

**First Reading:** \_\_\_\_\_  
**Second Reading:** \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE GRANTING A FRANCHISE TO ZAYO GROUP, LLC, FOR THE PURPOSE OF ALLOWING IT TO CONSTRUCT, INSTALL AND OPERATE CERTAIN TELECOMMUNICATIONS WIRES AND CABLING WITHIN THE PUBLIC RIGHTS-OF-WAY IN ORDER TO PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE; AND PRESCRIBING PENALTIES FOR THE VIOLATIONS OF THE PROVISIONS HEREIN.

---

This Franchise Ordinance and Agreement (this "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date") by and between the City of Chattanooga, Tennessee, (the "City"), and ZAYO GROUP, LLC and its subsidiaries, a Delaware limited liability company authorized to do business within the State of Tennessee, and having its principal office at ZAYO GROUP, LLC, 1805 29th Street, Boulder, CO 80301 ("ZAYO").

**RECITALS**

**WHEREAS**, ZAYO is a limited liability company duly organized and is authorized by the State of Tennessee and the Federal Communications Commission to provide Telecommunications Services; and

**WHEREAS**, ZAYO proposes to construct, maintain, operate and use a fiber optic telecommunications network within a specified portion of the City's rights-of-way for exclusively telecommunications service; and

**WHEREAS**; the City desires to permit, under the terms and conditions set forth herein, the placement and use of said facilities within certain of its rights-of-way, subject to the compliance of ZAYO, its agents, employees, contractors, successors and assigns with all current and future lawful ordinances, resolutions, and other current and future lawful regulations of the City, and with the terms of this Agreement; and

**WHEREAS**, based on Franchisee's representations and information, and in response to its request for a franchise, the City Council has determined that the terms and conditions set forth herein, the grant of a new, nonexclusive Franchise to Franchisee on the terms and conditions herein and subject to applicable law, is consistent with the public interest; and

**WHEREAS**, the City and Franchisee have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE:

**SECTION 1.** In consideration of the recitals and the promises contained herein, and in exchange for the City's grant of a new, non-exclusive Franchise to ZAYO GROUP LLC as its Franchisee;

THE DULY AUTHORIZED SIGNATORIES TO THIS FRANCHISE AGREEMENT DO HEREBY AGREE AS FOLLOWS:

Article 1. Definitions.

For the purpose of this Franchise, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings:

"Affiliate" means a person that directly, or indirectly, through one or more intermediaries, owns, controls, is owned or controlled by, or is under common ownership or control with another person.

"City" means the City of Chattanooga, Tennessee, and where appropriate, its officers, agents, employees and volunteers.

"City Property" means and includes all City owned rights-of-way within Public Rights-of-Way set out in the area included in the map attached to this Franchise.

"Communications Act" means the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, and as may be amended from time to time.

"Conduit" means a duct, pipe, tube, channel or similar item for carrying wires, lines, cables, fiber optic cable, under existing city rights-of-ways within the area included in the map attached to this Franchise or other technology for the provision of Telecommunications Service approved in writing by the Mayor.

"Franchise" means the right of the telecommunications carrier to operate a telecommunications system in the city for a limited term and in a manner in agreement with this chapter.

"Franchisee" means ZAYO Group, LLC, its successors, assigns and transferees.

"Law" means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement, as amended, now in effect or subsequently enacted or issued during the term of this Franchise, including, but not limited to, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub.L.No. 104-104 101(a), 110 Stat. 70

codified at 47 U.S.C., and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the governing state authority pursuant thereto.

"Mayor" means the Mayor of the City of Chattanooga or a designee in the Department of Transportation for the City having knowledge of City rights-of-ways set out in the area included in the map attached to this Franchise.

"Other Ways" means the highways, streets, alleys, utility easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.

"Overhead Facilities" means utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

"Person" means any natural person, corporation, company, association, joint stock company or association, firm, partnership, Limited Liability Company, joint venture, trust, individual and any other legally recognized entity, private or public, whether for profit or not-for-profit and includes the officers, agents, employees or representatives of such entity where appropriate.

"Public Way" or "Rights-of-Way" means and includes all public streets and utility easements, as those terms are defined herein, now or hereafter held or controlled by the City, but only to the extent of the City's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for the construction and operation of Telecommunications Facilities.

"State" means the State of Tennessee.

"Telecommunications Carrier" means and includes every person that directly or indirectly owns, controls, operates or manages plant, circuits, equipment or property (Telecommunications Facilities) within the City, used or to be used for the purpose of offering telecommunications service.

"Telecommunications Facilities" means the plant, equipment and property, including but not limited to, fiber optic cables, copper cables, lines, wires, Conduits, inner ducts, pedestals, poles, electronics and other appurtenances or technology used or to be used to provide or offer Telecommunications Services set out in the area included in the map attached to this Franchise.

"Telecommunications Provider" means and includes every person who provides Telecommunications Service over Telecommunications Facilities without any ownership or management control of the Telecommunications Facilities.

"Telecommunications Service or Services" means the providing or offering to a user for rent, sale or lease, or in exchange for other value received, the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. Telecommunications Service does not include cable service.

"Underground Facilities" means Telecommunications Facilities or other utility facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

"Utility" or "Public Utility" shall be defined in accordance with applicable state laws regarding public utilities.

"Utility Easement" or "Public Utility Easement" means any easement held by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with Telecommunications Facilities.

Article 2: Grant of Authority. ZAYO is hereby granted a nonexclusive revocable franchise to construct, maintain, and operate its Telecommunications Facilities in, over, under, and across Public Rights-of-Way within the City, as shown on EXHIBIT 1, attached hereto and incorporated herein by reference ("the City Right-of-Way"), subject to and conditioned upon the compliance of ZAYO, its agents, employees, contractors, successors and assigns with the provisions of this Agreement, the Land Development office regulations, and all current and future ordinances, resolutions, and regulations of the City of Chattanooga, provided that any such future ordinances, resolutions, or regulations shall not impair any lawful contractual rights of Zayo contained herein, and shall be applied on a nondiscriminatory basis among telecommunications providers. The City specifically reserves the right to grant other licenses, or franchises or other rights, as it deems appropriate for other Persons to install Telecommunications Facilities on a competitively neutral and nondiscriminatory basis.

Article 3: Compliance with Applicable Law. City and ZAYO shall at all times comply with all applicable Laws.

Section 4: Permits. As required by Law, ZAYO, its agents, employees, contractors, successors and assigns shall obtain from the City Engineering Department permits for the excavation, construction, installation of facilities, repair of facilities or any work to be performed within the City Right-of-Way prior to commencement of said work; provided, however, that in emergency situations, where work on existing facilities must be done immediately and a permit cannot be reasonably and practically obtained prior to the work, a permit shall not be required prior to commencement of work. In such emergency circumstances, however, ZAYO shall obtain a permit the next regular City business day following said emergency. For purposes of this section, an "emergency" shall be defined as a reasonably unforeseen occurrence with an imminent potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.

4.1 ZAYO shall construct and maintain its Attachments at ZAYO's expense in accordance with the requirements and specifications of APPENDIX 2-P attached hereto and incorporated herein by reference. The provisions of the version of the National Electrical Code and National Electrical Safety Code in effect at the time the Attachment is made, and any amendments thereto or replacements thereof, shall apply to all Attachments unless the parties specify different standards or any governmental or regulatory authority make different standards applicable. Changes or amendments to standards and specifications shall not be applied retroactively unless required by law.

4.2 Changes or amendments to APPENDIX 2-P may only be made in a writing signed by both parties. The separately executed APPENDIX 2-P shall become a part of this Franchise. The terms and conditions of this Franchise shall govern all modifications or amendments to APPENDIX 2-P.

4.3 Failure to comply with this Article or APPENDIX 2-P to this Franchise shall constitute a default of this Franchise unless the failure is cured as hereinafter provided.

Article 5: Issuance of Permits and Permit Fee. Upon execution of this Franchise and performance of the obligations set forth herein to be performed prior to permit issuance, the City will issue all permits necessary to the installation of ZAYO's Telecommunications Facilities, in accordance with the City's standard permitting procedures. ZAYO shall pay to the City for each permit granted by the Land Development Office a fee for the review of plans and inspection of the work in accordance with the ordinances, resolutions, rules, regulations and policies of the City.

Article 6: Term and Revocation of Franchise.

6.1 The initial term of this Franchise (the "Term") shall be for a period of five (5) years beginning on the date of its execution by all of the appropriate officials shown on the signature page of this Franchise. The initial term shall be automatically renewed for three (3) consecutive renewal terms of five (5) years, unless with party provides ninety (90) days written notice to the other party of its intent not to renew or unless terminated in accordance with the provisions of this Franchise.

6.2 If the City has reason to believe that ZAYO is materially in violation of this Agreement or other applicable City ordinances, resolutions, rules, regulations or policies, the City shall notify ZAYO in writing of the violation setting forth the nature of such violation. Within ten (10) days of receipt of such notice, ZAYO 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, ZAYO shall be allowed thirty (30) days to cure violations after written notice is received from the City; provided if the violation is such that it cannot reasonably be cured in thirty (30) days, and ZAYO shall commence the necessary work or action to cure such violation within such thirty (30) days and diligently proceed to cure it, ZAYO 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 City.

6.3 In addition to all other rights and powers retained by the City under this Agreement or otherwise, the City reserves the right to revoke this license, and all rights and privileges of ZAYO 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 ZAYO shall include, but shall not be limited to, the following:

- 6.4 ZAYO's violation of any material provision of this Agreement or any material rule, order, regulation or determination of the City made pursuant to this Agreement;
- 6.5 ZAYO's failure to compensate the City properly as required in this Agreement;
- 6.6 ZAYO's attempt to evade any material provision of this Agreement or to practice any fraud or deceit upon the City or City residents, businesses or property owners;
- 6.7 ZAYO's failure to complete its construction and provide services as described herein;
- 6.8 ZAYO's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this Agreement without the City's prior written approval;
- 6.9 ZAYO's failure to comply with any lawful City ordinance, resolution, rule, regulation or policy.

Article 7: Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise, or its application to any Person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

Article 8: Assignment. ZAYO shall not assign this Franchise, in whole or in part, without the prior consent of the City Council, which consent, shall not be unreasonably withheld. Notwithstanding the foregoing, without such consent ZAYO may a) assign to an Affiliate, b) assign collaterally to a lender as security for a debt or c) assign as part of a merger, corporate reorganization or sale of all or substantially all of its assets or stock.

Article 9: No Property Interest. This Franchise is not a grant by the City of any fee simple property interest and is made subject and subordinate to the prior and continuing right of the City to use the Public Rights-of-Way as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles and for other municipal uses and with right of ingress and egress, along, over, across and in said Public Rights-of-Way.

Article 10: Public Works. Should the location of Telecommunications Facilities of ZAYO interfere with any proposed construction, maintenance or repair of public works or improvements by the City, ZAYO, after reasonable advance written notice from the City, at ZAYO's sole expense, shall protect or relocate the Telecommunications Facilities or any applicable part thereof, as directed by the City or other governmental authorities having jurisdiction. Notwithstanding the foregoing, the City shall not require ZAYO to relocate Telecommunications Facilities more than one time in any five (5) year period.

Article 11: Use of Public Ways.

11.1: ZAYO, in any opening it shall make in the Public Ways of the City, shall be subject to the provisions of this Franchise and to all applicable ordinances, codes and regulations of the

City. The Telecommunications Facilities of ZAYO shall be located so as not to interfere with the public safety or with the convenience of persons using the Public Ways.

11.2: The City reserves the right, by ordinance or resolution of the City Council, or otherwise through proper representatives of the City, to designate specifically the location of the Telecommunications Facilities of ZAYO with reference to municipal facilities, such as sewer and water mains, drainage facilities, fiber optic cable, signal poles and lines and similar services, other facilities, such as public telephone utilities, public electric utilities, public cable television utilities, and railway communication and power lines, in such a manner as to protect the public safety and public and private property and to facilitate the creation of a convenient, attractive and harmonious community. Failure by the City to so designate does not relieve ZAYO of its responsibilities in matters of public safety as provided in this Franchise. ZAYO shall construct, maintain and locate its Telecommunications Facilities so as not to interfere with the construction, location and maintenance of sewer, water, drainage, electrical, signal and fiber optic facilities of the City.

11.3: The City does require that written permits, in any and all cases, be obtained by ZAYO whenever it becomes necessary for ZAYO to excavate in the Public Ways in order to install, construct, maintain or extend the Telecommunications Facilities. Such permits are applicable to any and all types of excavations in the Public Ways, and the Board of Commissioners may, by resolution, establish a fee for each excavation made in a Public Way. Such permits may require the particular part or point of the Public Ways where construction or excavation is to be conducted, the length of time in which such permit shall authorize such work to be done and the hours of each day during which such work shall be undertaken. A single permit may be issued for multiple excavations; provided, however, any Public Way opening fee established by the Board of Commissioners shall apply to each excavation made in Public Ways of the City. Exceptions to the requirement for a written permit may be allowed in cases of emergencies (conditions involving a service outage or danger of personal injury or property damage). In the case of emergency excavations made in the Public Ways without permit, ZAYO shall make a report of each such excavation to the City within two (2) working days and pay such fee as may be established by the Board of Commissioners for excavations in Public Ways. Any permit applications and inspections related to repair of excavations shall be promptly acted upon by the City so as not to unreasonably delay ZAYO in discharging its public service obligation. Any fees for permits or inspections charged by the City shall be based on the City's costs of administering the program of issuing permits and conducting inspections.

11.4: After installation, repair or extension of the Telecommunications Facilities or any portion thereof or any pavement cut by ZAYO in any Public Way of the City, the incidental trenches or excavations shall be refilled by ZAYO in a manner reasonably acceptable to the Mayor or his designee in the Department of Transportation. Pavement, sidewalks, curbs, gutters or any other portions of Public Ways damaged, disturbed or destroyed by such work shall be promptly restored and replaced with like materials to their former condition by ZAYO at its own expense; however, where it is necessary, and if authorized by the City, in order to achieve the former conditions, ZAYO shall use materials whose type, specification and quantities exceed those used in the installation, and ZAYO at its own expense shall provide such materials. Where a cut or disturbance is made in a section of sidewalk or paving, rather than replacing only the area actually cut, ZAYO shall replace the full width of the existing sidewalk or appropriate

sections of paving as determined by the City Engineer and the full length of the section or sections cut, a section being defined as that area marked by expansion joints or scoring or as determined by the City Engineer. ZAYO shall maintain, repair and keep in good condition for a period of one (1) year following such disturbance all portions of Public Ways disturbed by ZAYO, provided such maintenance and repair shall be necessary because of defective workmanship or materials by ZAYO or its agents or contractors.

11.5: ZAYO shall promptly remove or correct any obstruction, damage, or defect in any Public Way that was caused by ZAYO in the installation, operation, maintenance or extension of ZAYO's Telecommunications Facilities. Any such obstruction, damage, or defect which is not promptly removed, repaired or corrected by ZAYO after proper notice to do so, given by the City to ZAYO, may be removed or corrected by the City, and ZAYO shall reimburse the City for the reasonable, actual cost thereof. If ZAYO fails to so reimburse the City, the City shall have the right, in addition to any other rights existing at law or equity, to place a lien upon any of ZAYO's properties or assets within the Public Ways, subject to any prior existing liens. Any expense, cost, or damages incurred for repair, relocation, or replacement to City water, sanitary sewer, storm sewer, storm drainage, communication facilities or other property resulting from construction, operation, maintenance or extension of ZAYO's Telecommunications Facilities shall be borne by ZAYO and any and all expense and cost incurred in connection therewith by the City shall be fully reimbursed by the ZAYO to the City.

(a) If weather or other conditions do not permit the complete restoration required by this Article, ZAYO shall temporarily restore the affected Public Ways or property. Such temporary restoration shall be at the ZAYO's sole expense and ZAYO shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(b) ZAYO or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property and shall comply with all federal, state, and local laws and regulations, including the Manual on Uniform Traffic Control Devices flagging requirements.

11.6: ZAYO shall not open, disturb or obstruct, at any one time, any more of the Public Ways than reasonably may be necessary to enable it to proceed in laying or repairing its Telecommunications Facilities. ZAYO shall not permit any Public Ways so opened, disturbed or obstructed by it in the installation, construction, repair or extension of its Telecommunications Facilities to remain open or the Public Way disturbed or obstructed for a longer period of time than reasonably shall be necessary. In all cases where any Public Ways shall be excavated, disturbed or obstructed by ZAYO, ZAYO shall take all precautions necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals and other devices necessary or proper to adequately give notice, protection and warning to the public of the existence of all actual conditions present.

11.7: Whenever the City shall widen, reconstruct, realign, pave or repave, or otherwise work on any Public Ways, or shall change the grade or line of any Public Ways, or shall construct or reconstruct any water, sanitary sewer, storm sewer, drainage or communications facility of the City, it shall be the duty of ZAYO at ZAYO's cost and expense to move, alter or



relocate its Telecommunications Facilities or any part thereof as reasonably requested by the City. Upon written notice by the City Manager of the City's intention to perform work as specified above, ZAYO shall within a reasonable period of time accomplish its obligation in accordance with and to conform to the plans of the City for such construction, reconstruction or improvements. Should ZAYO fail, refuse or neglect to comply with such notice, the Telecommunications Facilities or any part thereof may be removed, altered or relocated by the City, the cost of which shall be paid by ZAYO, and the City shall not be liable to ZAYO for any damages resulting from such removal, alteration or relocation.

11.8 ZAYO or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property and shall comply with all federal, state, and local laws and regulations, including the Tennessee Department of Transportation flagging requirements.

11.9 All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation maintenance, repair or replacement of Telecommunications Facilities must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work. ZAYO shall abide by all ordinances and regulations governing trees and landscaping and shall abide by all directions of the City Forester issued pursuant to such ordinances and regulations.

#### Article 12. Fees and Charges

12.1 ZAYO shall pay to the City the fees and charges as specified in and in accordance with the terms and conditions of APPENDIX 1-P, attached hereto and incorporated herein by reference.

12.2 Nonpayment of any amount due under this Franchise shall constitute a default of this Franchise unless the non-payment is cured as hereinafter provided.

12.3 At City's request ZAYO shall furnish a bond or other satisfactory evidence of security in such amount as the City may from time to time require, in an initial amount of the annual franchise fee as calculated in APPENDIX 1-P, to guarantee payment of any sums which may become due to City for fees due hereunder or charges for work performed for ZAYO's benefit pursuant to this Franchise, upon termination of any franchise issued hereunder.

12.4 The parties shall effect changes or amendments to APPENDIX 1-P by separate execution of APPENDIX 1-P as so modified. The separately executed APPENDIX 1-P shall become part of this Franchise. The terms and conditions of this Franchise shall govern all modifications or amendments to APPENDIX 1-P and all other Appendices. To the extent there is an inconsistency between this Franchise and any appendix, this Franchise shall govern.

12.5 ZAYO shall continue to be responsible for franchise fees for use of its rights-of-ways until City receives written notice of removal, whichever is sooner.

12.6 In the event of a change in the Attachments or the use or operation of the Attachments, or a change in any statute, decision or rule that causes the City to incur additional cost or perform additional work as a result of the franchise after the Effective Date, ZAYO shall

reimburse the City for any such costs actually incurred by City and City provides satisfactory evidence of such costs to ZAYO.

Article 13: Maintenance, Repair and Emergency Work: ZAYO shall maintain its Telecommunications Facilities in a good and safe condition and in a manner that complies with all applicable Laws, codes and regulations.

13.1 The construction, expansion, reconstruction, excavation, use, maintenance and operation of ZAYO's network, facilities and property shall be subject to all lawful police regulations of the City and performed in accordance with the City's standards, policies and code requirements for utility location and coordination. In addition to any other City regulations or requirements, thirty (30) days prior to the commencement of construction of Zayo's network routes, Zayo shall provide the City Engineer, Director of Transportation, Director of Land Development and the Director of Information Systems with a copy of the construction work plans and drawings. Modification or expansion of ZAYO's authorized routes must be approved by the Director of Land Development. ZAYO shall be responsible for any additional fees due to expanded authorized routes as required in APPENDIX 1-P "Compensation". ZAYO shall not proceed with construction until the plans and drawings have been approved in writing by the Director of Engineering.

13.2 Within thirty (30) days of completion of each of ZAYO's network routes, ZAYO shall supply the Director of Land Development and the Director of Information Systems with a complete set of "as built" drawings for approval. Further, after each replacement, relocation, reconstruction, expansion, or removal of its facilities, ZAYO shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the Director of Land Development and the Director of Information Systems. ZAYO shall provide annually a complete set of "as built" drawings incorporating these changes.

13.3 Prior to the commencement of any work on its network, ZAYO shall provide its fiber optics location data, which shall conform to the City's standards, to the Director of Information Systems. Such data shall adhere to the City's computer mapping system.

13.4 Upon request of the City, ZAYO shall remove and abate any portion of the network or any facility that is dangerous to life or property, and if ZAYO, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of ZAYO, all without compensation or liability for damages to ZAYO. ZAYO shall promptly restore the City Right-of-Way to its condition prior to ZAYO's construction, maintenance or excavation, to the satisfaction of the Director of Engineering. ZAYO shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its network.

13.5 Each of ZAYO's network routes shall be completed within twelve (12) months from the commencement of its construction, unless otherwise authorized by the Director of Land Development or an additional building permit shall be required to be obtained.

Article 14: Safety Standards. ZAYO shall at all times employ a reasonable standard of care and shall install and maintain and use approved methods and devices for preventing failure or accidents which are likely to cause damages, injuries or nuisances to the public.

Article 15: Police Power. All rights and privileges granted hereby are subject to the lawful exercise of the police power of the City to adopt and enforce local laws, rules and regulations necessary to the health, safety and general welfare of the public.

Article 16: Removal of Unauthorized Facilities: Within thirty (30) days following written notice from the City, ZAYO shall, at its own expense, remove any unauthorized Telecommunications Facility from the Public Ways or other areas of the City. A Telecommunications Facility is unauthorized and subject to removal in the following circumstances:

16.1: Upon expiration or termination of this Franchise, unless replaced by a subsequent Franchise between the City and ZAYO that becomes effective prior to the expiration or termination of this Franchise.

16.2: Upon abandonment of a Telecommunications Facility within the Public Ways of the City.

16.3: If the system or facility was constructed or installed without the prior issuance of a required construction permit.

16.4: If the system or facility was constructed or installed at a location not permitted by this Franchise.

Article 17 Emergency Removal or Relocation of Facilities. The City retains the right to move any Telecommunications Facilities located within the Public Ways or other areas of the City as the City may reasonably determine to be necessary in response to an imminent public health or safety emergency; provided that prior to taking such action the City will notify ZAYO in writing of any such emergencies that may impact its Telecommunications Facilities by either attempting to notify ZAYO or the appropriate notification center.

Article 18: Damage to Grantee's Facilities. The City, its officers, agents, employees, or volunteers shall not be liable for any damage to or loss of any Telecommunications Services or any Telecommunications Facility within the Public Ways or any other areas of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work or activity or lack of any activity of any kind by or on behalf of the City; except to the extent caused by the City's negligence or willful misconduct. Nothing herein shall be construed to relieve either ZAYO or the City of the provisions of T.C.A. §65-31-101 et seq., as the same be amended (Underground Utility Damage Prevention Act).

Article 19: Facilities Maps. After completion of construction of the Telecommunications Facilities, ZAYO shall provide the City with "as built" drawings and an accurate map or maps in an electronic form agreed to by City and ZAYO certifying the location of all of its underground Telecommunications Facilities within the City. To the extent City and ZAYO cannot agree on an appropriate electronic form for the above referenced map or maps, ZAYO agrees to provide City with such information in hard copy, electronic and paper format. ZAYO shall also provide the City with a list of the Public Ways along which its above ground Telecommunications Facilities is located. ZAYO shall provide updated electronic and paper maps in accordance with this Article on an annual basis if any changes have occurred.

ZAYO shall keep and maintain, and make available to the City for inspection and copying at the City's offices upon ten (10) working days' notice, all books, records, contracts, accounts, documents and papers of ZAYO relating to ZAYO's operation and construction in the City Right-of-Way, and ZAYO's compliance with this Agreement or applicable City ordinances, resolutions, rules, regulations or policies. ZAYO agrees to assist the City with timely access to records in its possession as may be required by the Tennessee Open Records law at the time of any request during the term of this Agreement.

Article 20: Insurance Requirements. ZAYO shall at its sole expense obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement, including risks associated with the use and occupancy of the City Right-of-Way. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better.

1. *Commercial General and Umbrella Liability Insurance*; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than \$2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

a. Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of ZAYO including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.

b. For any claims related to this project, ZAYO's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of ZAYO's insurance and shall not contribute with it.

c. At the sole discretion of the City, dedicated limits of liability for this specific project may be required.

2. *Automobile Liability Insurance*; including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Zayo.

3. *Workers' Compensation Insurance*. Zayo shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Zayo shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be

engaged in such work unless such employees are covered by Zayo's workers' compensation insurance coverage.

4. *Environmental Impairment Liability.* Zayo shall maintain environmental impairment liability insurance with limits of not less than \$1,000,000 per occurrence.

5. *Pollution Liability Insurance.* Zayo shall procure pollution liability coverage, ISO CG 0039, or equivalent. If the coverage is written on a claims-made form:

a. The "Retro Date" must be shown and must be before the date of the contract or the beginning of contract work.

b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work and acceptance by the City.

c. If coverage is cancelled or non-renewed and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, Zayo must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

d. A copy of the claims reporting requirements must be submitted to the City for review.

6. *Excess Liability Insurance.* Zayo shall maintain excess liability insurance in addition to the insurance specified above with a limit of not less than \$10,000,000 each occurrence. This coverage shall be on a follow form basis.

7. *Other Insurance Requirements.* Zayo shall:

a. Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that said insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except upon 30 days' prior written notice to the Chattanooga City Attorney, 100 East 11<sup>th</sup> Street, Suite 200, Chattanooga, TN 37402. Proof of policy provisions regarding notice of cancellation will be required.

b. Upon the City's request, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance. Copies of policies will only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy will only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to specific coverage wording or endorsement(s), proof of such policy wording or endorsement(s) will be required.

c. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.

d. Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.

e. If ZAYO cannot procure insurance through an insurer having an A.M. Best rating of A-VIII, ZAYO may, in the alternative, place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered only upon appeal to the City Attorney.

f. Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/ Employer's Liability insurance (unless subcontractor's employees are covered by ZAYO's insurance) in the same manner as specified for ZAYO. ZAYO shall furnish subcontractors' certificates of insurance to the City without expense immediately upon request.

Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Chattanooga prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the City.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by ZAYO for or with regard to the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.

All general liability policies must be written on an occurrence basis unless the City Attorney determines that a claims made basis is reasonable in the specific circumstance. Use of policies written on a claims made basis must be approved by the City Attorney and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed. Professional Liability and Environmental Liability (Pollution Coverage) are most commonly written on a claims made basis and are generally acceptable in that form.

Article 21: Indemnification of City. ZAYO shall defend, indemnify and hold harmless the City, its officers, employees and agents from any and all liabilities which may accrue against the City, its officers, employees and agents or any third party for any and all lawsuits, claims, demands, losses or damages alleged to have arisen from an act or omission of ZAYO in performance of this Agreement or from ZAYO's failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused by the negligence of the City, its agents or employees.

ZAYO shall save, indemnify and hold the City harmless from the cost of the defense of any claim, demand, suit or cause of action made or brought against the City alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the City; and ZAYO shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action upon written notice and demand for same by the City. ZAYO will have the right to defend the City with counsel of its choice that is satisfactory to the City, such consent not to be unreasonably withheld or delayed, and the City will provide reasonable cooperation in the defense as ZAYO

may request. ZAYO will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

ZAYO shall save, indemnify and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against City alleging liability referenced above. The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

Article 22: Bonds. ZAYO shall obtain and maintain, at its sole cost and expenses, for the benefit of and filed with the City Law Department, two (2) corporate surety bonds, each written with a surety company authorized to do business in the State of Tennessee and found acceptable by the City Attorney, in an amount to be determined by the Land Development Department depending upon the nature of the work to be performed and the permit fee. The first bond will guarantee the timely and safe construction of ZAYO's network (the "Construction Bond"). The second bond will secure ZAYO's performance of its obligations and faithful adherence to all requirements of this Agreement (the "License Agreement Bond").

22.1 The City reserves the right to reevaluate the bond amount after the first year of the initial term and to adjust the bond requirement or bond amount if deemed necessary or prudent by the City Attorney, it being agreed and understood that the Construction Bond will remain in full force and effect until project completion and acceptance. Provided, however, the Construction Bond shall not exceed the amount of the contract for the construction of the network that is subject to this Agreement, and the Construction Bond shall terminate when the construction of ZAYO's network is complete and such completion is certified in writing by ZAYO and accepted in writing by the City. Provided further, the License Agreement Bond shall not exceed the amount of \$75,000 and shall be maintained throughout the term of this Agreement. The initial License Agreement Bond will be written to run concurrently with the License Agreement's initial term. Additional extensions to the term of the Agreement will be bonded with a continuation certificate to the original License Agreement Bond (or on a subsequent original License Agreement Bond written by a different surety company, acceptable to the City Attorney, if necessary), executed by the surety company and by ZAYO, it being agreed and understood that the Surety's continuation certificate shall be limited to annual renewal extensions, and reissued annually. ZAYO shall provide both of these corporate surety bonds at the time of execution of this Agreement.

22.2 The Construction Bond shall provide, but shall not be limited to, the following condition: there shall be recoverable by the City, jointly and severally, from the principal and surety, any and all damages, losses or costs, including attorneys' fees, suffered by the City resulting from ZAYO's construction and installation of its network, and from the failure of ZAYO to construct and install that network safely and satisfactorily, and to complete its network within 18 months after the commencement of this Agreement.

22.3 The License Agreement Bond shall provide, but shall not be limited to, the following conditions: there shall be recoverable by the City, jointly and severally, from the principal and surety, any and all damages, losses or costs, including attorneys' fees, suffered by

the City resulting from Zayo's installation, operation or maintenance of its network, or from its breach of the terms of this Agreement.

22.4 Any extension to the prescribed time limit in subsection 22.2 for completion of the network within 18 months shall be authorized by the City Attorney. Such extension may be authorized only when the City Attorney determines that such extension is necessary and appropriate due to causes beyond the control of ZAYO.

22.5 The rights reserved to the City with respect to the bond are in addition to all other rights and remedies of the City, whether reserved by this Agreement or authorized by law or equity; and no action, proceeding or exercise of a right or remedy with respect to such bond shall affect any other rights or remedies the City may have.

22.6 The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond will not be cancelled or non-renewed by the surety until sixty (60) days after receipt by the City Attorney, by registered mail, of written notice of intent to cancel or not to renew the bond."

Article 23: Coordination of Construction Activities. ZAYO agrees to cooperate with the City and with other telecommunications providers and all construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer, to minimize public inconvenience, disruption or damages.

Article 24: Non-enforcement. Neither party shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other party, upon any one or more occasions, to insist upon such party's performance or to seek such party's compliance with any one or more of such terms or conditions of this Franchise.

Article 25: Controlling Law. Notwithstanding any conflicts of laws doctrines to the contrary, this Franchise shall be construed and enforced in accordance with the substantive law of the State of Tennessee and any applicable federal laws.

Article 26: Removal of Franchisee's Facilities. Upon termination of this Franchise, ZAYO shall promptly remove all Telecommunications Facilities from the Public Ways.

Article 27: Notices. All notices required or permitted to be given under this Franchise shall be in writing, addressed as set forth below, and shall be hand-delivered to the addressee, sent by Federal Express or similar overnight delivery service, or sent by U.S. Mail, certified and return receipt requested.

If to the City:  
Mayor's Office  
101 East 11th Street  
Chattanooga, TN 37402



with copies to the City Attorney at:

Chattanooga City Attorney  
100 East 11<sup>th</sup> Street, Suite 200  
Chattanooga, TN 37402

If to ZAYO:  
Zayo Group, LLC  
1805 29th Street  
Boulder, CO 80301  
Attn: General Counsel, ZPI

Article 28: Nondiscriminatory Access. Notwithstanding anything included in this Franchise to the contrary, in no event shall ZAYO be required to pay any fee, charge, cost, expense or compensation, or perform any service, that is (a) in excess of that amount permitted or directed by Law; or (b) not imposed by the City upon and performed by all other telecommunication providers or telecommunication carriers using the Public Rights-of-Way.

Article 29: Default and Termination. In the event either Party shall fail to observe or perform any of the terms and provisions of this Franchise and such failure shall continue for a period of thirty (30) days after receipt of written notice from the non-defaulting party (“Default”), then the non-defaulting party may terminate this Franchise, provided however, that where such Default cannot reasonably be cured within such period, and the defaulting party has proceeded promptly to cure the same and is prosecuting such cure with diligence, the time for curing such Default shall be extended for an amount of time, not to exceed sixty (60) days, as may be necessary under the circumstances to complete such cure. Notwithstanding the foregoing, the cure period for failure to pay money or failure to maintain required insurance coverage shall be ten (10) days after written notice. Upon the occurrence of a Default, as defined above, by either Party, the non-defaulting Party may exercise any and all remedies available at law or equity, including but not limited to termination of this Franchise.

SECTION 2. BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately after its passage.

Passed on second and final reading:\_\_\_\_\_

\_\_\_\_\_  
CHAIRPERSON

APPROVED:\_\_\_\_ DISAPPROVED:\_\_\_\_

\_\_\_\_\_  
MAYOR

ACCEPTANCE

The foregoing Franchise and its terms and conditions are hereby accepted.

This the \_\_\_\_ day of \_\_\_\_\_, 2016.

ZAYO GROUP, LLC

By: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**CITY OF CHATTANOOGA, TENNESSEE**

\_\_\_\_\_  
ANDREW BERKE, Mayor

\_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

## **APPENDIX 1-P SCHEDULE OF COMPENSATION AND CHARGES**

This APPENDIX 1-P is an integral part of the Franchise Agreement and contains the fees and charges governing the Attachments of Zayo Group, LLC in the corporate boundaries of the City of Chattanooga.

### **1. ANNUAL COMPENSATION TO CITY FOR FRANCHISE RIGHTS**

ZAYO acknowledges that the City is permitted to collect a fee that is reasonably related to the City's costs associated with owning, managing and maintaining public rights-of-way and that the amount of \$.0587 per linear foot of fiber placed in the City's right-of-way per year, is fair, reasonable and reasonably related to the pro-rata share ZAYO's facilities to be located in the public rights-of-way contribute to the City's overall costs associated with owning, managing and maintaining the public rights-of-way. ZAYO and the City agree that the compensation for this right-of-way use shall be \$\_\_\_\_\_ per year, based on an estimated \_\_\_\_\_ linear feet, until the City has a new study performed of its costs related to its ownership, management and maintenance of the public rights-of-way and how they should be assigned to organizations with facilities therein. The parties further agree that \$\_\_\_\_\_ per year is a reasonable estimate of these costs given that the actual costs are indeterminable or difficult to measure at the time of the parties' entry into this Agreement, and that it is the parties' mutual intent that this amount serve as a reasonable measurement of these costs until this Agreement expires or a new cost study is done, whichever occurs first.

In the event a new cost study is done by the City prior to the expiration of this Agreement, a new amount shall be reasonably recalculated in accordance with its findings. The new amount shall be the basis for future payments by ZAYO, and the parties will reconcile the amounts already paid by ZAYO under this Agreement, such reconciliation to include a refund to ZAYO of excess payments or additional payment to the City, in accordance with the reconciliation. ZAYO specifically acknowledges that its obligation to compensate the City for use of public rights-of-way is an essential term of the parties' agreement that cannot be waived or severed.

The fee set forth herein shall be due on the first day of the month following execution of this Franchise Agreement, and on the same date of each year thereafter for the duration of this Agreement. In the event that any payment is made after the due date, ZAYO shall pay a late payment penalty of simple interest at ten percent (10%) per annum of the total amount past due.

The amount set forth above shall be in addition to and not in lieu of any general or special ad valorem taxes which the City is authorized to levy and impose, including taxes upon real or personal property of persons conducting business in the City, and permit fees connected with excavation and construction in the rights-of-way.

### **2. CITY USE OF FACILITIES**

The City may install or affix and maintain wires and equipment for municipal purposes upon any and all of ZAYO's ducts, conduits or poles, without charge to the City, and provided such installation or affixment shall not interfere with ZAYO's provision of service. For the

purposes of this section, the term “municipal purposes” includes only the use of the structures and installations for City fire, police, traffic, recreation facilities, telephone, and/or signal systems. The value of such use of ZAYO’s facilities may not be deducted from ZAYO’s license fee or any other fees or taxes payable by ZAYO to the City. Subject to these limitations the City shall indemnify and hold ZAYO harmless for any damage, to the wires or property of ZAYO, claims, personal injury, loss of life or property occurring as a result of the City’s use of ZAYO’s ducts, conduits and poles, subject to the limitations of the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101, *et seq.*

2.1 ZAYO, at its sole cost and expense, shall grant to the City the right to use two (2) pairs of dark fiber per the City’s specifications throughout ZAYO’s Chattanooga network as required by the Director of Information Systems, for extension of an institutional network to be used only for governmental and educational non-commercial purposes by the City or City-affiliated governmental and educational entities designated by the City. The City agrees to pay ZAYO’s direct cost for the two (2) pairs of fiber, and any direct and unique costs associated with splicing the City’s fiber strands to the City’s existing institutional network. Ownership of the fibers to be used by the City shall remain vested in ZAYO during the term of this Agreement; however, the right to use said fiber shall survive termination of this Agreement and extend so long as ZAYO, specifically including its successors or assigns, maintains or otherwise utilizes its facilities constructed pursuant to this Agreement. Should ZAYO, its successors or assigns abandon any of its facilities constructed pursuant to this Agreement, said fiber shall become the property of the City.

2.2 “Direct cost” shall be determined by multiplying the full cost per foot of the fiber by the fraction of the fiber dedicated to the City’s institutional network. For example, for 4 strands of a 96 strand, \$2.15 per foot fiber, ZAYO would recover  $4/96$  multiplied by \$2.15, or 9 cents per foot.

2.3 ZAYO shall provide coordination and engineering assistance to the City for providing such fiber optic accesses as the City may require.

### **3. OTHER CHARGES**

#### (a) Computation

(1) All charges for inspections, engineering, rearrangements, removals of Franchisee’s facilities from CITY’s rights-of-ways, and any other work performed for Franchisee shall be based upon the full actual cost and expense to CITY for performing such work. CITY shall determine such cost in accordance with the regular and customary methods CITY uses in determining such costs.

(2) Franchisee shall make an advance payment to CITY to cover the estimated cost of all work. After CITY completes the work, CITY shall determine the actual cost of the work and will make a debit or credit adjustment so that the actual cost rather than estimated cost will apply. Franchisee shall make additional advance payments as the work progresses.

(3) Only upon written consent of CITY, Franchisee may provide a Surety Bond in Lieu of the advance payment requirement of (2) above.

(b) Payment Date

All bills for such other charges shall be payable upon presentment to Franchisee, and failure to pay within thirty (30) days after receipt of the invoice by Franchisee shall constitute a default of this Franchise.

## **APPENDIX 2-P**

This APPENDIX 2-P is an integral part of the Franchise Agreement and contains certain minimum requirements and specifications governing the attachment of cables, equipment and facilities of ZAYO (sometimes called Attachments in this Appendix) within City rights-of-way and on City property.

### **GENERAL**

1. Franchisee shall comply with all federal, state, and local laws, ordinances, regulations, and licensing requirements, including, without limitation, the provisions of the National Electrical Safety Code.

2. Franchisee is solely responsible for the proper design, construction and maintenance of its Attachments.

3. CITY or an authorized Contractor shall perform any rearrangements of CITY's facilities or replacement of poles required to accommodate Franchisee's Attachments.

4. The fees and charges specified in APPENDIX 1-P shall be applicable to all licenses granted to Franchisee hereunder, without regard to the methods of attachment used.

5. Franchisee shall plainly identify plans to utilize City rights-of-ways by appropriate marking satisfactory to CITY.

6. All requirements of the National Electrical Safety Code referred to herein shall mean the 2007 Edition of such code and all requirements of the National Electrical Code shall refer to the 2011 Edition of such code, or any later amendment or replacement thereof, and shall include any additional requirements of any applicable Federal, State, County or Municipal code, rule or order. References to simply the Safety Code, or to NESC, have the same meaning.

7. While many of the standards and technical requirements for Franchisee's cable, equipment and facilities are set forth herein, CITY reserves the right to specify the type of construction required in situations not otherwise covered in this Appendix. In such cases, CITY will in its discretion furnish to Franchisee written materials that will specify and explain the required construction. Any amendment or revision to any standards or specifications referred to in Appendix 2-P or in the Franchise shall not apply retroactively and CITY shall provide sixty (60) days advance notice of any proposed changes, revisions, or amendments.

### **VOLTAGE, POWER, ELECTRICAL, INTERFERENCE**

8. Franchisee shall not use or carry voltages or currents in excess of the limits prescribed for communications conductors by the NESC. However, all parts of Franchisee's cabling or wiring carrying voltages in excess of 50 volts AC (rms) to ground or 135 volts DC to ground, except for momentary signaling or control voltages, shall be enclosed in an effectively grounded sheath or shield. All energized parts of Franchisee's cabling or wiring shall be appropriately covered to prevent accidental contact by the general public, CITY's employees, or employees of another entity having facilities on the same pole. CITY reserves the right to require that adequate

safety procedures and equipment, in its judgment, be followed and made a party of each of Franchisee's uses on City rights-of-ways.

9. CITY shall determine whether Franchisee's Attachments cause electrical interference with CITY's communications and/or control facilities. Franchisee shall, on CITY's demand, promptly correct at Franchisee's expense any such interference, including, if necessary, removal of the Attachments causing the interference.

10. None of Franchisee's cabling or wiring within rights-of-way shall use the earth as the sole conductor for any part of the circuit.

11. Franchisee shall not circumvent CITY's corrosion mitigation measures (e.g., short circuit insulating joints).

### **GROUNDING AND BONDING**

12. All power supplies shall be grounded. The neutral side of the power drop shall be continuous and not fused. The neutral line shall also be bonded to the power supply cabinet. The cabinet shall be connected to an earth ground at the pole.

### **CLEARANCES**

13. Franchisee's cabling and wiring within rights-of-ways shall be subject to the same clearances as communications facilities and shall meet all of the pertinent clearance requirements of the NESC.