

# Right-of-Way Facility Agreement

Licensee (Provide name, address and contact number):

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Licensee proposes to install, maintain, operate and/or use certain telecommunications network facilities within a specified portion of the County's right-of-way exclusively for telecommunications service.

## Section I: Grant of License

The County does hereby grant to Licensee a nonexclusive Revocable License to install and maintain its telecommunication facilities within the County's right-of-way, subject to and conditioned upon the compliance of Licensee, its agents, employees, contractors, successors and assigns with the provisions of this Agreement and all current and future resolutions, regulations and permits of the County, provided that any such future resolutions or regulations shall not impair any lawful contractual rights of Licensee contained herein, and shall be applied on a nondiscriminatory basis among telecommunications providers. Licensee must obtain a permit prior to installing a telecommunications facility or performing maintenance on its telecommunications facilities. The exact location of the installation or maintenance within the County right-of-way will be governed by the permit. The term of this License is five (5) years, subject to annual compliance inspections. Noncompliant installations are subject to immediate License termination after written notice, which will include no less than 30 days' opportunity to cure, is posted by regular mail to the Licensee at the address above. Noncompliant installations which pose a threat to the safety and welfare of the public are subject to immediate License termination and removal, with written notice thereafter to Licensee.

## Section II: Conditions and Terms

1. The County reserves the right to lay, and to permit to be laid, sewer, gas, water, and other pipelines, and electric, telecommunications or other communications cables, wires, and conduits, and to do, and to permit to be done, any underground and overhead work that may be deemed necessary or proper by the County in, across, along, over or under the County right-of-way, and to change any curb or sidewalk or the grade of the County right-of-way. In permitting such work to be done, the County shall not be liable to Licensee for any damages not willfully and directly caused by the sole fault of the County; provided, however, nothing herein shall relieve any other person or entity other than the County from liability for damage to Licensee's network. All

work performed will be in accordance with the County's standard drawings and specifications, the County's design guidelines for wireless communication facilities in the right-of-way, and related requirements, all of which may be updated from time to time and are or will be available at \_\_\_\_\_.

2. In the event that the County authorizes abutting landowners to occupy space under the surface of the County right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Licensee.

3. Removal of obsolete facilities:

A. When Licensee opens a trench, accesses a conduit or boring, or is working on aerial locations, it shall remove all obsolete network facilities it owns from such locations.

B. When Licensee opens a trench, accesses a conduit or boring, or is working on aerial locations, it shall notify all franchisees, Licensees and utilities of such work, so that they may remove their obsolete facilities from such locations. Licensee shall cooperate with all other franchisees, Licensees and utilities located in the County right-of-way in their removal activities.

C. When Licensee receives notification from any franchisee, Licensee or utility that it is opening a trench or access to borings, Licensee shall remove all of its obsolete facilities from such locations while they are open.

D. In the event this Agreement is terminated or expires without being renewed, Licensee shall remove its facilities from the County right-of-way within one hundred eighty (180) days of such termination or expiration unless the parties agree that all or a portion of the facilities shall remain in place. If, upon termination or expiration of this Agreement without being renewed, Licensee fails to remove its facilities from the County right-of-way within one hundred eighty (180) days of the County's written request to remove such facilities, all facilities shall become the property of the County without any compensation due to Licensee.

E. Whenever Licensee intends to discontinue using any network facility within the County right-of-way, Licensee shall submit to the Director of Engineering [Designate someone here if no engineer] for the Director's approval a completed application describing the facility and the date on which Licensee intends to discontinue using the facility. Licensee may remove the facility or request that the County permit it to remain in place. Notwithstanding Licensee's request that any such facility remain in place, the County may require Licensee, at Licensee's sole cost, to remove the facility from the County right-of-way area or to modify the facility in order to protect the public health and safety or otherwise serve the public interest.

F. In order to protect the public health or safety, or to alter, widen, reconstruct, abandon, repair, upgrade or otherwise modify the County right-of-way, the County may require that Licensee perform a combination of modification and removal of the facility.

Licensee shall complete such removal and/or modification in accordance with a schedule set out by the County. Until such time as Licensee removes or modifies the affected facility as directed by the County, or until the rights to and responsibility for the affected facility are accepted by another person or entity having authority to construct and maintain such facilities, Licensee shall be responsible for all necessary repairs, relocations of the facility, and maintenance of the County right-of-way area in the same manner and degree as if the facility were in active use, and Licensee shall retain all liability.

G. In order to ensure that obsolete facilities are removed in accordance with this Agreement, Licensee shall, at its own expense, obtain a bond or other form of security acceptable to the County, in an amount of \$ [REDACTED]. The bond or other form of security must remain in effect during the entire term of this Agreement.

H. For purposes of this Agreement, the term “obsolete” shall mean no longer used and useful in the provision of telecommunications service.

4. Whenever by reason of the changes in the grade of any right-of-way or in the location or the manner of constructing any sewer, gas, water or other pipeline, or any electric, telecommunications or other communications cables, wires, conduits or any other underground or overhead structure for any purpose whatsoever, it shall be deemed necessary by the County to alter, change, adapt or conform the underground or overhead portion of Licensee’s network thereto, such alterations or changes shall be promptly made by Licensee when ordered in writing by the County, without claim for reimbursement or damages against the County. If such requirements impose a financial hardship on Licensee, Licensee may present alternative proposals to the County, and the County shall give due consideration to such alternative proposals. If the County requires Licensee to adapt or conform its network, or in any way or manner to alter, relocate or change its network to enable any other entity or person, except the County, to use, or to use with greater convenience, the County right-of-way, Licensee shall not be required to make such changes until such other entity or person shall have undertaken to reimburse Licensee for any loss or expense which will be caused by, or arise out of such change, alteration or relocation of Licensee’s network; provided, however, that the County shall in no event be liable for such reimbursement, and provided further that Licensee shall not be entitled to defer such adaptation or relocation of its facilities where such other entity or person cannot be required to reimburse Licensee under applicable law.

5. In the event that Licensee has not relocated those of its affected facilities which are located in the County right-of-way, within a reasonable length of time (as determined by the County’s Director of Engineering [Designate someone else if no engineer]) prior to the County’s commencement date for construction in the County right-of-way, the County shall have the right to relocate or cause to be relocated the affected portion of Licensee’s network, and Licensee shall reimburse the County for all costs of relocation. County shall not be liable for any damage to Licensee’s facilities.

6. During the term of this Agreement, and any extension or renewal thereof, Licensee shall be liable for the acts or omissions of any person or entity used by Licensee (including, without limitation, any affiliate, contractor or subcontractor of Licensee) when such person or entity is

involved directly in the construction, installation, maintenance or operations of Licensee's network as if the acts or omissions of such person or entity were the acts or omissions of Licensee.

### Section III: Revocation of License

1. If the County has reason to believe that Licensee is materially in violation of this Agreement or other applicable County resolutions, rules, regulations or policies, the County shall notify Licensee in writing of the violation setting forth the nature of such violation. Within ten (10) days of receipt of such notice, Licensee shall respond in writing providing an explanation or documentation to support that the violation did not occur. Except where the violation involves a circumstance posing imminent danger to personal safety or health or imminent damage to property, Licensee shall be allowed thirty (30) days to cure violations after written notice is received from the County; provided if the violation is such that it cannot reasonably be cured in thirty (30) days, and Licensee commences the necessary work or action to cure such violation within such thirty (30) days and diligently proceed to cure it, Licensee may be allowed such additional time to cure it as may be necessary, so long as the work or action to cure the violation is being diligently pursued as determined by the County.

2. In addition to all other rights and powers retained by the County under this Agreement or otherwise, the County reserves the right to revoke this License, and all rights and privileges of Licensee hereunder shall cease, in the event of material breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A material breach by Licensee shall include, but shall not be limited to, the following:

- A. Licensee's violation of any material provision of this Agreement or any material rule, order, resolution, regulation or determination of the County made pursuant to this Agreement;
- B. Licensee's failure to compensate the County properly as required in this Agreement;
- C. Licensee's attempt to evade any material provision of this Agreement or to practice any fraud or deceit upon the County or County residents, businesses or property owners;
- D. Licensee's failure to complete its construction and provide services as described herein;
- E. Licensee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this Agreement without the County's prior written acknowledgement;
- F. Licensee's failure to comply with any lawful County resolution, rule, regulation or policy.

Licensee agrees that this Right-of-Way Facility Agreement shall be governed by the laws of the State of Tennessee.

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

LICENSEE:

COUNTY OF \_\_\_\_\_:

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

STATE OF TENNESSEE

COUNTY OF \_\_\_\_\_

Before me, of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be \_\_\_ (or other officer authorized to execute the instrument) of \_\_\_\_\_, the within named Licensee, a \_\_\_\_\_, and that such \_\_\_\_\_ or officer as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the \_\_\_\_\_ as \_\_\_\_\_.

WITNESS, my hand and seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC (Signature)

MY COMMISSION EXPIRES:

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