

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

Dated as of _____, 2019

Between

THE CITY OF BROMLEY

and

TABLE OF CONTENTS

Section 1. DEFINITIONS.....	1
Section 2. AUTHORIZATION TO USE RIGHT OF WAY.....	8
2.1. Grant of Permission.....	8
2.2. No Macro or Small Cell Installations Authorized.....	9
2.3. Franchisee Poles.....	9
2.4. Traffic Signals and Infrastructure.....	9
2.5. Co-Location.....	10
2.6. Continuation of Existing Facilities and Expansion.....	10
2.7. Notice of Other Users.....	11
2.8. Liability of Franchisee.....	11
Section 3. SCOPE OF AUTHORITY.....	11
3.1. Non-Exclusive.....	11
3.2. No Usage Transfer.....	12
3.3. Franchisee Poles.....	12
3.4. Use of Existing Utility Poles.....	12
3.5. Retention of Powers by City.....	12
3.6. No Priority of Use or Interest in Property.....	12
3.7. Eminent Domain.....	13
Section 4. SITE APPROVAL AND COMPLIANCE.....	13
4.1. Application and Process.....	13
4.2. Compliance with City Conditions.....	13
4.3. Reimbursement of Costs.....	14
4.4. Material Alteration.....	14
4.5. Permits.....	14
4.6. FCC Regulations and Compliance.....	14
Section 5. SITE ACCEPTANCE.....	15
5.1. Acceptance.....	15
5.2. Acceptance Conclusive Evidence.....	15
5.3. No Warranty.....	15
Section 6. TERM.....	16
6.1. Initial Term.....	16
6.2. Renewal.....	16
Section 7. CONDITIONS OF USE OF STREETS AND PUBLIC WAYS.....	16
7.1. Requirement.....	16
7.2. Information Required.....	17
7.3. Permit Fees.....	17
7.4. Time of Completion.....	17
7.5. Right-of-Way Restoration.....	18
7.6. Failure to Restore.....	18

7.7.	Timeframe for Issuance of Permit	18
7.8.	Emergency Conditions.....	18
7.9.	Erection of Additional Poles.....	19
7.10.	Cooperation.....	19
7.11.	Additional Conditions.....	19
7.12.	Inspections.	19
7.13.	Access to Detailed Plans.....	19
Section 8. CONSTRUCTION REQUIREMENTS AND MAINTENANCE.....		20
8.1.	Quality and Specifications	20
8.2.	Minimum Interference and Safety Compliance.....	20
8.3.	Compliance with Building and Zoning Codes and Ordinances.....	20
8.4.	Construction Standards	20
8.5.	Maintenance of Equipment and Stealth Technology	21
8.6.	Graffiti Abatement.....	21
8.7.	Authority to Stop Work	21
8.8.	Generators.....	21
Section 9. CONSTRUCTION CONDUIT AND POLE ATTACHMENT ACTIVITIES		21
9.1.	Determination of Pole and Conduit Availability	21
9.2.	Location	22
9.3.	Required Movement; Right of Authority.....	22
9.4.	Condition on Installation of Conduit	22
9.5.	Compliance with Federal Pole Attachment Act and FCC Regulations	22
Section 10. NECESSITY FOR UNDERGROUND FACILITIES		23
10.1.	Requirement for Underground Facilities	23
10.2.	Procedure to Bury Existing Overhead Facilities.....	23
Section 11. TREE TRIMMING.....		23
Section 12. RELOCATION OF FACILITIES		23
12.1.	Requirement to Relocate.....	23
12.2.	Notice.....	24
12.3.	Additional Time.....	24
12.4.	Authority to Perform.....	24
12.5.	Right to Remove	24
12.6.	Emergency	24
Section 13. LIABILITY INSURANCE.....		25
13.1.	Insurance Requirements, Scope and Limits.....	25
13.2.	Endorsements and Acceptability of Insurers	25
13.3.	Self-Insurance - Workers' Compensation.....	25
13.4.	Increase of Insurance Limits.....	26
13.5.	No Limitation on Liability	26
13.6.	Subrogation.....	26

Section 14. INDEMNITY	26
14.1. Scope of Indemnity	26
14.2. Franchisee's Duty to Employ Counsel	26
14.3. Indemnitees' Right to Employ Own Counsel	27
14.4. Duty to Give Notice and Tender Defense	27
14.5. Disclaimer	27
14.6. Non-Liability of City Officials, Employees and Agents	27
14.7. No Liability for Damage, Death or Bodily Injury	27
14.8. Waiver of Claims regarding Fitness of Poles and Structures Located on Public Ways	27
Section 15. REMOVAL AND RESTORATION	28
Section 16. PAYMENT OF FEES FOR USE OF THE RIGHT-OF-WAY	28
16.1. Nature of Payment	28
16.2. Application Fee	29
16.3. Franchise Fee	29
16.4. Alternate Compensation to Franchisee Fee	29
16.5. Definition of Gross Receipts	29
16.6. Gross Receipts Linked Tariff	30
16.7. Most Favored Terms	Error! Bookmark not defined.
16.8. Quarterly Payments	30
16.9. Late Payments	31
16.10. Right of Audit of Franchisee's Books and Records	31
16.11. Right of Inspection of Franchisee's Facilities	31
16.12. Other Payments	31
16.13. Not in Lieu of Other Fees	31
16.14. Acceptance Not to be Construed as Accord	31
16.15. Transition to Payment of Franchise Fees	31
Section 17. TRANSFER OF OWNERSHIP	32
17.1. Valid Transfer Required	32
17.2. No Rights Transferred	32
17.3. Notice	32
17.4. Transfer Application	32
17.5. Failure to Comply	33
17.6. Continuation of Liability	33
Section 18. PERFORMANCE BOND	33
18.1. Bond Required	33
18.2. Conditions	33
18.3. Replenishment	34
18.4. Maintenance of Suit	34
18.5. Drawing upon Bond	34
18.6. Requirements for Surety	34
18.7. Endorsement	34
18.8. Grounds for Revocation	35

- Section 19. HOLDOVER WITHOUT A FRANCHISE..... 35
 - 19.1. Continuing Obligation and Holdover**Error! Bookmark not defined.**
 - 19.2. Limitation on Holdover Term.....**Error! Bookmark not defined.**

- Section 20. ENVIRONMENTAL LAWS 35
 - 20.1. Compliance 35
 - 20.2. Hazardous Materials 35

- Section 21. FORFEITURE AND REVOCATION..... 35
 - 21.1. Default and Right to Revoke..... 35
 - 21.2. Force Majeure 36
 - 21.3. Procedure Prior to Revocation..... 37
 - 21.4. Disposition of Facilities 38
 - 21.5. Revocation for Public Purpose 38
 - 21.6. Right of Appeal..... 38

- Section 22. MISCELLANEOUS PROVISIONS..... 39
 - 22.1. Acceptance and Approval; Consent..... 39
 - 22.2. Representations and Warranties..... 39
 - 22.3. Statement of Acceptance 39
 - 22.4. Relationship of the Parties 39
 - 22.5. Severability 40
 - 22.6. Entire Agreement..... 40
 - 22.7. Written Amendment 40
 - 22.8. Applicable Law and Venue..... 40
 - 22.9. Notices 40
 - 22.10. Captions 40
 - 22.11. Non-Waiver 40
 - 22.12. Enforcement..... 41
 - 22.13. Ambiguities..... 41
 - 22.14. Survival..... 41
 - 22.15. Parties in Interest 41
 - 22.16. Remedies Cumulative 41
 - 22.17. Counterparts..... 41
 - 22.18. Authority 41
 - 22.19. Cross Default 41
 - 22.20. Liens..... 41
 - 22.21. Timely Response..... 42
 - 22.22. Subordination..... 42

- EXHIBIT A [Application of Franchisee] i

- EXHIBIT B Description of Telecommunications Services..... ii

THIS WIRED 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 Bromley, a municipal corporation and home rule city (“**City**”), as franchisor, and _____, a [state] [corporation/limited liability company] with its principal offices at _____ (“**Franchisee**”), as franchisee. City 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’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 or County, 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 Manager/County Judge-Executive).”

“City” means the City of Bromley, its Mayor, its Council, its 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 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 that are not connected to transmission equipment.

“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 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 and, with respect to a county, the unincorporated area(s) of the county and such additional areas as may be included in the unincorporated area by virtue of dissolution of any city or any 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/County], 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/County’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 (or its designee) as may be applicable.

"Planning Commission" means the Kenton County Planning Commission in the Commonwealth of Kentucky.

"Public Works Department" means the (City/County'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"** mean 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"** do 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.

"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, Multichannel Video Services or information 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/County 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 and/or repair 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 therefore.

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 PDS and/or 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 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 PDS and/or the Public Works Department, as applicable, 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 and/or PDS, as applicable, 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 PDS and/or 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 data 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 execution of the User Contract, 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, 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, using the Right-of-Way through or under Franchisee or this Agreement.

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 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 PDS and/or the Public Works Department, as applicable, 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.

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 and regulations 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 PDS and/or 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 PDS and/or 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 PDS and/or 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 PDS and/or 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 PDS and/or the Public Works Department, as applicable, 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, and the City, after first receiving the approval of the City Council, gives its written consent to the same, 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 PDS and/or the Public Works Department;
- (b) Any conditions, requirements or qualifications specified by PDS and/or 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 PDS and/or the Public Works Department for any and all reasonable costs and expenses reasonably incurred by PDS and/or the Public Works Department in connection with services performed by PDS and/or the Public Works Department, as applicable, at the request of PDS and/or the Public Works Department, as applicable, 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 PDS and/or 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.

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) PDS and/or the Public Works Department, as applicable, 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 PDS and/or the Public Works Department, as applicable, 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, installed on 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 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.** 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 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.

6.2. **Renewal.** The Term of this Agreement will be automatically renewed for two (2) additional terms of 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.

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 and/or PDS, as applicable, 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 PDS and/or 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 PDS and/or 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 PDS and/or 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 PDS and/or the Public Works Department, as applicable, 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).

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 eighteen (18) 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 PDS and/or Public Works Department, as applicable, 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/County Sheriff, as appropriate, 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 PDS and/or 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 PDS and/or 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) insure 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 hard copy and electronic format, together with several prints of the overall Telecommunications System as reasonably requested by the City. Franchisee shall update the plans, maps and plan sheets annually. The City agrees to use such plans and plan sheets for City purposes only.

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, PDS 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.

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.

9.4. **Condition on Installation of Conduit.** Any Permit to (a) excavate a Right-of-Way, (b) cut or trench a street, sidewalk or curb and/or (c) install a pole, Conduit, Conduit System, Duct, pipe or other Facilities in the Right-of-Way shall be subject to the right of the City to grant to other franchisees, licensees, grantees and users of the Right-of-Way similar rights and privileges to use the same pole, Conduit, Conduit System, Duct, pipe or other Facilities for similar purposes, provided such additional use is feasible and provided the other Persons shall agree to pay a rate consistent with the requirements of the federal Pole Attachment Act, 47 U.S.C. Sec. 224 (the "PAA"), or, in cases not covered by the PAA, other commercially reasonable rate. In those cases not subject to the PAA, and where the owner of the pole, Conduit, Conduit System, Duct or other Facilities and Franchisee cannot agree on the terms and conditions of an agreement to share the pole, Conduit, Conduit System, Duct or other Facilities matter shall be arbitrated in accordance with the rules and regulations of the American Arbitration Association.

9.5. **Compliance with Federal Pole Attachment Act and FCC Regulations.** Franchisee shall comply with the terms of the PAA and the FCC Regulations to the extent consistent with this Agreement, provided that if any provision of this Agreement is inconsistent with the PAA and FCC Regulations, then the terms and provisions of this Agreement shall prevail unless preempted by the PAA and FCC Regulations, or preempted by the rules and regulations of the Kentucky Public Service Commission (the "PSC"), including, but not limited to 807 KAR 5:006, Section 21 (Forfeiture and Revocation), or successor regulation. Failure to comply with the