



## Resolution 17 – 05

**A Resolution authorizing the establishment of a Franchise Agreement between the Town of Elsmere and Crown Castle NG East, LLC.**

**Proposed By:** Councilwoman Joann I. Personti  
**Date:** June 08, 2017  
**Results:** Passed 7 In Favor, 0 Opposed



## Resolution 17 – 05

### A Resolution authorizing the establishment of a Franchise Agreement between the Town of Elsmere and Crown Castle NG East, LLC.

**WHEREAS**, The Town of Elsmere has been approached by representatives of Crown Castle NG East, LLC who wish to be granted a franchise agreement with the Town; and

**WHEREAS**, The franchise agreement sought would authorize Crown Castle NG East, LLC to construct, operate and maintain a Distributed Antenna System (“DAS”) in order to provide telecommunication services to the residents of the Town; and

**WHEREAS**, The Mayor and Council believe that approving the requested franchise agreement would be beneficial to the residents of the Town and would not have a negative on the Town,

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and Council authorize entering into a franchise agreement, a copy of which is attached to this resolution, between the Town and Crown Castle NG East, LLC.

**RESOLVED BY THE MAYOR AND COUNCIL THIS 8TH DAY OF JUNE, 2017.**



Eric Thompson, Mayor



Brian Hurst, Secretary



## **Synopsis**

### **Resolution 17 – 05**

This Resolution authorizes the establishment of a Franchise Agreement between the Town of Elsmere and Crown Castle NG East, LLC.

#### **Fiscal Impact**

There are no costs to the Town estimated by signing this agreement. Income to the Town will not be known until the system is completely installed and the number of participants is known.



**TELECOMMUNICATIONS  
FRANCHISE AGREEMENT BETWEEN  
ELSMERE, DELAWARE  
AND  
CROWN CASTLE**

This Franchise is made on the \_\_\_ day of June, 2017, between the Town of Elsmere, Delaware (“**MUNICIPALITY**”), a municipal corporation with offices located at 11 Poplar Street, Elsmere, Delaware, and Crown Castle NG East, LLC (“**COMPANY**”), a Delaware Limited Liability Company authorized to do business in the State of Delaware with an office located at 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (**COMPANY OFFICE**).

**WHEREAS**, the **MUNICIPALITY** has the authority to grant Franchises and other authorizations for the use and occupancy of the Streets (as hereinafter defined); and

**WHEREAS**, the **COMPANY** desires a Franchise to use and occupy certain Streets within the Municipality to construct, operate and maintain a Distributed Antenna System (“**DAS**”) to provide telecommunications services as such services are described in all applicable laws and codes; and

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereby agree as follows:

**1. DEFINITIONS.** The following terms, as used in this Franchise, have the following meanings, with all the terms defined in this Section in the singular to have the correlative meaning when used in the plural and vice versa:

(a) “Affiliated Person” means each Person who falls into one or more of the following categories:

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(i) each Person having, directly or indirectly, a Controlling Interest in the **COMPANY**;

(ii) each Person in which the **COMPANY** has, directly or indirectly, a Controlling Interest in the **COMPANY**; and

(iii) each Person, directly or indirectly, controlling, controlled by, or under common Control with, the **COMPANY**; provided that “Affiliated Person” shall in no event mean the **MUNICIPALITY** or any creditor of the **COMPANY** solely by virtue of its status as a creditor and which is not otherwise an “Affiliated Person” by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management or common Control with, the **COMPANY**.

(b) “Control” or “Controlling Interest” means the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than fifty percent (50%) of any voting interest in the **COMPANY** or in any Affiliated Person which owns or controls the **COMPANY** directly or indirectly. “Control” or “Controlling Interest” as used herein may be held simultaneously by more than one Person or group of Persons.

(c) “Distributed Antenna System” (“DAS”) means a network of spatially separated antenna nodes connected via a transport medium to a common hub or hubs, and includes all necessary Equipment.

(d) “Equipment” means the cables, poles, wires, optical fibers, antennas, electrical conductors, amplifiers and other electrical devices, conduits, manholes, fixtures, appliances, appurtenances and related facilities that are used to provide Services.

(e) “FCC” means the Federal Communications Commission.

(f) “Franchise” has the meaning set forth in Section 2.1.



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(g) “Franchise Area” means the Municipality.

(h) “Gross Revenue” means any and all payments made to, or compensation in any form whatsoever received directly or indirectly by the **COMPANY** or any Affiliated Person from or in connection with the operation of the DAS within the Streets in the Franchise Area, or the provision of any Service over the DAS by the **COMPANY** or any Affiliated Person, using the Streets within the Franchise Area. The revenues derived from the operation of the DAS of provision of services within the Franchise Area shall include, but are not limited to, revenues from the lease, exchange or use of any portion of the DAS within the Streets within the Franchise Area and shall include all revenues, whether cash or non-monetary, received by the **COMPANY** or any Affiliated Person and derived from or in connection with the, lease or operation of the DAS within the Streets within the Franchise Area, or for the termination, origination or carriage of any communication via the DAS using the Streets in the Franchise Area. Where Gross Revenues are collectively attributable to Equipment within and outside the Franchise Area, Gross Revenues shall be ratably apportioned between the Equipment within the Franchise Area and outside of the Franchise Area. Non-monetary transactions shall be valued at fair market value as determined in accordance with Generally Accepted Accounting Principles.

(1) Gross Revenues do not include levies or taxes that the **COMPANY** is obligated by law to collect from its customers and to pay to a federal, state or local government, such as sales taxes. Gross Revenues also do not include non-operating interest income or gains from the sale of an asset. **COMPANY** represents that it may charge customers for the construction of elements of the DAS (hereinafter, “Construction Costs”). The **COMPANY** represents that it does not currently pay a franchise fee elsewhere in the State of Delaware for revenue associated with Construction

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Costs or for equipment on private property not owned or controlled by a municipality.

Gross Revenues shall not include any revenues associated with equipment installed on private property.

(2) Gross Revenues shall not include any future revenues associated with Construction Costs unless and until the **COMPANY** pays a franchise fee on Construction Costs elsewhere in the State of Delaware. Notwithstanding the foregoing it is the understanding of the parties, based on the **COMPANY'S** representations, that currently the **COMPANY** generates its revenue on a per node charge basis to its clients. So long as it continues to do so, it is acceptable to the **MUNICIPALITY** if franchise fee payments are based on total per node charges realized from nodes in the Franchise Area.

(i) "Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a governmental or political subdivision or any agency or instrumentality thereof.

(j) "Relevant Officials" means the Town Manager of the Municipality.

(k) "Service(s)" means any service provided by means of the DAS by the **COMPANY** or an Affiliated Entity pursuant to all applicable laws and codes. Without limitation, the term does not include cable service or other video services as set forth in Section 2.1 below.

(l) "Streets" means the streets, alleys, similar rights-of-way however nominated, and dedicated public utility easements within the Municipality as may now exist or be hereafter created, until and unless the same are abandoned or otherwise disposed of, which the Municipality may authorize the **COMPANY** to use, and which are appropriate for placement of a DAS, except as specifically provided herein. Unless the context requires otherwise, "Streets"

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includes the area up to the outermost boundary of any right-of-way in which the paved or improved portion of any Street is located, including areas accommodating sidewalks or grassy areas within the right-of-way.

## 2. FRANCHISE GENERAL CONDITIONS

2.1 Grant of Franchise. The **COMPANY** is hereby granted by the **MUNICIPALITY**, where the **MUNICIPALITY** has the right and authority to do so, the non-exclusive right and privilege to locate, place, attach, install, operate, control, maintain, upgrade and enhance, in, upon, along, across, above, over and under the Streets within the territorial limits of this Franchise (as defined in Section 2.9), a DAS for the sole purpose of providing Services. Without limitation, this Franchise shall not authorize the **COMPANY** to use and occupy the Streets to provide Title VI “cable service,” as that term is defined in 47 U.S.C. § 522(6), or to provide service as an open video system provider pursuant to 47 U.S.C. § 573. The **MUNICIPALITY** shall liberally amend this Franchise, or issue such additional Franchises or other authorizations as it may deem necessary, to authorize the **COMPANY** to use and occupy the Streets to provide additional communications services in addition to the Services, subject to appropriate terms and conditions.

This Franchise does not authorize or constitute consent to placement of Equipment aboveground in underground areas absent special permission by the Relevant Officials. This Franchise also does not authorize installation, modification or removal of any portion of the DAS unless the same is authorized by the Relevant Officials pursuant to **MUNICIPALITY** Code as amended from time to time. However, nothing herein prevents the **COMPANY** from challenging any denial, conditional approval, or failure to act on an application for installation,

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modification or removal of the DAS by the **MUNICIPALITY** or any Board, agency or department thereof, before a court or agency of competent jurisdiction. If for any reason **MUNICIPALITY** Code, if applicable, cannot be applied according to its terms to the DAS, the **MUNICIPALITY** may establish conditions within a reasonable period of time on the installation, modification or removal of the DAS consistent with the design, installation and maintenance requirements that may be applied to Equipment authorized pursuant to **MUNICIPALITY** Code, if applicable, or as may be necessary to protect public health and safety. The **MUNICIPALITY** may require modification or removal of any facility that it determines does not comply with conditions established by the **MUNICIPALITY** consistent with the design, installation or maintenance requirements of **MUNICIPALITY** Code, if applicable. The **COMPANY** reserves the right to challenge the application of **MUNICIPALITY** Code to particular installations, the conditions, or the application of the conditions to the DAS, to the extent permitted by law. Placement of hubs in the paved portion Streets will not be permitted, and the **COMPANY** agrees placement of hubs in the paved portion of Streets is not necessary.

2.2. No Sub-Lease. This Franchise does not authorize the **COMPANY** to place Equipment in Streets that are owned by, or that are subject to the management or control of, another Person unless that Person holds a Franchise or other authorization issued by the **MUNICIPALITY**.

2.3 Attachment to Third-Party Property. Subject to obtaining the permission of the owner(s) of the affected property and subject to applicable **MUNICIPALITY** permits and regulations and approval, the **MUNICIPALITY** hereby authorizes and permits the **COMPANY** to enter upon the Streets, and locate, place, attach, install, operate, control, maintain, upgrade and

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enhance Equipment in or on poles or other structures owned by public utility companies or other property owners located within the Streets as may be permitted by the public utility company or property owner, as the case may be. Upon request, the **COMPANY** shall furnish to the **MUNICIPALITY** evidence that the **COMPANY** has entered into the appropriate pole-attachment agreement required pursuant to federal, state, and local laws. The **MUNICIPALITY** understands and agrees that the **COMPANY** has the right to install on third-party property under one or more existing prior contracts. Where third-party property is not available or cannot be modified for attachment of Equipment, the **COMPANY** may install its own utility poles similar to existing utility poles in the Streets if necessary to the operation of the DAS system, but subject to prior approval of the **MUNICIPALITY**, which may impose conditions consistent with the requirements of Section 2.1, and other conditions that the **MUNICIPALITY** imposes on similar installations made by other utilities that use and occupy the Streets, or that the **MUNICIPALITY** may impose under application provisions of the Municipality Code.

2.4 Non-exclusivity; Other Municipal Franchises; Procedure. No privilege or power of eminent domain is bestowed by this grant of authority. This Franchise is a nonexclusive grant to construct, operate and maintain the DAS in the Franchise Area for the purpose of providing Services. The **MUNICIPALITY** expressly reserves the right to grant other non-exclusive Franchises for DAS, on non-discriminatory and competitively neutral terms, in accordance with applicable law.

2.5 Intentionally omitted.

2.6 Exercise of Police Power. All rights and privileges granted hereby are subject to the police power of the **MUNICIPALITY** to adopt and enforce local laws, rules and regulations necessary to protect the health, safety and general welfare of the public consistent with any other

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requirements under the laws of the State of Delaware. Expressly reserved to the **MUNICIPALITY** is the right to adopt, now and in the future, in addition to the provisions of the Franchise and existing laws, ordinances and regulations, such additional laws and regulations as it may find necessary in the exercise of its police power and the **COMPANY** shall comply with all lawful laws, ordinances and regulations, now existing and hereafter adopted whether local, State or Federal. While the application of such laws to the **COMPANY** shall not be treated as an impairment of this Franchise, nothing herein prevents the **COMPANY** from challenging the legality of a particular local, State or Federal law, ordinance, judicial or administrative orders, rule or regulation on other grounds.

2.7 Use of Streets. The **COMPANY**'s right to use and occupy the Streets pursuant to the provisions of this Franchise shall not be exclusive and shall be subject and subordinate to the right of the **MUNICIPALITY** to use the Streets. Neither this Franchise, nor any permit issued pursuant to this Franchise gives the **COMPANY** authority to occupy any particular location or maintain its Equipment at any particular location within the Streets. The **COMPANY** may be required to remove and relocate its DAS if the Equipment to which it is attached are removed, ordered to be removed or relocated; or to accommodate the use of the Streets by the **MUNICIPALITY**; or to ensure that the DAS or Equipment to which it is attached do not interfere with the use of the Streets by the public, or present a risk to public health or safety.

2.8 Conflict with Public Works. The rights and privileges granted hereby shall not be in preference or hindrance to the right of the **MUNICIPALITY**, or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works, public improvements or public projects. In the event that the DAS interferes in any way with the construction, maintenance or repair of such public works, public

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improvements, or public projects, the **COMPANY** shall promptly commence work to remove or relocate the object of such interference if emergency circumstances exist or otherwise within the greater of thirty (30) days, or the amount of notice given to other similarly affected utilities, after notice of such interference, at its own expense, protect or relocate its system or part thereof, as may be directed by the relevant department within the **MUNICIPALITY**. In the event that after notice, the **COMPANY** fails to act to remove an interference, creating an emergency condition, the **COMPANY** acknowledges and agrees that the **MUNICIPALITY** has the absolute right to remove such interfering portion of the DAS, so as to remove such interference at the sole cost and expense of the **COMPANY** and the **COMPANY** shall reimburse the **MUNICIPALITY** for such cost and expense within thirty (30) days after receipt of an invoice therefor from the **MUNICIPALITY**. In this event, the **MUNICIPALITY** shall not be liable for any damages that may occur to the DAS, except as may be the result of the **MUNICIPALITY**'s gross negligence or willful misconduct, and the **COMPANY** hereby waives any rights or claims for damages that it may have against the **MUNICIPALITY** arising from these events. The **COMPANY** shall register the location of all its underground ducts as required by all applicable laws and codes, and shall comply with all requirements and recommendations contained in State law. This reporting shall be in addition to the **COMPANY**'s obligation to advise Relevant Officials of the location of all Equipment and to obtain approval for all such locations prior to installation. The **COMPANY** may be required to provide maps showing the location of its Equipment in the Streets to the Municipality, in hard copy or standard GIS- compatible formats.

2.9 Territorial Limits. The rights and privileges awarded to the **COMPANY** pursuant to this Franchise shall relate to and cover the territorial limits of the incorporated Municipality during the term of the Franchise and any extension thereof to the extent that the

**MUNICIPALITY** controls such territory, in accordance with such plans as may be approved by the relevant Municipality Departments, the Planning Board and, if also required under the circumstances, Zoning Board of Appeals, in accordance with §2.1. The installation of any new conduit shall be limited to areas necessary to service the DAS.

**3. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**3.1** The **COMPANY** makes the following representations, warranties and covenants as the basis for the benefits and obligations contained in this Franchise:

(i) The **COMPANY** represents that it is validly existing and in good standing under the laws of the State of Delaware, that it is qualified to do business under the laws of the State of Delaware, and that it has the power and authority to own its properties, to carry on its business as now being conducted, to enter into this Franchise and carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Franchise.

(ii) The **COMPANY** covenants and agrees that it or an Affiliated Person will, at its or the Affiliated Person's own expense, construct or cause to be constructed, own, lease or otherwise acquire a possessory interest in, and operate and maintain the DAS. The **COMPANY** represents and warrants that, as of the date of this Franchise, it has adequate financial resources to construct and maintain the DAS in accordance with the provisions of this Franchise.

(iii) The **COMPANY** represents, covenants and warrants that, subject to Section 2.6, during the term of this Franchise the **COMPANY** will comply with all laws, judicial and administrative orders, rules and regulations, with respect to the ownership, lease or possession and operation of the DAS, including but not limited to, all requirements to obtain and



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comply with the conditions of any applicable certificates, Franchises, permits and governmental approvals and all applicable environmental-related requirements.

(iv) The **COMPANY** represents and warrants that it is not prohibited from entering into this Franchise and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Franchise; that the execution and delivery of this Franchise, the consummation of the transactions contemplated hereby, and the fulfillment of and compliance with the provisions of this Franchise will not conflict with, or constitute a breach of or a default under, any of the terms, conditions, or provisions of any law, any order of any court or other agency of government having jurisdiction, or any contractual limitation, or outstanding trust indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the **COMPANY** or any Affiliated Person is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing; and that this Franchise is the legal, valid and binding obligation of the **COMPANY** enforceable in accordance with its terms.

(v) The **COMPANY** represents and warrants that all corporate actions and consents required on its part to execute and deliver this Franchise have been completed.

3.2 No Undue Influence. The **COMPANY** represents to the **MUNICIPALITY** that neither it, nor its officers, agents, employees or any other person acting under its control or on its behalf has authorized or exerted or caused to be authorized or exerted any undue influence in furtherance of or to obtain the award of this Franchise, including any political influence, or has performed or authorized or caused to be performed or authorized any unlawful act in furtherance of or to obtain the award of this Franchise. A breach of the representations contained in this paragraph shall constitute a non-curable default under this Franchise, and shall entitle the

**MUNICIPALITY** to immediately terminate the Franchise for cause. In the event the Franchise is terminated pursuant to this paragraph, the **COMPANY** hereby agrees that the disposition of the DAS in the Streets shall be governed by Sections 4.5, 4.6 and 4.7.

3.3 State Certification. The **COMPANY** represents that on May 22, 2007, the **COMPANY** obtained a certificate of public convenience and necessity to operate in the State of Delaware as a facilities-based provider and reseller of telephone service.

#### **4. TERM OF FRANCHISE**

4.1 Effective Date. The Franchise shall become effective on the date of this Franchise (the "Effective Date").

4.2 Initial Term. The term of this Franchise shall be for a period of 10 years from the date of this Franchise (the "Initial Term"), unless sooner terminated in accordance with the provisions of this Franchise.

4.3 Renewal Term. Upon expiration of the Initial Term and subject to the mutual consent of the parties and after the **MUNICIPALITY** has determined that the **COMPANY** has complied substantially satisfactorily with all material terms and conditions of the Franchise during such term, the **COMPANY** shall have the option to renew the Franchise for a term of ten (10) years (the "Renewal Term"). Without limiting the foregoing, at renewal, the insurance requirements in Section 5.1 shall be adjusted to reflect the then-current requirements of the **MUNICIPALITY**.

The **COMPANY** shall provide notice to the **MUNICIPALITY** ("renewal notice") not more than twenty-four (24) months nor less than six (6) months prior to the expiration of the Initial Term that it wishes to renew the Franchise. In the event the **COMPANY** fails to provide the **MUNICIPALITY** with a timely renewal notice, this Franchise shall terminate at the end of

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the Initial Term. If this Franchise terminates for failure of the **COMPANY** to provide the **MUNICIPALITY** a renewal notice as required in this Section 4.3, the rights of the parties shall be as set forth in Sections 4.5 and 4.6 of this Franchise.

4.4 Rights of the **MUNICIPALITY** on Renewal. Except as otherwise provided in Section 4.3, the Renewal Term shall take effect upon the expiration of the Initial Term, unless within ninety (90) days after receipt of the renewal notice, the **MUNICIPALITY** finds and so notifies the **COMPANY** in writing, giving specific reasons therefor that: the **COMPANY** has not satisfactorily performed all material obligations under the Franchise during such term; any material condition hereof is no longer enforceable in accordance with its terms; or that the material conditions herein are no longer adequate to protect the public interest. In the event of the foregoing and while not foregoing any rights the **MUNICIPALITY** may have under law, both parties mutually agree that they will negotiate in good faith to agree to renewal conditions. However, in the event that a mutual agreement cannot be achieved, the **MUNICIPALITY** may terminate the Franchise and this Franchise at the end of the Initial Term and upon such termination all rights and obligations between the parties shall cease except for the obligation to pay any outstanding Franchise fees and other amounts due to the **MUNICIPALITY**, and defense and indemnification obligations as set forth in Section 6 of this Franchise. Provided the **MUNICIPALITY** determines that the **COMPANY** has satisfactorily performed all material obligations under the Franchise during the Initial Term, and could lawfully occupy Streets and provide Services during a renewal term, the **MUNICIPALITY** shall within 180 days prior to the termination of the Initial Term proffer a good faith renewal Franchise to the **COMPANY**. If accepted within 60 days of the proffer (or such longer period as the **MUNICIPALITY** may

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specify), the Franchise shall be deemed renewed on the proffered terms; if not timely accepted, or if rejected, this Franchise shall be terminated.

4.5 Rights and Obligations Upon Termination of Franchise. Upon termination of this Franchise, whether by expiration of the Initial or Renewal Term, by reason of Section 3.2 or 7 hereof, or by abandonment of the DAS by the **COMPANY**, all rights and obligations between the parties hereto shall cease other than (a) the obligation to pay outstanding Franchise fees and other amounts due to the **MUNICIPALITY**; and (b) defense and indemnification obligations as set forth in Section 6 of this Franchise. The **MUNICIPALITY** shall have no obligation whatsoever to grant a further renewal, and the disposition of the DAS shall be governed by Sections 4.6 and 4.7 of this Franchise, as applicable.

4.6 Disposition of the Fiber Optic Network Upon Termination. In the event of any termination of this Franchise, whether by expiration of the Initial or Renewal Term, by reason of Sections 3.2 or 7 hereof, or by abandonment of the DAS by the **COMPANY**, then the **COMPANY**, at the **MUNICIPALITY**'s election, shall remove the DAS, or portions of the DAS, installed on, over or under the Streets at the **COMPANY**'s own cost and expense, pursuant to Section 4.7 hereof.

4.7 Removal of the DAS. Upon any termination of this Franchise, the **MUNICIPALITY**, in its sole discretion, may, but shall not be obligated to, direct the **COMPANY** to remove, at the **COMPANY**'s sole cost and expense, all, or any portion designated by the **MUNICIPALITY**, of the DAS installed by the **COMPANY** from the Streets

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in accordance with all applicable requirements of the **MUNICIPALITY** and subject to the following:

- (i) this provision shall not apply to buried portions of the DAS which, in the opinion of the **MUNICIPALITY**, cannot be removed;
- (ii) in removing the DAS, or part thereof, the **COMPANY** shall refill and compact, at its own cost and expense, any excavation that shall be made by it and shall leave, in all material aspects, all Streets and other property in as good condition as that prevailing prior to the **COMPANY**'s removal of the DAS from the Streets and without affecting, altering or disturbing in any way any electric, telephone or other cables, wires, structures or attachments;
- (iii) the **MUNICIPALITY** shall have the right to inspect and approve the condition of such Streets, after removal and, to the extent that the **MUNICIPALITY** determines that said Streets and other property have not been left in materially as good condition as that prevailing prior to the **COMPANY**'s removal of the DAS, the **COMPANY** shall be liable to the **MUNICIPALITY** for the cost of restoring the Streets and other property to said condition;
- (iv) the performance bond, liability insurance and indemnity provisions of this Franchise shall remain in full force and effect during the entire period of removal and associated repair of all Streets, and for not less than one hundred twenty (120) days thereafter; and

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- (v) removal shall be commenced within thirty (30) days of the removal order by the **MUNICIPALITY** and shall be substantially completed within nine (9) months thereafter including all reasonably associated repairs of the Streets.
- (vi) If the **COMPANY** fails to comply with the **MUNICIPALITY**'s removal order pursuant to this Section 4.7, the **MUNICIPALITY** may remove the DAS at the **COMPANY**'s expense, and the **COMPANY** shall reimburse the **MUNICIPALITY** for all expenses within thirty (30) days after receipt of an invoice therefor.

The **COMPANY** may request the **MUNICIPALITY** to accept, at no cost to the **MUNICIPALITY**, title to all or any portion of the DAS, including any portion of the DAS that the **MUNICIPALITY** has ordered the **COMPANY** to remove. The **MUNICIPALITY** may, but shall not be obligated to, accept such title to all or any portion of the DAS that the **COMPANY** has offered to the **MUNICIPALITY**. If the **MUNICIPALITY** does not accept such title, the **COMPANY** shall comply with the **MUNICIPALITY**'s removal order and the **MUNICIPALITY** shall have all rights and remedies provided, including Section 4.7 and at law.

**5. INSURANCE**

**5.1 Company Insurance.** The **COMPANY** shall secure insurance prior to the commencement of any activity on the public streets of the **MUNICIPALITY**, and thereafter continuously maintain insurance during the Initial Term and any renewal thereof to protect it and the **MUNICIPALITY** from any claims which may arise directly or indirectly or result from its granting of this Franchise or the **COMPANY**'s operations under its Franchise, including but not limited to activity associated with the placement or maintenance of the **COMPANY**'s cables, whether such operations are performed by the **COMPANY**, or by anyone for whose acts the **COMPANY** may be liable. The insurance to be maintained by the **COMPANY** shall include, but not be limited to, the following:

- (i) Workers Compensation, including disability benefits and any other legally required employee benefits, shall be supplied in accordance with all applicable laws; and
- (ii) General Liability Insurance, in the amount of Three Million Dollars (\$3,000,000.00) per occurrence and Motor Vehicle Insurance in the following amounts:
- (iii) Bodily injury or death - \$3,000,000 per occurrence combined single limit of liability covering claims of both bodily injury and property damage.
- (iv) An umbrella policy in the amount of Five Million Dollars (\$5,000,000).

The limits required by this section (except as otherwise specified) may be met by a combination of primary and umbrella/excess liability insurance policies. The **COMPANY**'s general liability and any umbrella liability policy shall cover the indemnification obligation of the Company to the **MUNICIPALITY** specified in Section 6 of this Franchise. The **COMPANY** shall increase

the amount of any of its insurance policies should such an increase be required by any law of the State of Delaware or any rule or regulation of any public entity with appropriate jurisdiction.

5.2 Named Insured. All insurance policies, except workers compensation and disability policies, shall bear the name of the **COMPANY**, and shall name the **MUNICIPALITY** as an additional insured and shall be from an insurance company with an A.M. Best Insurance rating of "A" or better.

5.3 Cancellation Notice. All such **COMPANY** insurance policies shall be endorsed to provide for at least thirty (30) days prior written notice of cancellation for any reason except, non-payment of premium to the **MUNICIPALITY** from the carrier, it being understood that the **MUNICIPALITY** shall be named an additional insured. With respect to cancellation of coverage for non-payment of premium, the **COMPANY** shall provide written notice to the **MUNICIPALITY** within three (3) business days of receiving notice of cancellation from its insurance carrier for the non-payment of premium.

5.4 Evidence of Insurance. Prior to the commencement of any activities on the public streets, and throughout the duration of the Franchise and any extensions or renewals thereof, the **COMPANY** shall furnish to the **MUNICIPALITY** current certificates of insurance, naming the **MUNICIPALITY** as an additional insured up to the limits required by this Franchise. Failure to maintain said insurance shall constitute a default within the meaning of the terms of this Franchise. Upon request by the Municipality's Attorney, copies of all endorsements required under this Franchise shall also be timely furnished by the **COMPANY** to the Municipality's Attorney within thirty (30) days of said request. Upon request by the Municipality's Attorney, copies of all policies required under this Franchise may be reviewed at the Municipal Building, or at such other location as the parties may agree.



5.5 Approval. All insurance coverages shall be reviewed by the **MUNICIPALITY** as to the form of the policies and certificates of insurance and no work shall commence prior to the approval of said policies by the **MUNICIPALITY**, which approval shall be processed expeditiously. All insurance coverage shall be with a company authorized to do business in the State of Delaware. The **MUNICIPALITY** shall have the right to approve the insurance company at the time of, or at any time following, execution of this Franchise subject to those requirements listed in paragraph 5 or, some other like and reasonable criteria.

5.6 Surety Bonds. The **COMPANY** shall obtain, or shall cause its contractor to obtain, each of the following surety bonds: (i) a construction bond running to the **MUNICIPALITY** in the face amount of \$50,000, to remain in effect while construction is taking place and for an additional ninety (90) days after work is completed and Service has been initiated; and (ii) a performance bond running to the **MUNICIPALITY**, which shall be multi-year, with good and sufficient corporate surety, approved by the Municipality's Attorney in the amount of \$25,000, to remain in effect for the remainder of the Initial Term. Said construction bond shall be conditioned upon the faithful performance of all work required in connection with the construction of the DAS, and said performance bond shall be conditioned upon the operation, maintenance and removal of the DAS as required herein. The **MUNICIPALITY**'s right to recover under these bonds shall be in addition to any other rights it may have pursuant to this Franchise or under law. For the **MUNICIPALITY** to recover from any surety, the **COMPANY** or the **COMPANY**'s contractor, as applicable, under this section for any failure to properly construct, operate, maintain or remove the DAS and/or any alteration, repair, maintenance or restoration of Municipal facilities in connection with such construction, operation, maintenance or removal, it is not necessary that the **MUNICIPALITY** first perform such work. The bonds shall provide and the **COMPANY**, for itself or for its contractor, as applicable, agrees that, upon

receiving written notification from the Municipality of the reasonable cost of said alteration, repair, maintenance, or restoration, the **COMPANY**, or its contractor, as applicable, shall pay and upon a failure to do so after thirty (30) days, the surety shall pay immediately said amount upon demand or other related costs occasioned by any such default. Each such bond shall contain a covenant or endorsement of the surety to provide thirty (30) days written notice by registered mail of such surety's intention to cancel, to both the Municipality Attorney's office and the **COMPANY**.

5.7 Right to Require Replacement of Bond or Insurance. If the financial conditions of any bonding or insurance company issuing a performance bond or insurance policy pursuant to Section 5 materially and adversely change, the **MUNICIPALITY** may, at any time, require that any such bond or insurance policy be replaced with such other bond or other insurance policy consistent with the requirements set forth in this Section 5.

5.8 Qualified Companies. The bonds and all insurance policies called for in this Franchise shall be issued by companies authorized to do business in the State of Delaware rated "A" or better by A.M. Best and Co. and satisfactory to the Municipality Attorney. The bonds shall be in form and substance satisfactory to the Municipality Attorney.

5.9 Replacement Insurance and Bonds. The **COMPANY** shall, in the event of any cancellation notice under Section 5.3 or 5.6, obtain, pay premiums for, and file with the Municipality Attorney written evidence of the issuance of replacement bonds or policies prior to the expiration of any such bonds or policy. Failure to carry or keep such insurance and bonds in force throughout the period set forth in Section 5 shall constitute a default of this Franchise. The **MUNICIPALITY** reserves the right to stop any work related to the DAS until proper evidence of insurance and bonds is furnished.

6. **INDEMNIFICATION** Except for the negligence or willful misconduct of the **MUNICIPALITY** or its officers, agents, representatives contractors and volunteers, the **COMPANY** hereby indemnifies and holds the **MUNICIPALITY**, its officers, agents, representatives, volunteers performing authorized **MUNICIPALITY** functions, and employees harmless from and against all acts and omissions, expenses, including, without limitation, reasonable attorneys' fees, losses and claims, demands, payments, suits, actions, recoveries, and judgments of any nature and description resulting from claims arising out of the grant of this Franchise, or the procedures leading thereto, any act or omission of the **COMPANY**, its agents or employees, representatives, or sub-contractors in the construction, operation, maintenance, repair or service of the DAS in the **MUNICIPALITY**, or any portion thereof, or of any failure to comply with any law, ordinance, or regulations, or by reason of any suit or claim for royalties, Franchise fees, or infringement of copyright or patent rights, or by reason of any action arising from the **COMPANY**'s performance under this Franchise or of any provision of this Franchise. In the event of the commencement of any action against the **MUNICIPALITY**, or its officers, agents, volunteers performing authorized **MUNICIPALITY** functions, or employees, which is within the scope of this indemnification, the **MUNICIPALITY** will promptly give notice thereof to the **COMPANY**, and the **COMPANY** will have the right to select and furnish counsel for the defense of any such action, provided such counsel is reasonably acceptable to the **MUNICIPALITY**, which acceptance shall not be unreasonably withheld, at no cost or expense to the **MUNICIPALITY**. The **MUNICIPALITY** will cooperate with the **COMPANY** as reasonably required for the defense of any such action. Both parties hereby waive the right to recover punitive or consequential damages from the other party.

7. **BREACH, REMEDIES, DEFAULT AND TERMINATION** In addition to any other rights and powers granted to the **MUNICIPALITY** under this Franchise, the

**MUNICIPALITY** may terminate this Franchise and all rights and privileges of the **COMPANY** hereunder, or in the alternative, impose a reasonable penalty as allowed under law, upon the occurrence of any of the following:

(i) if the **COMPANY** fails to perform any of its covenants, agreements and obligations under this Franchise involving the payment of money, which shall continue for a period of thirty (30) days after the **MUNICIPALITY**'s written notice of such failure; or

(ii) if the **COMPANY** fails to perform any of its nonmonetary covenants, agreements and obligations under this Franchise and such failure continues uncured for thirty (30) days after written notice of such failure from the **MUNICIPALITY**, provided that in the case of any failure that is susceptible to cure by the **COMPANY** but cannot with diligence be cured within thirty (30) days, it shall not constitute grounds for termination hereunder if the **COMPANY** shall have commenced curative action within such thirty (30) day period and thereafter diligently proceeds to effect such cure as soon as possible thereafter provided such cure is completed no later than one hundred twenty (120) days after the **MUNICIPALITY**'s written notice of such failure; or

(iii) if any assignment, transfer or other disposition of the DAS is made in violation of this Franchise; or

(iv) if the **COMPANY** provides services via the DAS not specifically authorized by this Franchise without first obtaining a modification of this Franchise, or other authorization from the Municipality;

(v) if there is a dissolution or liquidation of the **COMPANY**, or the admission in writing of the **COMPANY** of its inability to pay its debts as they become due, or the failure by the **COMPANY** to lift any execution, garnishment or attachment of such consequence as will impair the **COMPANY**'s ability to perform substantially its obligations pursuant to this

Franchise, or the commission by the **COMPANY** of any act of bankruptcy, or the adjudication of the **COMPANY** for the benefit of its creditors or the entry by the **COMPANY** into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the **COMPANY** in any proceeding for the reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding instituted under the provisions of any bankruptcy act or under any similar act in any domestic or foreign jurisdiction which may now be in effect or hereafter enacted, or within one hundred twenty (120) days after the commencement of any such proceeding against the **COMPANY**, such proceeding shall not have been dismissed, or the filing of an answer admitting or not contesting the material allegations of a petition against it in such proceeding, or the appointment without the consent or acquiescence of the **COMPANY**, of any trustee, receiver or liquidator of the **COMPANY** or of any material part of its properties, if within ninety (90) days thereafter such appointment shall not have been vacated, or if the **COMPANY** shall seek or consent or acquiesce in the appointment of any trustee, receiver or liquidator of itself or any material part of its properties; or

(vi) if the **COMPANY** fails to keep or to cause to be kept in full force and effect its [required state authorizations]; or

(vii) if the **COMPANY** attempts to evade any material provision of the Franchise or practices any fraud or deceit upon the **MUNICIPALITY**. For purposes of this Section 7(vii), a “material” provision shall include, but shall not be limited to, any provision which requires the **COMPANY** to pay any non-disputed financial obligation which is not subject to a bona fide dispute and/or matters dealing with the public health and safety; or

(viii) if any policy of insurance carried on behalf of the **MUNICIPALITY** with respect to the DAS or this Franchise shall be canceled or rendered void unless a suitable

replacement of such insurance is made prior to the effective date of any cancellation or voiding;  
or

(ix) if the DAS is abandoned either during construction before becoming operational or after becoming operational for a period of 180 consecutive days; or

(x) if construction of the DAS is not commenced within one (1) year of pole and/or conduit make-ready, which is defined as that process required by the **MUNICIPALITY**, local exchange carrier, and/or the local energy utility, for the preparation of utility poles and/or underground conduit systems, as the case may be, to receive DAS Equipment facility installation; or

(xi) the DAS is not operational on or before eighteen (18) months from the date of execution of this Franchise. For purposes of this Franchise, the DAS will be deemed operational when the system is carrying traffic over the DAS either in a test mode and/or generating revenue. In the event the DAS is not operational on or before eighteen (18) months from the date of execution of this Franchise, the **COMPANY** must submit to the **MUNICIPALITY** documentation regarding the **COMPANY**'s due diligence in pursuing the construction of the DAS since the date of this Franchise. If the delay in operation of the DAS results solely or substantially from events not in the control of the **COMPANY**, other than a lack of financing, then the **MUNICIPALITY** will consider granting an extension of time to the **COMPANY** beyond the aforementioned deadline; or

(xii) if the **COMPANY** fails to comply with its representation that it has adequate financial resources to construct the DAS as warranted in paragraph 3.1(ii) of this Franchise; or

(xiii) if the **COMPANY** fails to remove or relocate the DAS as directed by the **MUNICIPALITY** pursuant to Section 4.7 hereof.

The obligations of the **COMPANY** hereunder are subject to the force majeure provisions of subsection 13.8.

**8. COMPENSATION TO THE MUNICIPALITY**

**8.1 Franchise Fee.**

In order to compensate the **MUNICIPALITY** for the rights granted in this Franchise, **COMPANY** shall pay to the **MUNICIPALITY**, on an annual basis, an amount equal to five percent (5%) of Gross Revenues (the "Fee"). The Fee shall be payable for the period commencing with the Effective Date and ending on the date of termination of this Franchise. The **COMPANY** shall make any payment of the Fee that may be due and owing within forty-five (45) days after each anniversary of the Effective Date of this Franchise. Within forty five (45) days after the termination of this Franchise, the Fee shall be paid for the period elapsing since the end of the last calendar year for which the Fee has been paid.

**8.2 Reports and Receipt of Payment.** The **COMPANY** shall furnish to the **MUNICIPALITY** with each payment of the Fee a statement, executed by an authorized officer of the **COMPANY** or his or her designee, and certified to the best of such individual's knowledge, showing, by revenue category, the amount of Gross Revenues for the period covered by the payment. If the **COMPANY** discovers any error in the amount of compensation due, the **MUNICIPALITY** shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the **MUNICIPALITY** through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the **MUNICIPALITY** of any payment of the Fee shall not be deemed to be a waiver by the **MUNICIPALITY** of any breach of this Franchise occurring prior thereto, nor shall the acceptance by the **MUNICIPALITY** of any such payments preclude the **MUNICIPALITY**

from later establishing that a larger amount was actually due or from collecting any balance due to the **MUNICIPALITY**.

8.3 Other Costs. A onetime fee of Eight Thousand Five Hundred dollars (\$8,500) shall be payable to the Municipality to cover the legal fees and other costs incurred in connection with the processing and preparing this Franchise, payable within thirty days of full execution of this Franchise by both parties.

8.4 No Credits or Deductions. The compensation and other payments to be made pursuant to this Section 8 shall not be deemed to be in the nature of a tax (real property or other) and shall not be deducted from Gross Revenue except for the purpose of determining the **COMPANY's** income, and shall be in addition to any and all taxes or other fees or charges (including but not limited to customary permit fees) that the **COMPANY** shall be required to pay to the **MUNICIPALITY** or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the **COMPANY**. The **COMPANY** shall comply with the applicable provisions of Delaware state property tax law.

8.5 As additional compensation to the **MUNICIPALITY** for use of the Streets, and to minimize disruption caused by repeated construction in the Streets and promote efficient management and use of the Streets, in the event the **COMPANY** installs any conduit for its own use, the **COMPANY** at its own cost and expense except for the cost of materials shall also install conduit for the **MUNICIPALITY's** Municipal purposes in the same locations where the **COMPANY** is engaging in new construction to install conduit for the **COMPANY's** own use and at such time as the **COMPANY** is engaging in such new construction, for which the **MUNICIPALITY** shall reimburse the **COMPANY** for all costs of materials. "Municipal purposes" shall mean only those purposes that are governmental in nature. In no event shall the **MUNICIPALITY** use any conduit installed by the **COMPANY** for any purpose that shall be



commercial in nature or that shall result in the **MUNICIPALITY** providing conduit capacity or services in competition with the **COMPANY**.

Notwithstanding anything herein to the contrary, the **COMPANY**'s conduit installation obligations for the benefit of the **MUNICIPALITY** in this Section 8.6 shall be applicable only in the event that the **COMPANY** shall engage in new construction to install conduit for the **COMPANY**'s own use pursuant to this Franchise. "New construction" shall mean that the **COMPANY** shall excavate or dig in the Streets to install its conduit under the Streets.

**8.6** Documentation. Each payment shall be accompanied by a report as set forth in Section 8.2. All such documents shall be considered to constitute trade secrets and shall be treated in accordance with such classification.

**8.7** Examination. Upon reasonable written notice by a duly authorized official of the **MUNICIPALITY** to the **COMPANY**, the **MUNICIPALITY** or its representatives shall have the right to examine any officer of, and audit documents of, the **COMPANY** or the **COMPANY**'s parent or an Affiliated Party as to the correctness, completeness or accuracy of any record or report with respect to the payment of Franchise fees to the Municipality. Any audit by the **MUNICIPALITY** hereunder shall be at its expense unless such audit shall disclose an underpayment of more than three (3%) percent of the total Franchise fees payable during the period of the audit, in which event the **COMPANY** shall reimburse the **MUNICIPALITY** for the expense of such audit. If, as a result of such an audit, an underpayment is discovered in an amount greater than three (3%) percent of the Franchise fee due for any given period, there shall be a penalty imposed equal to one and one half (1½%) percent of the underpaid amount, compounded monthly, until such amount is paid in full.

**8.8** Conditions of Acceptance. No acceptance of any payment shall be construed as an accord that the payment is in fact the correct amount, nor shall such acceptance of payment be

construed as a release of any claim the **MUNICIPALITY** may have for further or additional sums payable under the provisions of this Franchise. It is the understanding of the parties hereto that this Franchise shall not cause the **MUNICIPALITY** to expend any monies hereunder except for it to process payments and perform other actions contemplated by this Agreement. The **COMPANY** shall have no right to offset, or otherwise receive credit for, the Franchise fees the **COMPANY** pays to the **MUNICIPALITY** pursuant to Section 8, against any other payments the **COMPANY** shall be obligated to make to the **MUNICIPALITY**, including, without limitation, real estate taxes.

9. **DISPUTE RESOLUTION**. Except as otherwise provided in this Franchise, either the **MUNICIPALITY** or the **COMPANY** may, but is not obligated to, use alternative dispute resolution to resolve any disputes, claims or controverted matters arising out of this Franchise.

10. **SEVERABILITY**. All terms and conditions of this Franchise are subject to all applicable rules and regulations, and subject to any required approvals. If any provision of this Franchise is held, by the state utility commission or any court or Federal or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is ordered by such court or agency to be modified in any way in order to conform to the requirement of any such law, rule or regulation, said provision shall be considered a separate, distinct and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof.

11. **CONSTRUCTION**

11.1 **General Construction Requirements**. In the construction, reconstruction, maintenance and repair of the DAS, the **COMPANY** shall utilize materials of good and durable quality and shall perform or cause to be performed, all work so associated with the DAS in a

safe, thorough and reliable manner, subject to the approval of the Municipality as set forth in Section 11.3.

11.2 Compliance with Regulations. All work, including all working conditions and Equipment, associated with the construction, operation, installation, maintenance and repair of the DAS shall comply with the following (while requiring the COMPANY to comply with the following is not an impairment of any rights the COMPANY may obtain under this Franchise, the COMPANY is not waiving its right to otherwise challenge the lawfulness of any Federal, State, County or local law, ordinance, rule, regulation or judicial or agency order):

(i) All applicable Federal, State and local laws, rules and regulations now or hereafter lawfully enacted, and

(ii) All applicable laws, codes, ordinances, rules and regulations of the **MUNICIPALITY** now or hereafter lawfully enacted, and all requirements for payment of fees, taxes and other payments under such laws, codes, rules or regulations, and

(iii) Any insurance requirements associated with street openings in the **MUNICIPALITY**'s laws, ordinances or regulations, shall be deemed to have been satisfied by the **COMPANY**'s compliance with the insurance requirements contained herein unless such requirements for street openings are stricter than those set forth herein, and in such case, the **COMPANY** shall comply with such stricter requirements. Any bonds required for street opening may be satisfied by the posting of a "Master Bond" for all such street opening in an amount to be agreed upon and shall comply with the provisions of Sections 5.6, 5.7 and 5.8.

(iv) All construction, installation, maintenance and repair shall also comply with the National Electric Safety Code (NESC) and the National Electric Code (NEC) and the **MUNICIPALITY** shall have the right to reasonable inspections to ensure such compliance.

11.3 Municipality Rights. The **MUNICIPALITY** reserves the right to inspect all construction and installation work for compliance with applicable laws, codes, ordinances and regulations of the **MUNICIPALITY** and with the provisions of this Franchise, and may order corrections of any violations. The **COMPANY** agrees to cure any such violations within thirty (30) days (or if any such violation cannot be cured within such thirty (30) day period, and if the **COMPANY** shall commence to cure the same within such thirty (30) day period and thereafter shall prosecute the curing of the same with diligence, then the time within which such failure or breach may be cured shall be extended for such period as may be reasonably necessary to complete the same with diligence), and if the **COMPANY** fails to do so, then the **MUNICIPALITY** may cure same and charge the **COMPANY**. The **COMPANY** shall reimburse the **MUNICIPALITY** within thirty (30) days of the receipt of an invoice. In this event, the **COMPANY** hereby waives any claims for damages to the DAS that may arise during the **MUNICIPALITY**'s actions.

11.4 Restoration of Damage. The **COMPANY**, at its sole expense, shall restore all damage to property, both public and private, caused by the construction, operation, maintenance or repair of the DAS.

(a) Such restoration shall be made as soon as practicable after completion of work necessitating the restoration, and shall be done in a manner approved by the Municipality.

(b) In no event shall such restoration be made later than ten (10) days, weather permitting, after the **COMPANY**'s receipt of written notification from the owner of the property so damaged (provided that if any such failure cannot be cured within such ten (10) day period, and if the **COMPANY** shall commence to cure the same within such ten (10) day period and thereafter shall prosecute the curing of the same with diligence, then the time within which such failure or breach may be cured shall be extended for such period as may be reasonably necessary

to complete the same with diligence), or unless otherwise mutually agreed by the **COMPANY** and the property owner, provided that if any such damage involves pavements, sidewalks, driveways, water mains, storm or sanitary sewers, traffic control conduits, cable, or loop system, other public facilities or other emergency circumstances, the damage shall be repaired to the **MUNICIPALITY**'s satisfaction as promptly as possible. In the event the **COMPANY** fails to so restore, the **MUNICIPALITY** has the right, but not the obligation, to restore same and charge the **COMPANY** therefor. The **COMPANY** shall reimburse the **MUNICIPALITY** within thirty (30) days of receipt of an invoice for such restoration. The **COMPANY** hereby waives any claims for damages to the DAS that may arise as a result of the **MUNICIPALITY**'s actions.

11.5 Hazards. Any openings or obstructions in Streets, public ways, or other municipal or public property made by the **COMPANY** shall be guarded and protected at all times, subject to the approval of the Municipality, by the placement of adequate barriers, fences, borderings or other protective devices at the sole expense of the **COMPANY**. During the periods of dusk and darkness, the protective devices shall be clearly designated by warning lights. The **COMPANY** shall indemnify the **MUNICIPALITY** with respect to any claim in connection herewith and provide insurance thereof, as provided in Sections 5 and 6 of this Franchise.

11.6 DAS Locations.

In all areas of the **MUNICIPALITY** where the distribution facilities of the pole owner are scheduled to be moved underground the **COMPANY** shall relocate its DAS Equipment unless otherwise expressly permitted by the **MUNICIPALITY**. In other areas the DAS shall be installed aboveground, but must be relocated if the distribution facilities of the pole owner are required to be moved underground, unless otherwise expressly permitted by the **MUNICIPALITY** by separate authorization. In areas where wire facilities are underground, but

public utilities are permitted to install equipment cabinets aboveground, the **COMPANY** may install similar equipment aboveground, subject to the provisions of Section 2.

11.7 Non-Interference of Construction. As set forth in Sections 2.7 and 2.8: (i) all lines, cables and distribution equipment, including poles and necessary appurtenances erected by the **COMPANY** within the Franchise Area, shall be located so as not to obstruct or interfere with the proper use of Streets and other places, and to cause minimum interference with the rights of property owners who abut any of the said Streets, and places, and not to interfere with existing public utility installations, other franchisees, or other authorized users of the Streets or public safety systems, including traffic control system; (ii) the **COMPANY** shall have no vested right in any location, and such construction shall be removed by the **COMPANY** at its own cost and expense whenever the same restricts or obstructs or interferes with the operation or location or any future operation or location of said streets, alleys and public ways and places; and (iii) notwithstanding anything stated in this Franchise, the **MUNICIPALITY** shall have no obligation hereunder to repair, replace or construct any Street, alleys, public ways, public places, highways or any part thereof.

11.8 Grade or Location Changes. As set forth in Sections 2.7 and 2.8, if at any time during the term of this Franchise, the **MUNICIPALITY** shall elect to alter or change the grade or location of any Street, alley or other public way, or shall engage in any construction or other public works in, on or under the Streets, or other construction as relevant authorities shall deem necessary, the **COMPANY** shall, upon reasonable notice by the **MUNICIPALITY**, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures at its own expense, and in each instance comply with the standards and specifications of the **MUNICIPALITY**.

11.9 No Interference with other Utilities. As set forth in Sections 2.7 and 2.8, the **COMPANY** shall not place poles, conduits, or other fixtures above or below ground where the

same will interfere with any gas, electricity, telephone fixtures, water hydrants, traffic control system and loops, or other utility use, and all such poles, conduits or other fixtures, in or upon any street shall be so placed as to comply with all requirements of the **MUNICIPALITY** or other applicable authority, and comply with local regulations, including the aesthetic provisions thereof.

11.10 Temporary Relocation. The **COMPANY** shall, on request of any person or entity holding a permit or Franchise issued by the **MUNICIPALITY** or other appropriate authority, temporarily move its wires or fixtures to permit the moving of buildings or other objects, with the expense (based on an estimate consistent with the cost as may be standard in the industry) of such temporary relocation to be paid in advance by the person requesting same, and the **COMPANY** shall be given not less than the greater of fourteen (14) days' advance notice or the amount of notice given to other affected utilities, to arrange for such temporary relocation. In no event shall the **MUNICIPALITY** be required to pay for any such temporary relocation. If the prepayment exceeds the actual cost, the **COMPANY** shall rebate the difference to the requesting party.

11.11 Tree Trimming. Subject to the prior approval of the Municipality, the **COMPANY** shall have the authority, provided it abides by any local laws, ordinances or regulations to trim any trees upon and overhanging the streets, alleys, sidewalk, or public easements of the **MUNICIPALITY** to prevent the branches of such trees from coming in contact with the wires or cables of the **COMPANY**, except that at the option of the **MUNICIPALITY**, such trimming may be done by it, or under its supervision and direction, at the reasonable expense and cost of the **COMPANY**. All said tree trimming performed by the **COMPANY** or by the **MUNICIPALITY** or under its supervision or direction shall be accomplished in accordance with applicable law.

11.12 Company Identification. The **COMPANY** shall ensure that all of its vehicles and employees (excluding the vehicles and employees of the **COMPANY**'s contractors) are clearly identified to the general public as being associated with the **COMPANY** while engaged in outside construction maintenance or service. Said identification requirement may be satisfied by the carrying of and presentment, upon request, of a company identification card.

## **12. RECORDS AND REPORTS**

12.1 Maintenance and Inspection of Records. As set forth in Section 8.7, the **COMPANY** shall, at all times, maintain complete and accurate books of account and records of its business and operations and all other records required by this Franchise, and the **COMPANY** shall allow the **MUNICIPALITY** to inspect and/or audit accounting and financial records of the **COMPANY** or any Affiliated Person with respect to the DAS, its construction, operation and maintenance, and the **COMPANY**'s obligations pursuant to this Franchise.

12.2 Location of Records. The records set forth above shall be maintained at the **COMPANY OFFICE** or such other address as the **COMPANY** may designate. Any records that cannot reasonably be copied shall be made available to the **MUNICIPALITY** at a local business office located within fifty miles of the **MUNICIPALITY** upon request affording reasonable notice therefore.

### 12.3 Submission of Information/Reports.

(a) The **MUNICIPALITY** may request the **COMPANY** to submit to the **MUNICIPALITY**, or identify sources for the availability of, such publicly available financial information as the **MUNICIPALITY** deems necessary or appropriate to confirm the continuing financial capability of the **COMPANY** to comply with the obligations of this Franchise, and to confirm compliance with the obligations of this Franchise.



(b) Upon the request of the **MUNICIPALITY**, the **COMPANY** shall promptly submit to the **MUNICIPALITY** any information or report that the **MUNICIPALITY** deems necessary or appropriate to carry out its authority to manage the Streets or to determine the **COMPANY**'s compliance with its obligations under this Franchise. Such information or report shall be in such form and contain such detail as the **MUNICIPALITY** may reasonably specify, and shall be accurate and complete.

12.5 Right of Inspection. As set forth in Sections 11.2(iv) 11.3, the **MUNICIPALITY** shall have the right to inspect the DAS of the **COMPANY** at any time for the purpose of determining compliance with this Franchise and applicable laws and regulations regarding the use of the Streets by the **COMPANY**.

**13. MISCELLANEOUS**

13.1 Amendment or Modification. This Franchise shall not be amended, modified or any provision waived, except by written agreement executed in the same manner as this Franchise. This Franchise constitutes the entire agreement between the parties and shall be interpreted under and according to the Laws of the State of Delaware. This Franchise shall be binding upon the successors, assigns and heirs of the **COMPANY**. Any failure by the **MUNICIPALITY** at any time to insist upon strict compliance with the terms of this Franchise shall not constitute a waiver of any rights the **MUNICIPALITY** may have and shall not have the effect of precluding the **MUNICIPALITY** from thereafter declaring such non-compliance to be a default hereunder.

13.2 Notices. Notices required to be sent to the **MUNICIPALITY** shall be sent by overnight courier or certified mail, addressed to

Town of Elsmere  
Attn: Town Manager

11 Poplar Avenue  
Elsmere, DE 19805

With a Copy to:  
Town Solicitor  
11 Poplar Avenue  
Elsmere, DE 19805

Notices required to be sent to the **COMPANY** shall be sent by overnight courier or certified mail to:

Crown Castle NG East, LLC  
c/o Crown Castle USA Inc.  
2000 Corporate Drive  
Canonsburg, PA 15317 – 8564  
ATTN: E. Blake Hawk, General Counsel, Legal Department

With a copy to:

Crown Castle NG East, LLC  
c/o Crown Castle USA Inc.  
2000 Corporate Drive  
Canonsburg, PA 15317 – 8564  
ATTN: SCN Contracts Management

13.3 Delegation of Authority. Except where otherwise specified, the **MUNICIPALITY** may delegate to any **MUNICIPALITY** officer, employee, agency or commission, the authority to exercise any of the **MUNICIPALITY**'s rights and authorities hereunder and shall so notify the **COMPANY** in writing of such delegation.

13.4 Right to Enforce Company Covenants. As set forth in Section 2.8, if the **COMPANY** shall fail to perform any of its obligations under this Franchise, the **MUNICIPALITY** may perform the same at the expense of the **COMPANY** (i) immediately and without notice, in the case of emergency and (ii) in any other case, if such failure continues after thirty (30) days from the date of the giving of notice by the **MUNICIPALITY** to the **COMPANY** of the **MUNICIPALITY**'s intention to perform same. The **COMPANY** shall

reimburse the **MUNICIPALITY** for all such expenses within thirty (30) days of the receipt of an invoice therefor. The **COMPANY**'s or any successor's obligations under this section shall survive the expiration or termination of this Franchise. The **COMPANY** hereby waives any rights or claims that it may have against the **MUNICIPALITY** arising from the **MUNICIPALITY**'s actions under this Section.

13.5 No Recourse. Except as expressly provided in this Franchise or at law, the **COMPANY** shall have no recourse against the **MUNICIPALITY** for any loss, expense or damage resulting from the terms and conditions of this Franchise or because of the **MUNICIPALITY**'s failure to have authority to grant the rights conveyed in this Franchise. The **MUNICIPALITY** has made no representations or warranties hereunder except that this Franchise has been duly authorized and executed by the Relevant Officials. The **COMPANY** agrees to this Franchise relying upon its own investigation and understanding of the power and authority of the **MUNICIPALITY** to grant the **COMPANY** its rights under the Franchise.

13.6 Acceptance and Acknowledgment. The **COMPANY** acknowledges that it has carefully read, understands and accepts without reservation the obligations imposed by the terms and conditions herein. The **COMPANY** further agrees that to its knowledge as of the effective date of this Franchise, the terms and conditions of this Franchise are lawful, valid and enforceable under applicable law, and that the **COMPANY** will not, at any time in any forum, seek to void or challenge, under applicable law as in effect on the effective date of this Franchise, any terms or conditions contained herein or the processes or procedures pursuant to which this Franchise was entered. Nothing contained herein is to be construed so as to prevent the **COMPANY** from contesting any determination of the **MUNICIPALITY** in connection with this Franchise. All lawsuits commenced by the parties shall be in courts or agencies of competent jurisdiction.

13.7 Parties. Except where the context would require a different meaning, all reference to the **COMPANY** or the **MUNICIPALITY** include each of its Affiliated Parties. No member, individually or collectively, of the **MUNICIPALITY** or agent or employee of the **MUNICIPALITY** or the **COMPANY** assumes any individual or personal liability by the execution of this Franchise or by reason of default in the performance of any of the terms hereof. All such liability of such officials, agents and employees of the **MUNICIPALITY** and agents and employees of the **COMPANY**, unless otherwise required by law, is hereby released as a condition of and in consideration for the execution of this Franchise. The signatories to this Franchise do however, by execution thereof, warrant their authority to sign this Franchise.

13.8 Force Majeure. Neither party shall be responsible for any failure to fulfill any of the terms or provisions of this Franchise if such failure is caused by revolutions, insurrections, riots, wars, acts of enemies, national emergency, strikes, floods, fires, acts of God, or by any other cause not within the control of the party whose performance is interfered with which by the exercise of reasonable diligence such party is unable to prevent, whether of the class of causes enumerated above or not.

13.9 Approval of the Municipality. An approval by the **MUNICIPALITY** may be given by any department or officer that has jurisdiction of a matter. By way of example and not limitation, the Building Inspector must grant certain approvals associated with construction of a structure, while the **MUNICIPALITY's** Engineer must grant certain approvals related to boring in the Streets.

#### **14. CHANGE OF CONTROL, ASSIGNMENT, ETC.**

14.1 Assignments, Etc. Neither the Franchise, nor any rights or obligations of the **COMPANY** in the DAS, nor any part of the capacity of the DAS, shall be assigned, sold or transferred in any manner, in whole or in part, to any Person, nor shall title therein, either legal or

equitable, or any right or interest therein, pass to or vest in any Person, either by act of the **COMPANY** or any Affiliated Person, by act of any Person holding Control of or any interest in the **COMPANY**, Equipment or Franchise, by operation of law, or otherwise, without the prior written consent of the **MUNICIPALITY**. The transactions referred to in this paragraph are collective referred to as “Transfers.”

After the date of this Franchise, no change in Control of the **COMPANY** or and Affiliated Entity that directly or indirectly owns or Controls the **COMPANY** shall occur without the prior written notice to the **MUNICIPALITY** as set forth below in Section 14.2.

Notwithstanding the foregoing, Transfers shall not include the assignment by the **COMPANY** of this Franchise to any entity wholly owned by an entity that also wholly owns the **COMPANY**, so long as (a) the **MUNICIPALITY** is given notice of the transaction; (b) the entity to which the Franchise is assigned agrees to sign the Franchise, and accept its terms unconditionally, and assumes responsibility for all acts and omission of its predecessors known and unknown; (c) the ultimate parent warrants that it will ensure that the new Franchisee will have the resources required to comply with this Franchise; and (d) the transaction is not part of a larger transaction through which the control of the **COMPANY** or its parents will change.

14.2 Transfer Procedure. The **COMPANY** shall submit an application for approval of any Transfer to the Municipality, along with

(i) A copy of the proposed agreement between the **COMPANY** and the proposed transferee or assignee or a summary of the major terms of the agreement including those terms that relate to the financial structure of the transferee or assignee;

(ii) an agreement from the proposed transferee or assignee assuming the provisions of this Franchise;

(iii) a statement setting forth in reasonable detail the identity of the proposed assignee or transferee, the nature of its business and its qualifications to maintain the DAS in the Streets; and

(iv) current financial information with respect to the proposed assignee or transferee to demonstrate that the proposed assignee or transferee has the financial resources necessary to perform the obligations of the **COMPANY** under this Franchise.

The **COMPANY** shall provide the **MUNICIPALITY** with: (i) additional information or documents reasonably requested by the **MUNICIPALITY** and related to the obligations of this Franchise and/or the **MUNICIPALITY**'s authority to manage the Streets and require fair and reasonable compensation, consistent with applicable law. It is not the intent or purpose of this provision to permit the **MUNICIPALITY** to regulate the Services provided by the **COMPANY** pursuant to this Franchise.

The **COMPANY** may, as part of an application, or independently via a petition containing the information required in subsections (i)-(iv), request the **MUNICIPALITY** to determine that no Transfer has occurred within the meaning of this Franchise. The **MUNICIPALITY** shall act upon a complete application or petition within 90 days of the provision of that application or petition to the **MUNICIPALITY**.

In the event that the **COMPANY** complies with the foregoing, the **MUNICIPALITY** shall not unreasonably withhold, delay or condition its consent to any Transfer so long as:

(i) the **COMPANY** shall have paid the **MUNICIPALITY** any reasonable costs incurred by the **MUNICIPALITY** to review the requested consent, including, without limitation, reasonable attorney's fees;

(ii) the proposed assignee or transferee is a reputable entity and the **MUNICIPALITY** has been furnished with reasonable proof thereof;

(iii) the proposed assignee or transferee is of sound financial condition as reasonably determined by the **MUNICIPALITY** given the obligations to be assumed by the proposed assignee or transferee;

(iv) the proposed assignee or transferee agrees to enter into an agreement approved by the **MUNICIPALITY**, pursuant to which it assumes the obligations under this Franchise, and responsibilities for past acts and omissions, known and unknown; and

(v) each other Person involved in any action described in Section 14.1 agrees to enter into an agreement containing such conditions as may be reasonably specified by the **MUNICIPALITY**, and the **MUNICIPALITY** determines that the Transfer, as conditioned, presents no additional risks to it or to the public or property.

(vi) the proposed assignee or transferee meets all of the applicable requirements of federal, state and local law to operate and maintain a DAS, including approval from state regulators.

14.2 Pledge of Controlling Interest. None of the provisions of this Section 14 shall apply to a pledge in trust, mortgage or hypothecation of the **COMPANY**'s common stock or portions of the DAS to secure an indebtedness of the **COMPANY**. Nothing in this Section 14 shall be deemed to prohibit any assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the Equipment, or any right or interest therein, for financing purposes.

14.3 Disclosure of Ownership. The **COMPANY** is an indirect wholly-owned subsidiary of Crown Castle International Corp. ("Crown Castle"). Information regarding the ownership of Crown Castle is available at the investors' portion of [www.crowncastle.com](http://www.crowncastle.com).

14.4 Consent Not A Waiver. As provided in Section 13.1, the grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver of any other rights of the **MUNICIPALITY**.

\_IN WITNESS WHEREOF, the parties have executed this Franchise on the \_\_ day of \_\_\_\_\_, 2016, pursuant to Resolution No. \_\_\_\_\_ of the [municipal board/council] adopted \_\_\_\_\_, 2016.

Town of Elsmere, Delaware

By \_\_\_\_\_

[Representative of Municipality]

Crown Castle NG East LLC

By \_\_\_\_\_

[Representative of Company]



**MUNICIPAL ACKNOWLEDGMENT**

STATE OF DELAWARE, NEW CASTLE COUNTY) SS.:

On the \_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally came [\_\_\_\_\_], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**COMPANY ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_ ) SS.:

On the \_\_ day of October, 2016, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally came [\_\_\_\_\_], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

