Public Works Department, the following costs, which will be in an amount sufficient to recover the costs to the City:

7.3.1 the cost of evaluating, processing and issuing the permit;

7.3.2 the cost of creating and maintaining information on the GIS mapping system;

7.3.3 the degradation of the Right-of-Way, if any, that will result from the project. "**Degradation**" for the purpose of this section means the accelerated depreciation of the Right-of-Way caused by the project resulting in the need to reconstruct such Right-of-Way earlier than would be required if the project did not occur; and

7.3.4 the cost of monitoring and inspecting the project.

No Permit shall be issued without payment of the Permit fees except in accordance with this Section 7.3 and Section 4.3 (Reimbursement of Costs). To be recoverable by the City under this Section, all such permit fees shall be reflected in the City's rate sheet schedules and policies lawfully promulgated or determined by the Public Works Department and the Authorized City Official, from time to time, and such rates and policies, as provided in Section 4.3 (Reimbursement of Costs), must be applied by the City on a competitively neutral and nondiscriminatory basis.

7.4 Time of Completion. The Work to be done under the Permit, and the restoration of the Right-of-Way as required herein, must be completed at no expense to the City within the dates specified in the Permit. In the event no completion date is specified in the Permit, such Work and restoration shall be performed promptly. If Franchisee is unable to complete the Work within the specified time, the Staff and/or Authorized City Official may extend the time for good cause shown, provided that a supplemental permit fee may be imposed at the time that the City extends the time.

7.5 Right-of-Way Restoration. In addition to restoring its own Work, Franchisee must restore at no expense to the City the general areas of the Work, and the disturbed surrounding areas, including the paving and its foundations, to the same condition, as nearly as possible, that existed before the commencement of the Work. Franchisee must inspect the areas of the Work and use reasonable care to maintain the same condition for twelve (12) months after it completes the

restoration of the Right-of-Way and surrounding areas. Franchisee shall perform the restoration Work within the time frame set forth in Section 7.4 (Time of Completion) and in accordance with the standards and the materials specified by the Authorized City Official and/or any applicable City regulation or ordinance or regulation of the Kentucky Department of Transportation, whichever is applicable or required by the City. If the Authorized Official provides no standards or materials, there exist no Applicable Law or regulation addressing the same, then the Work shall be performed according to such standards as are generally recognized in the Northern Kentucky area for similar circumstances.

7.6 Failure to Restore. If Franchisee fails to restore the Right-of-Way or surrounding areas in the manner and pursuant to the condition required by this Section 7 or the Authorized City Official, or fails to satisfactorily and timely complete all repairs required hereunder, the City, at its option, may perform such Work. In that event, Franchisee shall pay to the City, within thirty (30) days of billing, the cost of restoring the Right-of-Way and affected surrounding areas. In addition to requiring Franchisee to pay the cost of restoration, the City may pursue any other remedies available to the City under law.

7.7 Timeframe for Issuance of Permit. With respect to the approval or disapproval by the Public Works Department, of a Permit Application filed pursuant to the terms and conditions of this Agreement or Applicable Law, any decision will be made within the time frame specified herein or therein. As to all other Permits, the City and/or the Authorized City Official shall issue or deny such Permits within the time frame specified within the applicable rules, regulations or requirements; provided, however, the City has also received the fees and costs provided in Sections 7.3 (Permit Fees) and 4.34.3 (Reimbursement of Costs), and provided further that the City reserves the right to delay or condition the issuance of the Permit(s) if the project would unduly hinder or obstruct the Right-of-Way during the specific dates requested by Franchisee due to special events or uses of the Right-of-Way scheduled for the specific dates requested.

7.8 Emergency Conditions. In the event an emergency occurs requiring Franchisee to obstruct or hinder the Right-of-Way in order to necessitate repairs to its Telecommunications System, Facilities, Franchisee Poles and/or related equipment that would otherwise require Franchisee to obtain a Permit under this Section 7, Franchisee shall immediately notify the Authorized City Official or the City Police Department, of the emergency, but the Franchisee may begin Work to repair the Telecommunications System, Facilities and Franchisee Poles without obtaining a Permit; provided that, the Franchisee shall apply for a Permit within two (2) business days after the occurrence of the emergency and provided further that it complies with all other requirements of the permitting process of the Public Works Department, including the payment of fees and costs. For purposes of this section, “**emergency**” includes an unplanned interruption of service.

7.9 Erection of Additional Poles. Franchisee shall not Construct or Install new Franchisee Poles in the Right-of-Way unless it first procures approval for such Construction or Installation from the Public Works Department, as applicable, in accordance with all Applicable Law, including but not limited to all building and zoning regulations and policies of PDS and/or the Public Works Department.

7.10 Cooperation. Franchisee shall cooperate with all gas, electric, telecommunications, cable, water, and sewer companies and any other Utility, in the Construction, Installation, Maintenance and Operation of the Telecommunications System, the Facilities, Franchise Poles and

related, equipment or fixtures, to minimize the cost and disruption caused by any such Construction, Installation, Maintenance or Operation activities or other Work.

7.11 Additional Conditions. The City reserves the right to impose such additional conditions on the Permit as may be required to: (a) protect the public health, safety and welfare, (b) ensure the structural integrity of the Right-of-Way, (c) protect the property and safety of other users of the rights of way, and (d) minimize the disruption and inconvenience to the public.

7.12 Inspections.

7.12.1 Visual Inspection. The Authorized City Official may perform visual inspections of the Telecommunications System, Facilities, Franchisee Poles and/or related equipment located in the Right-of-Way as the Authorized City Official deems appropriate without notice. If the inspection requires physical contact with the Telecommunications System and/or Facilities, the Authorized City Official shall provide written notice to the Franchisee within five (5) business days of the planned inspection. Franchisee may have a representative present during such inspection. No inspection, delay or failure to inspect, or failure to discover any defect or noncompliance by City, shall relieve Franchisee of any of its obligations or duties under this Agreement. This Section 7.12 shall not be construed as a duty to inspect.

7.12.2 Emergency. In the event of an emergency situation, the City may, but is not required to, notify Franchisee of an inspection. The City may take action necessary to remediate the emergency situation and the Authorized City Official shall notify Franchisee as soon as practically possible after remediation is complete.

7.13 Access to Detailed Plans. Franchisee shall provide to the City the most current set of detailed plan sheets, including as-built drawings and specifications, depicting the location and alignment of the Telecommunications System, Facilities and Franchisee Poles, excluding, however, the service lines to individual customers. Such plan sheets and drawings shall be made available in electronic format and if requested, in hard copy, together with several prints of the overall Telecommunications System as reasonably requested by the City. Franchisee shall update the plans, maps and plan sheets upon request. The City agrees to use such plans and plan sheets for City purposes only.

7.14 Confidentiality. To the extent permissible under Applicable Law, namely the Kentucky Open Records Act (KRS 61.870 to KRS 61.884 (“**Open Records Law**”)), City shall protect from disclosure any confidential, proprietary information, including maps, submitted to or made available by Franchisee to the City under this Agreement, provided that Franchisee notifies the City in writing of, and clearly identifies and labels, the information which Franchisee deems in good faith to be confidential, proprietary information as such (“**Confidential Information**”). Such Confidential Information may include, but not be limited to any customer names and lists, financial information, technical information or maps regarding placement of the Telecommunications System, Facilities and/or related equipment (with the exception of any map(s) attached to this Agreement), or other information clearly identified as “Confidential” pertaining to services provided to its customers. Subject to the Open Records Law, Confidential Information disclosed by Franchisee to the City shall be regarded as confidential, proprietary as to third parties. If the City receives a request to disclose such Confidential Information, the City shall notify Franchisee of such request and allow Franchisee a reasonable opportunity to defend its information from disclosure at Franchisee’s sole cost and expense. If the City believes it must release any Confidential Information in the course of enforcing

this Agreement or overseeing compliance with Applicable Law, the City will comply with the Open Records Law.

SECTION 8. CONSTRUCTION REQUIREMENTS AND MAINTENANCE

8.1 Quality and Specifications. All Construction, Installation, Maintenance and other Work performed by Franchisee in the Right-of-Way shall be performed in a safe and reliable manner using materials of good and durable quality so as not to create a hazard or dangerous condition on or in the Right-of-Way and so as to minimize, to the extent possible, the necessity to repair the Telecommunications System, Facilities and related equipment Constructed, Installed or placed in the Right-of-Way. All Work impacting the Right-of-Way shall be done in accordance with specifications of City ordinances, regulations and/or policies of the Authorized City Official to the extent such Work relates to the safety, obstruction, durability, or appearance of the Right- of-Way.

8.2 Minimum Interference and Safety Compliance. In the Construction, Installation, Maintenance, Operation, upgrade, relocation or removal of the Telecommunications System, the Facilities comprising the System, Franchisee Poles and/or associated equipment, Franchisee shall have due regard for the rights of the City and others, and shall not unnecessarily interfere with, or in any way injure, the property of the City, other Utilities, or other Persons in the Right-of-Way. Franchisee shall comply with all Applicable Law and safety standards and policies regarding placement of lights, danger signals, warning signs and/or barricades and shall be liable for any and all damage that may arise by reason of its negligence or failure or neglect to comply with Applicable Law. Work by Franchisee and its Contractors shall be done in a good, workmanlike manner and so as not to unnecessarily interfere with public use of any of the Rights-of-Way.

8.3 Compliance with Building and Zoning Codes and Ordinances. As provided elsewhere in this Agreement, any Work done in the Right-of-Way and/or anywhere in the Franchise Area shall comply with all building, planning and zoning codes, ordinances, and regulations currently or hereafter existing.

8.4 Construction Standards. The Construction, Installation, Maintenance, Operation, relocation and/or removal of the Telecommunications System, Facilities, Franchisee Poles and any related equipment shall meet all of the following safety, construction and technical specifications, codes and standards:

8.4.1 Occupation Safety and Health Act of 1970, as amended, and the Occupational Safety and Health Administration (OSHA) regulations;

8.4.2 The most current edition of the National Electric Safety Code or NFPA 70 published by the National Fire Protection Association (NFPA), to the extent that such code is consistent with local and state laws;

8.4.3 The most current edition of the Kentucky Building Code and all amendments thereto;

8.4.4 The International Fire Code, when specifically referenced by the Kentucky Building Code;

8.4.5 FCC and FAA tower marking and lighting requirements; and

8.4.6 All other applicable federal, state, City, or local laws and regulations that may apply to the Construction, Installation, Maintenance, or Operation of the Telecommunications System, Facilities, Franchisee Poles and related equipment, including, local zoning, building and construction codes and Applicable Law and accepted industry practices, as hereafter may be amended or adopted.

8.5 Maintenance of Equipment and Stealth Technology. Certain Facilities of the Telecommunications System shall be concealed or enclosed as much as possible in a box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a Conduit, so that wires are protected and not visible or visually minimized to the extent possible. All such equipment, boxes, cabinets and units shall be painted and maintained to prevent any deterioration, degradation or rusting of such equipment, boxes, cabinets and units. Failure of Franchisee to comply with this Section 8.5 shall constitute an event of default.

8.6 Graffiti Abatement. As soon as practical, but not later than five (5) days from the date Franchisee receives notice thereof, Franchisee shall remove all graffiti on any of its Telecommunications System, Facilities, Franchisee Poles and related equipment located in the Right-of-Way. In the event Franchisee does not remove the graffiti within the time period specified in this Section 8.6 or should the Authorized City Official deem any graffiti to be overtly offensive or obscene and reasonable discretion dictates its immediate removal, then the City may remove or cause the graffiti to be removed promptly at the reasonable cost and expense of Franchisee. Franchisee shall reimburse the City within thirty (30) days of billing by the City. Any removal of graffiti effected by painting over the graffiti shall be done with the same color and type of paint as is on the Telecommunications System, Facilities, Franchisee Poles or related equipment. The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

8.7 Authority to Stop Work. If at any time the City or other agency or authority of competent jurisdiction determines that any Work being done in the Right-of-Way by Franchisee or its Contractors or Users presents a danger to the public health, safety or welfare, the City may require Franchisee to cease and desist all Work until Franchisee and/or its Contractors or Users, at its or their own expense, take the necessary corrective action. Should the City have to correct any condition, the City shall bill the Franchisee for the cost of such correction and the Franchisee shall promptly reimburse the City as provided in Sections 4.3 (Reimbursement of Costs) and 7.3 (Permit Fees). If the Franchisee fails to promptly reimburse the City, the City may take whatever actions necessary to enforce this Agreement, including revoking Franchisee's Franchise.

8.8 Generators. Franchisee shall not allow or install power generators or back-up generators in the Right-of-Way without the express written consent of the City.

SECTION 9. CONSTRUCTION CONDUIT AND POLE ATTACHMENT ACTIVITIES

9.1 Determination of Pole and Conduit Availability. In order to minimize street cuts, excavation and additional Utility Poles (including Franchisee Poles) in the Right-of-Way, while preserving the rights of Franchisee and other franchisees, licensees or grantees to provide Telecommunications Services or other services, prior to applying for a Permit to Construct or Install, or perform Work on, the Telecommunications System, Facilities, a Franchisee Pole or other equipment in the Right-of-Way, Franchisee shall seek to determine whether a Utility Pole, Conduit, Duct, Conduit System or other facility is available in the Right-of-Way for its use or Co- Location.

If the Utility Pole, Conduit, Duct, pipe or other facility is available, Franchisee shall utilize such Utility Pole, Conduit, Duct, pipe or other facility unless it demonstrates to the Authorized City Official, and/or the Public Works Department that it is necessary to install Franchisee's own Utility Pole, Conduit, Duct, pipe or other facility or unless it demonstrates that the conditions required by other franchisees, licensees or grantees owning the Conduit System, Conduit, Duct, pipe or other facility that Franchisee seeks to use are commercially unreasonable.

9.2 Location. Franchisee shall use all reasonable efforts to locate pedestals or other aboveground facilities along property lines or adjacent to other Utility pedestal or facility locations. Franchisee shall not locate overhead cables across any roadway without the express written consent of the City.

9.3 Required Movement; Right of Authority. No Construction, Installation, placement or location of the Telecommunications System or any Franchisee Pole, Conduit, Conduit System, Duct, pipe or other Facilities of Franchisee within the Right-of-Way shall be a vested interest and all such Franchisee Poles, Conduit, Conduit System, Duct and Facilities comprising the Telecommunications System shall be removed, relocated or modified by Franchisee at Franchisee's expense whenever the City reasonably determines that public convenience or safety would be enhanced thereby. The City shall have the right, during the Term of this Agreement, to Construct, Install, Maintain and Operate free of charge, upon the Facilities and Franchisee Poles owned by Franchisee in the Rights-of-Way any wire or fiber optic cables and pole fixtures that do not unreasonably interfere with the Operation of Franchisee's Telecommunications System or Telecommunications Services or other authorized services provided by Franchisee; provided, however, that the City must first notify Franchisee in writing of its intent to utilize any such Facilities or Franchisee Poles and enter into Franchisee's standard agreement, which shall be commercially reasonable in all respect.

9.4 Common Use of Facilities. Consistent with the intent set forth in Section 9.1 (Determination of Pole and Conduit Availability) and Section 7.1 (Requirement – Accela ROW Management), which is to minimize the adverse impact to the Right-of-Way caused by street cuts, excavation, and additional Utility Poles and Conduit Systems, it is the policy of the City to encourage and require shared use of telecommunications and other Utility facilities by City franchisees, licensees and permittees whenever practicable or feasible. Accordingly, Franchisee shall make available and grant permission to other franchisees, licensees, grantees and users of the Right-of-Way the right to utilize Franchisee Poles, Conduit, Conduit System, Duct, pipe or other Facilities for the purpose of attaching or locating thereon or therein any cable, wire, fiber optic lines, equipment or other facilities of such franchisees, licensees, grantees and users; provided, however, that such utilization, attachment or location is practicable or feasible and provided, the other Person enters Franchisee's standard agreement, the terms and pricing provisions of which shall be commercially reasonable. Franchisee shall be required to grant such permission only to the extent the aforementioned wires and facilities of such requesting Person do not unreasonably interfere with Franchisee's Facilities or create a safety or quality of service hazard. In the event Franchisee and the requesting Person are unable to agree upon such terms and conditions, the Franchisee and the requesting Person shall resolve any disagreements in such legal or other forum as may be provided by Applicable Law.

9.5 Compliance with FCC and PSC Regulations. Franchisee shall comply with FCC Regulations and the rules and regulations of the Kentucky Public Service Commission (the "PSC"), including, but not limited to 807 KAR 5.001 et. seq., or successor regulation. Failure to comply with

FCC Regulations and PSC rules and regulations shall be grounds for termination or revocation of Franchisee's Franchise and this Agreement. A determination by the PSC that Franchisee has violated PSC regulations or tariffs regarding pole attachments, shall be grounds for revocation or termination of this Franchise and this Agreement pursuant to Section 21 (Forfeiture and Revocation) of this Agreement or Applicable Law. In the event the PSC or the Commonwealth of Kentucky retracts or withdraws its Certification to the FCC with respect to its regulatory authority over rates, terms, and conditions for pole attachments, as provided in the Federal Pole Attachment Act (47 U.S.C. 224(c)) (the "PAA"), then the PAA will become effective automatically and controlling under this Agreement.

SECTION 10. NECESSITY FOR UNDERGROUND FACILITIES

10.1 Requirement for Underground Facilities. Where a Utility Underground condition exists in the Right-of-Way, Franchisee shall construct and/or install its wires, fiber optic lines and other Facilities underground in those areas of the Franchise Area where existing telephone and electric service, wires and/or other facilities are underground at the time of Franchisee's Telecommunications System Construction, Installation, expansion and extension, including the Construction or Installation of new Facilities, equipment, Conduits and other installations within the Franchise area comprising, or becoming part of, the Telecommunications System and Facilities.

10.2 Procedure to Bury Existing Overhead Facilities. With respect to any Facilities, equipment, cables and lines of Franchisee that are or have been installed aboveground in the Right-of-Way, Franchisee may be required subsequently to bury those facilities at its expense subject to the provisions of this Agreement and/or City ordinances, rules and regulations. Once Franchisee is permitted to install its Facilities aboveground, the City may require Franchisee to bury its Facilities in conformance with City ordinance, rules or regulations only on the condition that all utilities in the Right-of-Way are also required to bury their facilities. Such a requirement to bury Utility or Telecommunications System Facilities shall be taken pursuant to a written plan adopted by the City Council or the planning and zoning or other authorized agency with jurisdiction over the affected Rights-of-Way.

SECTION 11. TREE TRIMMING

Franchisee shall have the right, at its own expense, to trim trees located in or overhanging the Right-of-Way and that are interfering with the Operation of its Telecommunications System, Facilities, Franchisee Poles and/or related equipment in the Right-of-Way only to the extent necessary to keep the branches of the trees from coming into contact with such Facilities, Franchisee Poles or equipment and after notifying the City at least seven (7) days in advance. All trimming and pruning shall be approved by an arborist and shall comply with all Applicable Laws and ordinances of the City. Notwithstanding the foregoing and prior to engaging in such activity, Franchisee shall submit to the Authorized City Official a tree trimming or pruning plan for approval. Except for branches or limbs of trees and bushes overhanging the Right-of-Way, Franchisee shall secure the consent of the private property owner, upon whose property the tree or bush is located, prior to cutting or trimming such tree or bush. Any Person engaged by Franchisee to provide tree trimming or pruning services shall be deemed, for purposes of this Agreement, an employee or agent of Franchisee, and in no event shall such Person be deemed an employee or agent of the Authority.

SECTION 12. RELOCATION OF FACILITIES

12.1 Requirement to Relocate. The City may require Franchisee to relocate its Telecommunications System, Facilities, Franchisee Poles and related equipment at the expense of Franchisee: (a) in order to allow the City to make any public use of or improvements to the Right-of-Way; (b) as made necessary due to a change in grade or other change in the Right-of-Way made by the City; (c) as a result of traffic conditions or public safety or the widening or reconfiguring streets, highways or lanes; (d) as a result of the Construction or Installation of any public structure or public improvement by the City, the State or other public agency or district; or (e) in connection with any decision or action by the City to abandon or vacate a street, road, highway, avenue, lane, path, alley, public way, sidewalk or other Right-of-Way space or area. Nothing in this Agreement or the Franchise granted pursuant hereto shall abrogate the right of the City, or any governmental authority, to perform or carry out any public works or public improvements of any description, provided that the City shall comply with the provisions of the Telecommunications Act. The City shall not be liable for lost revenues sustained by Franchisee, however caused, because of damage to, modification, alteration, or destruction of Franchisee's Facilities in the Right-of-Way, where such costs or lost revenue result from any one or more of the conditions or requirements listed above in subclauses (a) through (e) of this Section 12.1, or from the Construction, Installation, Operation, and/or Maintenance of City facilities, structures and/or the Right-of-Way.

12.2 Notice. The City shall provide sixty (60) days' prior written notice of the necessary relocation.

12.3 Additional Time. If Franchisee believes that it cannot complete the relocation of its Telecommunications System, Facilities, Franchisee Poles or related equipment within sixty (60) days of receiving written notice from the City, it shall contact the Authorized City Official and request additional time, but such request for additional time may not or cannot be granted by the City by virtue of timing, construction, safety or other constraints.

12.4 Authority to Perform. If Franchisee fails to complete the Work within the time allotted by the City, the City or other public agency or district may perform the Work at the expense of Franchisee.

12.5 Right to Remove. In the event Franchisee refuses or neglects to alter or relocate its Telecommunications System, Facilities, Franchisee Poles or related equipment in a timely fashion, the City or other public agency shall have the right to break through, remove, alter or relocate such facilities, equipment and poles as necessary without any damages or liability owing to Franchisee, and Franchisee shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation. Franchisee shall pay to the City, within thirty (30) days of billing, the costs incurred by the City in connection with its relocation, removal and/or alteration of the Telecommunications System, Facilities, Franchisee Poles and/or related equipment.

12.6 Emergency. In cases of emergency, the City may cut, remove, or relocate the Franchisee's Telecommunications System, Facilities, Franchisee Poles and related equipment immediately at Franchisee's expense without notice to Franchisee, provided that the City shall undertake efforts to notify Franchisee as soon as practicable. Franchisee shall bear all costs of reinstallation, repair or other costs arising out of the emergency cutting, removal or relocation. As provided in Section 12.5 (Right to Remove) above, all costs incurred by the City in cutting, removing or relocating such facilities, poles and equipment shall be paid by Franchisee within thirty (30) days of billing by the City.

SECTION 13. LIABILITY INSURANCE

13.1 Insurance Requirements, Scope and Limits. Throughout the Term of this Agreement and any Renewal thereof, Franchisee shall maintain, at its own cost and expense, insurance to protect the City and Franchisee and its officers, agents and employees from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the Construction, Installation, Maintenance, Operation, removal or relocation of, or any Work on, the Telecommunications System, Facilities, Franchisee Poles and any related equipment and against every form of liability referred to in Section 14 (Indemnity). The amount of such insurance shall be no less than the following:

General Liability Insurance

Bodily injury per person	\$3,000,000.00
Bodily injury per occurrence	5,000,000.00
Property damage per occurrence	1,000,000.00
Property damage aggregate	1,000,000.00

Automobile Insurance

Bodily injury per person	\$1,000,000.00
Bodily injury per occurrence	3,000,000.00
Property damage per occurrence	1,000,000.00

Such automobile liability insurance shall be for owned, non-owned and leased vehicles. Workers' Compensation insurance, including disability benefits and any other legally required employee benefits, shall be provided in statutory amounts as required by the laws of the Commonwealth of Kentucky.

13.2 Endorsements and Acceptability of Insurers. The City shall be named as additional insureds on the policies, which (a) shall be issued by companies duly licensed to do business in the Commonwealth of Kentucky, carrying a rating by Best's, or some other nationally recognized rating service, of not less than A, and (b) shall provide thirty (30) days' notice to City in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective. Copies of certificates of insurance for all policies required hereunder shall be furnished to and filed with the City prior to Franchisee obtaining any Permit pursuant to this Agreement and shall be updated annually throughout the Term of this Agreement.

13.3 Self-Insurance - Workers' Compensation. If the Commonwealth of Kentucky permits Franchisee to self-insure, then Franchisee may exercise its rights to self-insure with respect to Workers' Compensation insurance, so long as the minimal amounts of insurance coverage outlined in this section are met and maintained for the entire period that Franchisee is self-insured.

13.4 Increase of Insurance Limits. The City reserves the right to increase by a reasonable amount the insurance coverage required by this Agreement at any time. In determining whether to increase the coverage, the City shall take into account at least the following factors: (a) any increased exposure to Franchisee respecting its operations; (b) inflationary factors; and (c) insurance amounts commonly carried by other franchisees or licensees in similar circumstances.

13.5 No Limitation on Liability. None of the provisions of this Franchise or any insurance policy required herein, or any damages recovered by the City hereunder, shall be construed to excuse the faithful performance by Franchisee or limit Franchisee's liability for damages either to the limits of such policies or otherwise.

13.6 Subrogation. Franchisee Waives any claim or right of subrogation to recover against the City, its elected officials, officers, agents or employees and each of Franchisee's insurance policies must on its face or by endorsement state that the issuer waives any claim or right of subrogation to recover against the City, its elected officials, officers, agents or employees.

SECTION 14. INDEMNITY

14.1 Scope of Indemnity. To the extent permitted by Applicable Law and except with respect to Claims based on City's gross negligence or willful misconduct, Franchisee shall at all times fully defend, indemnify, protect, save harmless, and exempt the City and its elected officials, employees, officers, agents and representatives (individually, an "**Indemnitee**" and collectively, the "**Indemnitees**"), from and against any and all actions, liabilities, losses, fines, penalties, damages, expenses, costs, demands, or charges arising out of, or in any way connected with, any and all claims, demands, suits, damages, causes of action, or judgments or awards of damages, whether compensatory or punitive (collectively, "**Claim(s)**"), arising therefrom, including reasonable attorneys' fees, either at law or in equity, which might be claimed now or in the future, which may arise out of, or be caused by, whether directly or indirectly:

14.1.1 The Construction, Installation, Maintenance, Operation, removal, relocation or restoration of, or any Work on, the Telecommunications System, Facilities, Franchisee Poles or any related equipment or any portion thereof, within or relating to the Franchise Area by a wrongful or negligent act or the omission or commission of an act by Franchisee, its agents or employees, Contractors, Users, subcontractors, independent contractors, or implied or authorized agents or representatives;

14.1.2 Franchisee's failure to comply with the provisions of any Applicable Law;

14.1.3 Environmental hazards or pollutants transported to, stored on or disposed of or released in the Right-of-Way or any portion thereof; and

14.1.4 Franchisee's failure to comply with the terms and conditions contained in this Agreement.

14.2 Franchisee's Duty to Employ Counsel. With respect to any Claim, suit, demand or cause of action made or brought against any of the Indemnitees by reason of any event to which reference is made in this Section 14, Franchisee shall obtain counsel for the Indemnitees at the sole cost and expense of Franchisee.

14.3 Indemnitees' Right to Employ Own Counsel. With respect to the Indemnitees' own defense of such actions noted in this Section 14, it is understood that the Indemnitees reserve the right to select and retain, without Franchisee's approval, counsel of the Indemnitees' choice, at Indemnitees' own expense.

14.4 Duty to Give Notice and Tender Defense. The Indemnitee(s) shall give Franchisee timely written notice of the making of any Claim or the commencement of any action, suit or other proceeding covered by the indemnity in this Section 14. In the event any such Claim arises, the Indemnitee(s) shall tender the defense thereof to Franchisee, and Franchisee shall have the right and duty to defend any Claims arising hereunder and the Indemnitees shall cooperate fully therein.

14.5 Disclaimer. Notwithstanding any other provision of this Agreement, City shall not have any liability to Franchisee or any User for any loss of profit or revenue, loss of use of the Telecommunications System, Facilities, Franchisee poles or any related equipment or system, Claims of customers or clients of Franchisee or Users for service interruptions or indirect, incidental, special, economic or consequential damages, as a result of or related to the Telecommunications System or Facilities, Franchisee poles or other related equipment or systems, the existence of the Telecommunications System or Facilities, Franchisee poles or other related equipment or systems in the right-of-way or in an approved location(s), or this Agreement, whether arising in contract, tort (including negligence, product liability) or otherwise.

14.6 Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other agent of the City shall be personally liable to Franchisee, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to Franchisee, its successors and assigns, or for any obligation of the City under this Agreement.

14.7 No Liability for Damage, Death or Bodily Injury. Neither the City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Franchisee, its officers, agents, employees, Contractors, Users or subcontractors, or their employees, or for any bodily injury or death to such Persons, resulting or arising from the Telecommunications System, Facilities, Franchisee Poles, related equipment, or activities authorized by this Agreement, the condition of any City property, including the Rights-of-Way, subject to this Agreement or Franchisee's use of any City property, including the Rights-of-Way, except to the extent caused by the City's gross negligence or willful misconduct.

14.8 Waiver of Claims regarding Fitness of Poles and Structures Located on Public Ways. Franchisee acknowledges that the City has made no warranties or representations regarding the fitness, suitability, appropriateness, adequacy or availability of any of Utility Poles, City Poles or City-owned structure, infrastructure or property for the Construction, Installation, Maintenance, or Operation thereon of Franchisee's Telecommunications System, Facilities, or related equipment, or for any other activities permitted under this Agreement, and that, except as expressly provided in this Agreement, any Construction, Installation, Maintenance, Operation, and/or performance of any Work or costs incurred by Franchisee is at Franchisee's sole risk. Except as otherwise expressly provided in this Agreement, Franchisee, on behalf of itself and its Users, Contractors, successors and assigns, waives its right to recover from, and forever releases and discharges, the City and its elected officials, employees, officers, representatives and agents, from any and all Claims, whether direct or indirect known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Utility Poles and/or City Poles located in Rights-

of-Way, any City owned structure, infrastructure or property, including the Rights-of-Way, affected by this Agreement, or any law or regulation applicable thereto. In the event this Agreement authorizes the use of City Poles or City-owned structure, infrastructure or property, the City agrees: (i) to allow Franchisee to investigate the location of a City Pole facility, and (ii) to work cooperatively with Franchisee to facilitate the investigation of City-Owned Property, under consideration for attachment of Franchisee's Facilities or related equipment for the possible presence of lead based paint, asbestos, or other hazardous substances (as that term may be defined under any Applicable Law), and the City shall facilitate such investigation as necessary.

SECTION 15. REMOVAL AND RESTORATION

Upon the termination, revocation or expiration of this Agreement, and unless Franchisee Transfers its Telecommunications System, Facilities, Franchisee Poles and related equipment to another carrier or communications provider or the City in a manner consistent with this Agreement, Franchisee shall remove its Telecommunications System, Facilities, Franchisee Poles and related equipment from the Rights-of-Way within one hundred twenty (120) days of the date of the termination, revocation or expiration of this Agreement; provided, however, any such Facility, pole or equipment that is not exclusive to Franchisee and is being utilized by other carriers may remain with permission of the City. Franchisee shall restore any property, whether public or private, to as good a condition as it was just before the removal. Restoration of public property, including the Rights-of-Way, shall be at the expense of Franchisee in accordance with the directions and specifications of the Authorized City Official and Applicable Law. If such removal and restoration is not completed within one hundred twenty (120) days of the termination or expiration of this Agreement, all of Franchisee's Telecommunications System, Facilities, Franchisee Poles and related equipment remaining in the Right-of-Way shall be deemed Abandoned, and shall become, at the option of the City, the property of the City. In the alternative to taking possession of the Telecommunications System, Facilities, Franchisee Poles and related equipment and systems, the City may remove them, or cause them to be removed, at the sole cost and expense of Franchisee. Any such cost or expense may be recovered by the City as against any Performance Bond maintained by Franchisee pursuant to the terms of this Agreement, as provided in Sections 21.4.2 and 18 (Performance Bond) and against Franchisee directly by submitting to Franchisee an invoice for all such cost and expense. Such invoice shall be paid by Franchisee within thirty (30) days of receipt. In addition to declaring the grantee in default under the Performance Bond, the City may pursue any other remedy available to it under this Agreement or Applicable Law. Notwithstanding the foregoing, where the wires, lines, Conduits, Conduit System Ducts and other Facilities are underground (at least two (2) feet below the surface of the Right-of-Way), Franchisee shall be allowed to abandon such items in place upon the written consent of the City.

SECTION 16. PAYMENT OF FEES FOR USE OF THE RIGHT-OF-WAY

16.1 Nature of Payment. It is the intention of the City that Franchisee compensate City for the use of the City's Rights-of-Way, as they are valuable assets of the City that: (a) the City acquired and maintains at the expense of its taxpayers and citizens; (b) the City holds in trust for its citizens; and (c) the grant to Franchisee of the use of the Rights-of-Way is a valuable right without which Franchisee would be required to invest substantial capital in right-of-way costs and acquisitions. Accordingly, it is the intention of the City to obtain fair and reasonable compensation from Franchisee in the manner provided in Sections 16.2 (Application Fee) and 16.3 (Franchise Fee). The City explicitly states herein that such compensation is in the nature of rent as permitted by the laws and Constitution of the Commonwealth of Kentucky, and the City and Franchisee agree that the

compensation and other payments to be made pursuant to this Agreement are not a tax and are not in the nature of a tax, but are in addition to any and all taxes of general applicability or other fees or charges which Franchisee shall be required to pay to the City or to any other governmental authority. Notwithstanding the foregoing, in the event the City chooses to (a) withdraw from and elect not to participate in the monthly hold harmless account or fund as provided in KRS 136.650 [Required participation funds – Computation Amounts – Designated monthly hold harmless amount] and (b) impose the Franchise Fee called for under Section 16.3 (Franchise Fee), Franchisee will be permitted to offset payments of Franchisee Fees against the state tax of 1.3% of gross revenues, as provided under KRS 136.616, received by Franchisee for the provision of communications services, as sourced under the provisions of KRS 136.605. The payment of compensation by Franchisee in no way limits the right of the City to charge fees for any Permits Franchisee is required to obtain under Section 7.3 of this Agreement.

16.2 Application Fee. In addition to all other fees, permits or charges, Franchisee shall pay to the City at the time of Application, or amendment to its Application, the sum equal to \$2,500.00. This payment is to cover the cost and expense incurred by the City and/or the Public Works Department in reviewing, processing and administering the Application and issuing any initial Permits leading to the Construction or Installation of the Telecommunications System, Facilities, Franchisee Poles and/or related equipment. If after review, the City does not approve Franchisee's Application, sums not directly attributed to the City's cost of reviewing, processing and administering the Application shall be returned to Franchisee.

16.3 Franchise Fee. Franchisee shall be obligated to pay a "**Franchise Fee**" of three percent (3%) of Gross Receipts received from customers, subscribers or Users located within the Franchise Area and such obligation shall commence on the earlier of the "**Completion Date**" or the date when the System or any part thereof becomes commercially operational. For purposes of this Section 16.3, the "**Completion Date**" shall be the date of completion of the Initial System. This percentage shall apply to all Telecommunications Service providers and Users using the Rights-of-Way. All Franchise Fees and other compensation due and payable under this Agreement shall be paid automatically by Franchisee without any notice or other request from City.

16.4 Reserved.

16.5 Definition of Gross Receipts. For purposes of this Section 16.5, "**Gross Receipts**" means any and all revenues or receipts (as determined in accordance with generally accepted accounting principles), including cash, credits, or other consideration of any kind or nature, derived directly or indirectly from the Telecommunications System (including the Fiber Optic Network), Facilities and Franchisee Poles including: (a) revenues or receipts which Franchisee and/or its Affiliates receive in connection with Telecommunications Services or other services provided in accordance with this Agreement; (b) revenues or receipts which Franchisee and/or its Affiliates receive from their respective customers or subscribers, including residential, industrial and commercial entities within the Franchise Area for the sale, transmission, rendering and/or provision of Telecommunications Services, under rates, temporary or permanent, whether authorized or not by the Public Service Commission and represents amounts billed under such rates, as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments; (c) any revenues or receipts earned or received within the Franchise Area for the leasing, licensing, rental, lending, or usage of Franchisee's Telecommunications System, Facilities, Franchisee Poles or any part or portion thereof, including Franchisee's Fiber Optic Network and communications system

as provided under Section 2.7 (Notices of Other Users); and (d) any revenues or receipts received for rendering other services, products or charges (including installation, maintenance and service charges) relating or pertaining to, or in connection with, the Telecommunications System, Facilities, Franchisee Poles, the transmission, rendering, sale or provision of Telecommunications Services, or both. Gross Receipts shall include any revenue or receipts received by any Affiliate of Franchisee where such revenue or receipts in the ordinary course of business should have, according to existing practices, been paid to Franchisee in connection with the Operation, ownership or control of the businesses or services detailed in sub-clauses (a), (b), (c) and/or (d) of this Section 16.5. Gross Receipts include: (1) revenues or other consideration from leasing, licensing, rental or usage of the Telecommunications System or Dark Fiber; (2) revenues or other consideration received from Franchisee's Affiliates; and (3) miscellaneous service charges, including but not limited to turn-ons, meter sets, non-sufficient charges, late fees and interest, which are related to but are not part of the actual sale, transmission, rendering or provision of Telecommunication Services.

16.6 Gross Receipts Linked Tariff. At a minimum and if applicable, the Franchise Fee is intended to apply to Gross Receipts related to those services which include the Franchise Fee as part of the Company's tariff (defined herein as the PSC Tariff) filed with the Public Service Commission as of the Effective Date (i.e. the adoption date of the Franchise), and Franchisee expressly agrees that it will continue to pay the Franchise Fee on Gross Receipts derived from these services including the Telecommunications Services, for the Term of this Franchise Agreement. Franchisee will also assess and pay the Franchise Fee on any such Gross Receipts from revised, amended, or additional tariffs (except for nonrecurring charges in the City, and subject to any necessary approval by the Public Service Commission, if applicable). Following any changes to calculations of amounts payable hereunder, such payments shall commence with the first billing period following any necessary tariff approval by the Public Service Commission. Until such time, Franchisee will continue collecting and remitting payments of Franchise Fees to the City under the terms of its existing PSC Tariff and this Franchise Agreement until such time as this tariff is obtained.

16.7 Reserved.

16.8 Quarterly Payments. The Franchise Fee shall be paid by Franchisee on a quarterly basis and shall be made directly to the City within thirty (30) days after the expiration of each calendar quarter (i.e., by April 30, July 30, October 30 and January 30). The initial payment of Franchise Fees shall be prorated over that calendar quarter it becomes due. Thereafter, quarterly payments of Franchise Fees shall be due quarterly, as provided above. Simultaneously with the payment of the Franchise Fee, Franchisee shall file with the City a detailed revenue statement clearly showing the Gross Receipts received by Franchisee during the preceding quarter and certified by an officer, or his designee, of Franchisee attesting to the accuracy, completeness and veracity of the revenue figures consistent with the definition of Gross Receipts as defined in this Agreement. Simultaneously with its payment of the Franchise Fee, Franchisee shall file a certification from an officer, or his designee, of Franchisee describing the amount consistent with the basis for the calculation of its Franchise Fee.

16.9 Late Payments. In addition to any other remedies provided in this Franchise Agreement, Franchisee shall pay interest on any late payments made to the City at the rate of one percent (1%) for each month or portion thereof that the payment is late.

16.10 Right of Audit of Franchisee's Books and Records. The City reserves the right to audit or review Franchisee's books and records no more than one (1) time each year as they relate to the payment of the Franchise Fee if the City deems it necessary. If an audit or review by the City

results in a finding by the City that Franchisee has underpaid the Franchisee Fee due and owing by three percent (3%) or more, Franchisee shall reimburse the City its reasonable costs associated with determining the correct amount owed, including the expense of the audit and review. If such audit or review is performed in connection with the granting of a new or extended franchise, a Transfer, or a substantive modification of the terms to, or a Transfer of this Franchise, Franchisee shall reimburse the City for all of the reasonable costs and expenses associated with the audit or review, including all out-of-pocket costs for attorneys, accountants and other consultants.

16.11 Right of Inspection of Franchisee's Facilities. In addition to the inspection rights provided in Section 7.12 (Inspections) of this Agreement, the City reserves the additional right to conduct a physical inspection of Franchisee's Telecommunication System, Facilities and Fiber Optic Network in the Right-of-Way in order to determine whether Franchisee is complying with this Section 16. In such a case, the City shall give Franchisee ten (10) days' notice of its intention to inspect. An authorized representative of Franchisee shall accompany the representative of the City and bring to the City's attention all of the Telecommunications System, Facilities, Franchise Poles, including the Fiber Optic Network, contained within or using the Right-of-Way. If the City determines that Franchisee has underpaid the Franchise Fee due and owing by three percent (3%), then Franchisee shall reimburse the City and pay for all inspection costs, all as provided in Section 16.10 (Right of Audit of Franchisee's Books and Records).

16.12 Other Payments. In addition to all other fees to be paid to City under this Agreement, Franchisee shall timely pay to the City all applicable deposit fees, Permit fees, and other fees and amounts Franchisee is required by Applicable Law to pay to the City in connection with obtaining Permits or performing Work under this Agreement.

16.13 Not in Lieu of Other Fees. Payments made by Franchisee to the City pursuant to this Section 16 shall be in addition to and not in lieu of all other fees, assessments, taxes, or payments which are now or hereafter required to be paid by Franchisee by any Applicable Law.

16.14 Acceptance Not to be Construed as Accord. Acceptance and receipt of any payment by the City shall not constitute a release, waiver or accord and satisfaction by the City of any claim or its right to collect any fee owing under this Agreement during the Term of this Franchise or of any other obligation of Franchisee. All amounts paid shall be subject to audit and re-computation by the City.

16.15 Transition to Payment of Franchise Fees. Prior to the Effective Date and pursuant to KRS 136.660 (Prohibitions – Local Franchise Fee or Tax Defined), every political subdivision of this State was prohibited from (1) levying any franchise fee or tax on multichannel video programming or communications services, (2) requiring any provider (cable operator or communications provider) to enter into or extend the term of a franchise or other agreement that requires the payment of a franchise fee or tax, or (3) enforcing any provision of any ordinance or agreement to the extent that the provision obligates a provider to pay the political subdivision a franchise fee or tax. On June 15, 2017, the Kentucky Supreme Court issued a decision in the case of *Kentucky CATV Association, Inc. v. City of Florence, Kentucky, et al., and Lori Hudson Flannery, in her official capacity as Secretary of the Finance and Administration Cabinet, et al. (2015-AC-000178-DO)* holding that the aforesaid statute and prohibitions were unconstitutional and void. The Parties agree to participate and cooperate with each other in good faith in the transition to and resumption of the payment of franchise fees by providers should the City choose or elect such transition and receive franchise fees payments directly from Franchisee, as opposed to remaining and

participating in the “monthly hold harmless amount” and receiving its “local historical percentage,” all as provided in KRS 136.650 [Required participation funds – Computation of amounts – Designated monthly hold harmless amount]. [Now that the S. Ct. decision allows or] Department of Revenue (“**DOR**”) otherwise give political subdivisions the right and option to (1) withdraw from and elect not to participate in the monthly “hold harmless amount or fund” and/or (2) return to or be reinstated in the monthly “hold harmless amount or fund” and receive its local historical amount, as opposed to receiving direct franchise fee payments from cable operators or communication providers, Franchisee agrees to cooperate in good faith with the City in making any such withdrawals and returns or reinstatements to the monthly “hold harmless amount or fund.” In this regard, Franchisee shall also take all such action as is necessary or appropriate with the DOR or the State in order to meet or otherwise comply with the obligations or requirements of the statutory provisions of KRS 136.600 through 136.660, as applicable. For any given period of time that the City participates in monthly “hold harmless amount or fund,” Franchisee shall provide the City with the Franchise Fee reports set forth in this Section 16. Nothing in this Section 16.15 shall be deemed to expand, modify, abrogate, or alter Franchisee’s rights and obligations under Kentucky law.

SECTION 17. TRANSFER OF OWNERSHIP

17.1 Valid Transfer Required. Franchisee may sell, assign or otherwise transfer by operation of law its rights and privileges (“**Transfer**”) under this Agreement and the Franchise to another Person (the “**Transferee**”) without the consent of the City only in the manner set forth in this section.

17.2 No Rights Transferred. The Transferee shall have no rights under this Agreement to occupy or use the Right-of-Way of the City unless it has complied with the terms of this Section 17.

17.3 Notice. Franchisee shall provide no less than a thirty (30) day written notice to the City that it intends to Transfer its rights and privileges under this Agreement.

17.4 Transfer Application. The Transferee shall complete a transfer application in a form required by City, providing the following information:

17.4.1 Name, post office address, E-mail address, fax number and telephone number of Transferee, parent of Transferee, and any Affiliate of Transferee who may be or is expected to lease, use or operate Transferee’s Telecommunications System, Facilities, Franchisee Poles and related equipment, or make any payment, in whatever form, to Transferee in order to utilize Transferee’ Telecommunications System, Facilities, Franchisee Poles and related equipment.

17.4.2 Address and telephone number of local office of Transferee, if any.

17.4.3 Method to contact Transferee on a 24-hour basis in case of emergency with respect to its Telecommunications System, Facilities, Franchisee Poles and related equipment.

17.4.4 The articles of incorporation or organization of Transferee, the state in which Transferee was formed, and whether Transferee is in good standing in that state.
Kentucky.

17.4.5 Whether Transferee is qualified to do business in the Commonwealth of The name, address and telephone number of Transferee’s agent for service of process in Kentucky.

17.4.6 A statement signed by an officer of Transferee certifying that Transferee has obtained authorization from the Kentucky Public Service Commission to provide Telecommunications Services in Kentucky, and a copy of the document constituting that authorization. If no approval is required by the Public Service Commission, the Transferee shall identify the statute or regulation exempting Transferee from the necessity to obtain approval.

17.4.7 An agreement signed by Transferee and Franchisee stating that Transferee: (a) has read this Agreement, (b) will comply with all its terms and conditions, and (c) has accepted and assumed all obligations and liabilities arising under this Agreement.

17.5 Failure to Comply. Should Franchisee attempt to effect a Transfer of this Agreement without fully complying with this Section 17, or should Transferee fail to comply with the requirements of this Section 17, such assignment or transfer shall be invalid, unless ratified by the City. The Transferee shall be liable for all costs incurred by the City with regard to the Transfer, including reasonable attorneys' fees, and shall reimburse City within thirty (30) days of billing.

17.6 Continuation of Liability. Notwithstanding a Transfer of this Agreement to the Transferee, Franchisee shall remain liable and obligated for any debts or obligations incurred to the City by Franchisee prior to the date of the Transfer.

SECTION 18. PERFORMANCE BOND

18.1 Bond Required. Franchisee shall, prior to obtaining any Permit specified in Section 4 (Site Approval and Compliance) of this Agreement, deliver a performance bond to the City in favor of City in the amount of One Hundred Thousand dollars (\$100,000) (the "**Performance Bond**").

18.2 Conditions. The Performance Bond must include the following conditions:

18.2.1 that all Work is done in a good and workmanlike manner and in compliance with this Agreement and in compliance with all Applicable Law relating to: (a) the Construction, Installation, Maintenance, Operation, removal or relocation of the Telecommunications System, Facilities, Franchisee Poles and/or related equipment and the restoration and/or (b) the repair or restoration of the Right-of-Way, any disturbed land surrounding or abutting the Right-of-Way, and private property.

18.2.2 that the City must be fully indemnified and be held whole and harmless from any and all costs and expense, including reasonable attorneys' fees, losses or damages, on account of any injury done to any Person or property in the prosecution or and any completion of such Work, or that may arise out of or be occasioned by the performance of such Work, except with respect to claims based on the City's gross negligence or willful misconduct;

18.2.3 that Franchisee, without additional cost to the City, shall Maintain and warrant all restoration and repair Work to the Right-of-Way for a period of one (1) year from the date of completion of the Work to the satisfaction of the City;

18.2.4 that Franchisee shall remain in compliance with the terms and conditions of this Agreement; and

18.2.5 the City's removal of any of Franchisee's Telecommunications System, Facilities, Franchisee Poles that are Abandoned or left in place after the termination, revocation or expiration of this Agreement.

18.3 Replenishment. If the Performance Bond is decreased because of any recovery that may be obtained arising out of the violation of any condition of the Performance Bond, City shall require an additional bond to be given in accordance with this Section 18 in an amount sufficient, when added to the unexhausted amount of the original Performance Bond, to return the Performance Bond to the original face amount.

18.4 Maintenance of Suit. The City may for itself, or the use and benefit of any Person injured or damaged as a result of any failure by Franchisee to perform its obligations under this Agreement, maintain suit on the Performance Bond in any court of competent jurisdiction, or suit may be maintained by any Person injured by reason of Franchisee's failure to perform.

18.5 Drawing upon Bond. If Franchisee fails to perform its obligations in accordance with this Agreement, the City may draw against the Performance Bond on behalf of the City to the extent necessary to cause Franchisee's obligations to be performed by sending the appropriate notice of default to Franchisee, and if Franchisee fails to adequately respond, to call upon the surety on the Performance Bond to fulfill its obligations thereunder.

18.6 Requirements for Surety. The surety on the Performance Bond shall be authorized to do business in the Commonwealth of Kentucky. The Performance Bond shall be continued throughout the life of this Agreement. The rights reserved to the City with respect to the Performance Bond are in addition to all other rights the City may have under this Agreement or any Applicable Law.

18.7 Endorsement. The Performance Bond shall contain the following endorsement: "It is hereby understood and agreed that this Performance Bond may not be canceled without the consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew.

18.8 Grounds for Revocation. Failure to maintain the Performance Bond as required by this Section 18 shall be grounds for revocation or termination of this Agreement in addition to all other remedies available to the City under this Agreement or Applicable Law.

SECTION 19. RESERVED

SECTION 20. ENVIRONMENTAL LAWS

20.1 Compliance. Franchisee shall comply with, and shall cause its Users, Contractors, sub-contractors and vendors to comply with, all rules, regulations, statutes or orders of the U.S. Environmental Protection Agency, the Kentucky Department for Environmental Protection and any other governmental agency with the authority to promulgate and enforce environmental rules and regulations applicable to Franchisee's use of any portion of the Right-of-Way under this Agreement ("**Environmental Laws**"). Franchisee shall promptly reimburse the City for any fines or penalties levied against the City because of Franchisee's failure, and/or the failure of its Users, Contractors, subcontractors and/or vendors to comply with Environmental Laws.

20.2 Hazardous Materials. Neither Franchisee nor its Users, Contractors, subcontractors or vendors shall possess, use, generate, release, discharge, store, dispose of or transport any Hazardous Materials on, under, in, above, to or from the site except in compliance with the Environmental Laws. “**Hazardous Materials**” mean any substances, materials or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state or local laws, regulations, ordinances or orders. Neither Franchisee, nor its clients, Users, Vendors or Contractors, if any, shall deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials or substances in the City’s storm sewer system or sanitary sewer system or elsewhere on or in the Right-of-Way in violation of the Environmental Laws. Except for its Users, Contractors, subcontractors and vendors, Franchisee will not have any responsibility for managing, monitoring or abating, nor be the owner of, nor have any liability for, any Hazardous Materials that it did not bring into or on the Right-of-Way or any portion thereof.

SECTION 21. FORFEITURE AND REVOCATION

21.1 Default and Right to Revoke. The City reserves the right to revoke or terminate this Agreement and Franchise and to rescind all rights and privileges associated with this Agreement and Franchise in the following circumstances, each of which shall represent a material default and breach under this Agreement:

21.1.1 Failure by Franchisee to provide or maintain in full force and effect the liability insurance and indemnification coverage, or the Performance Bond as required by this Agreement;

21.1.2 Violation by Franchisee of any orders, rulings or regulations of any state, federal or local regulatory body, including the City, PDS and/or the Public Works Department, as applicable, relating to this Agreement and Franchise;

21.1.3 Attempt by Franchisee to evade any of the provisions of this Agreement or the practice of any fraud or deceit upon the City or any regulatory body, including PDS and/or the Public Works Department;

21.1.4 Franchisee becomes insolvent, unable or unwilling to pay its debts, is placed into the hands of a receiver, files a petition in bankruptcy or involuntarily is placed in bankruptcy;

21.1.5 Material misrepresentation of fact in the Application or any Permit Application filed with the Public Works Department, as applicable, or in any statement or information provided to any other regulatory agency, including the City and the departments thereof;

21.1.6 Failure to complete the Construction and Installation of its Telecommunications System, Facilities, Franchisee Poles and related equipment and systems within the timeframes as set forth in Sections 7 (Conditions of Use of Streets and Public Ways) and 2.6 (Continuation of Existing Facilities and Expansion) of this Agreement;

21.1.7 Failure to complete a project or Work for which a Permit is required within the time allotted, provided that if Franchisee obtains additional time from the Authorized City Official, such failure shall not be grounds under this section for revocation;

21.1.8 Failure to appropriately perform restoration Work in violation of Section 7 (Conditions of Use of Streets and Public Ways);

21.1.9 Failure to comply with the requirements of Section 10 (Necessity for Underground Facilities) with regard to underground facilities;

21.1.10 Failure to pay in a timely manner any Franchise Fee or other payment(s) or annual fee, if applicable, or any other sums or payments due under this Agreement;

21.1.11 Effecting a Transfer without fully complying with the mandatory provisions of Section 17 (Transfer of Ownership), including the requirement to secure the prior approval of the City;

21.1.12 Breach, default or violation by Franchisee in the performance of any of the material obligations or requirements of this Agreement; or

21.1.13 Franchisee knowingly and repeatedly fails to comply with, or violates a provision of this Agreement, regardless of whether any single provision not complied with or violated is deemed material.

21.2 Force Majeure. It shall be a defense to any claim, except with respect to the payment of any fee or other payments called for under this Agreement, by the City that Franchisee has breached or violated a material term of this Agreement that the breach or violation directly resulted from a cause that was beyond the reasonable control of Franchisee, including acts of God, civil emergencies, failure on the part of electric utilities, and labor strikes, provided further, however, that Franchisee has notified the City in writing within thirty (30) days of its discovery of the occurrence of such an event. Franchisee's inability to obtain capital, material or labor, or general economic conditions, shall not constitute an event beyond Franchisee's reasonable control for purposes of this section.

21.3 Procedure Prior to Revocation. In the case the City chooses to revoke or terminate this Agreement and Franchisee, the following procedures shall apply:

21.3.1 The Mayor or his designee shall make written demand that Franchisee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation or termination. If the failure, refusal or neglect of Franchisee continues for a period of thirty (30) days following such written demand, the City may place a request for revocation or termination of this Agreement upon a regular council meeting agenda.

21.3.2 At the regular council meeting, the council may choose to: (a) provide additional time to Franchisee within which it shall comply with the terms of this Agreement and remedy any defect or failure to comply of which Franchisee has been notified pursuant to Section of this Agreement; (b) schedule a revocation hearing; (c) make a determination that Franchisee has remedied the breach or failure to comply; and/or (d) defer any action until a time the council considers appropriate.

21.3.3 If the council chooses to schedule a revocation or termination hearing as provided in Section 21.3.2 of this Agreement, it shall provide at least thirty (30) days' written notice via certified mail to Franchisee of such hearing. The council may choose to designate a hearing officer

for the purpose of taking testimony and making nonbinding recommendations to the council regarding revocation or termination. The rules and procedures to be followed at the hearing shall afford due process to Franchisee, allow for the participation of interested Persons, and shall be approved by the council prior to the hearing, with adequate notice being given to Franchisee.

21.3.4 After receiving evidence at a revocation or termination hearing or after receiving the hearing officer's recommendation (if such officer was appointed) concerning the alleged breach or failure to comply with this Agreement and Franchise, the City Council may, as an alternative to revoking this Agreement, choose to allow Franchisee to continue to operate under this Agreement, provided that Franchisee complies with an order of the Council that, at the discretion of the City Council, is intended to bring Franchisee into compliance with this Agreement in a timely manner. After the issuance of such an order, if the City Council determines that Franchisee has failed to comply with the order, the City Council may declare this Agreement and Franchise revoked and terminated without further hearing or proceeding.

21.3.5 Franchisee may appeal any revocation or termination to the appropriate Circuit Court, which shall have exclusive jurisdiction of such appeal.

21.4 Disposition of Facilities. In the event this Agreement expires and is not renewed, or revoked or otherwise terminated, as provided herein, the City may in its sole discretion, do any of the following:

21.4.1 effect a Transfer of ownership of the Telecommunications System, Facilities, Franchisee Poles and related equipment to another Person;

21.4.2 order the removal of the Telecommunications System, Facilities, Franchisee Poles and related equipment from the Right-of-Way within a reasonable period of time. If the City orders the removal of the Telecommunications System, Facilities, Franchisee Poles and related equipment, Franchisee shall remove all of its Telecommunications System, Facilities, Franchisee Poles and related equipment at Franchisee's expense and under the supervision of the Authorized City Official, and restore the Right-of-Way and all property, public or private, to its original condition prior to the installation of the Telecommunications System, Facilities, Franchisee Poles and related equipment. If all of Franchisee's Facilities, Franchisee Poles and/or equipment are not removed within one hundred-twenty (120) days after delivery in writing of the City's order requiring removal, as provided in Section 15 (Removal and Restoration) Franchisee's System Facilities, Franchisee Poles and related equipment shall be deemed Abandoned and shall, at the option of the City, become the property of the City, as provided in Section 15 (Removal and Restoration). In the event Franchisee fails or refuses to remove its Telecommunications System, Facilities, Franchisee Poles and related equipment within such time period, the City, at its option, may perform such Work or cause such Work to be performed, and collect the cost thereof from Franchisee, as provided in Section 15 (Removal and Restoration). The surety on any Performance Bond identified in Section 18 (Performance Bond) of this Agreement shall not be discharged until Franchisee has certified to the City that its Telecommunications System, Facilities, Franchisee Poles and related equipment have been dismantled and removed, and all other property has been restored to reasonable satisfaction of the City.

21.4.3 Notwithstanding the foregoing provisions of this Section 21, Franchisee does not waive any rights it may have pursuant to Applicable Law.

SECTION 22. MISCELLANEOUS PROVISIONS

22.1 Acceptance and Approval; Consent. An approval by the Authorized City Official, or the Public Works Department, or any other instrumentality of City of any part of the Franchisee's performance shall not be construed to waive compliance with this Agreement or to establish a standard of performance other than required or permitted by this Agreement or by Applicable Law. Where this Agreement contains a provision that either Party approves or consents to any action of the other Party, such approval or consent shall not be unreasonably withheld or delayed. Except as provided for in this Agreement, the Authorized City Official, or the Public Works Department is not authorized to vary the terms of this Agreement.

22.2 Representations and Warranties. In addition to the representations, warranties and covenants of the Franchisee to the City set forth elsewhere herein, the Franchisee represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City) that, as of the Effective Date and throughout the Term of this Agreement:

22.2.1 Organization, Standing and Power. The Franchisee is a Telecommunications provider duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized to do business in the Commonwealth of Kentucky. Franchisee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted, to offer Telecommunications Services within the Commonwealth of Kentucky, and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.

22.2.2 Truthful Statements. Franchisee warrants, to the best of its knowledge and belief, that information provided and statements made in connection with its Application to the City and the Permit Applications to the Public Works Department, as applicable, for or in connection with this Agreement were true and correct when made and are true and correct upon the execution hereof and/or upon the issuance of any Permit.

22.3 Statement of Acceptance. Franchisee and City, for themselves, their successors and assigns, hereby accept and agree to be bound by all terms, conditions and provisions of this Agreement.

22.4 Relationship of the Parties. Franchisee shall be responsible and liable for its Users, Contractors, subcontractors, sublicensees and vendors. The City has no control or supervisory powers over the manner or method of Franchisees', Users', Contractors', subcontractors' and sublicensees' performance under this Agreement. All personnel Franchisee uses or provides are its employees, Contractors, subcontractors or sublicensees and not the City employees, agents, or subcontractors for any purpose whatsoever. The relationship between City and Franchisee is at all times solely that of franchisor and franchisee, not that of partners or joint venturers.

22.5 Severability. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

22.6 Entire Agreement. This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances,

conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

22.7 Written Amendment. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the (City Council/Fiscal Court)) and Franchisee.

22.8 Applicable Law and Venue. This Agreement is subject to the laws of the Commonwealth of Kentucky, the City ordinances, the laws of the United States, and all rules and regulations thereof and/or of any regulatory body or officer having jurisdiction over the Franchisee, Telecommunications Services, and/or the subject matter of this Agreement (collectively, “**Applicable Law**”), including any lawful court or administrative decisions, judgments or orders that have been fully and finally adjudicated, including any appeals of such decisions, judgments or orders. If any material provision of this Agreement is superseded or affected by Applicable Law, then the Parties shall negotiate in good faith to revise this Agreement.

22.9 Notices. All notices to either Party to this Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set forth below or other address the receiving party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

CITY: Mayor
City of Fort Mitchell
2355 Dixie Highway
Fort Mitchell, Kentucky 41017
(859) 331-1212

FRANCHISEE:

22.10 Captions. Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section of this Agreement.

22.11 Non-Waiver. If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other’s breach of a term, that waiver does not waive a later breach of this Agreement.

22.12 Enforcement. The City Attorney may enforce all legal rights and obligations under this Agreement without further authorization. Franchisee shall provide to the City Attorney all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining Franchisee’s compliance with this Agreement, with the exception of those documents made confidential by Applicable Law.

22.13 Ambiguities. If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

22.14 Survival. Franchisee and the City shall remain obligated to the other Party under all provisions of this Agreement that expressly or by their nature extend beyond the termination, revocation or expiration of this Agreement, including, but not limited to, the provisions regarding warranty and indemnification, restoration, removal or relocation of the Telecommunications System, Facilities, Franchisee Poles and related equipment. All representations and warranties contained in this Agreement shall survive the Term of this Agreement.

22.15 Parties in Interest. This Agreement does not bestow any rights upon any third- party, but binds and benefits the City and Franchisee only.

22.16 Remedies Cumulative. Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

22.17 Counterparts. This Agreement may be executed in multiple counterparts, each of which is an original. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all Parties.

22.18 Authority. The signer of this Agreement for the Franchisee and the City hereby represent and warrant that he or she has full authority to execute this Agreement on behalf of Franchisee or the City, respectively.

22.19 Liens. Franchisee must keep the Approved Locations and all other portions of the Right-of-Way wherein its Telecommunications System, Facilities, Franchisee Poles and related equipment is located or placed free from any liens or encumbrances arising from any Work performed, materials furnished, or obligations incurred by or at the request of Franchisee. Franchisee may allow the Telecommunications System, Facilities, Franchisee Poles to serve as collateral in financial transactions, as provided in Section 17 (Transfer of Ownership), but only to the extent that City's rights and interests are not affected. If any lien is filed against the Right-of- Way or any portion thereof or other property belonging to the City as a result of the acts or omissions of Franchisee or Franchisee's employees, agents, Users or Contractors, Franchisee must discharge the lien or bond the lien off in a manner satisfactory to the City within thirty (30) days after Franchisee receives written notice from any party or Person that the lien has been filed. Failure to discharge or bond off any lien within the stated period of time will constitute a default under this Agreement.

22.20 Timely Response. Each Party shall take such prompt action as may be reasonably be requested by the other Party for the implementation of continuing performance of this Agreement.

22.21 Subordination. This Agreement is subject and subordinate at all times to the lien of all mortgages and deeds of trust issued by City and securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Rights-of-Way or all other property owned or controlled by the City or on or against the City's interest or estate therein, and any underlying ground license, lease or instrument on a particular Approved Location or site within the Right-of-Way, all without the necessity of having further instruments executed by Franchisee to the

effect such subordination with respect to any such liens, leases and licenses arising subsequent to the execution of this Agreement and Franchise.

22.22 Competitive Neutrality. The Parties understand and agree that, with respect to providers of telecommunications services, the City is to manage and administer “the public Rights-of-Way or to require fair and reasonable compensation, on a competitively neutral and non-discriminatory basis, for the use of public Rights-of-Way on a non-discriminatory basis,” all as provided in 47 U.S.C. § 253(c). To this end, in order to maintain a relatively level playing field among all similarly situated providers of telecommunications services, upon the grant or renewal of another franchise in the Rights-of-Way where material terms or conditions of this Franchise conflict with a change in the City Code or right-of-way ordinances, or the provisions of this Franchise provide a material competitive advantage over another similarly situated telecommunications provider (such that it negatively and materially impacts the City’s ability to effectively manage and administer the Rights-of-Way), then the City may elect to renegotiate with Franchisee in good faith to modify the terms and provisions of this Franchise to obtain material terms and conditions that, as a whole, are competitively neutral among similarly situated providers of telecommunications services.

22.23 Reservation of Rights. Without limitation of the foregoing, there is hereby reserved to each of City and Franchisee every right and privilege granted to each such party under Applicable Law, and each Party, by execution of and delivery of this Agreement shall not be deemed in any way to waive, relinquish, release or abrogate any of Franchisee’s lawful rights and privileges.

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

CITY OF FORT MITCHELL

By: _____
Jude Hehman, Mayor

Authority: Pursuant to Ordinance/Resolution
No. _____ duly adopted and passed _____,
201__

Date: _____, 201__

FRANCHISEE:

By: _____

Name: _____

Title: _____

Date: _____, 201__

EXHIBIT A

[Application of Franchisee]

[Should contain the Application of Franchisee and all related or supporting documents, drawings and maps depicting the Initial System.]

EXHIBIT B

Description of Telecommunications Services

The Agreement and Franchise to which this Exhibit B is attached and made a part thereof, only authorizes Franchisee to use its Telecommunications System, Facilities, Franchisee Poles and related equipment in offering and making available to customers or subscribers within the Franchise Area the following described Telecommunications Services:

- Competitive local exchange, voice and data communications services;
- Internet access;
- Private line service;
- Cell site front-haul and back-haul using fiber optic cables; and
- Leasing of Conduit, Conduit Systems, Ducts and/or Dark Fiber to Users under a User Contract pursuant to Section 2.7 (Notice of Other Users) of this Agreement:

No services will be offered to residential customers or subscribers.

As provided in the definition of “Telecommunication Services” in this Agreement, such services do include Commercial Mobile Radio Services, Personal Communications Services, pay phone services, Cable Services, Multichannel Video Services or Information Services.