JACQUELINE M. BISKUPSKI
Mayor

MIKE REBERG

DEPARTMENT *of* COMMUNITY
and NEIGHBORHOODS

CITY COUNCIL TRANSMITTAL

David Litvack, Deputy Chief of Staff

Date Received: November 16, 2018
Date sent to Council: November 16, 2018

TO: Salt Lake City Council
Erin Mendenhall, Chair

DATE: November 16, 2018

FROM: Mike Reberg, Director Department of Community & Neighborhoods

SUBJECT: Crown Castle NG West, LLC– Franchise Agreement

STAFF CONTACT:
Melissa Jensen, Director, HAND, 801-535-6035
Melissa.Jensen@slcgov.com
Dan Rip, Real Property Manager, 801-535-6308
Dan.Rip@slcgov.com
Kimberly Chytraus, Senior City Attorney 801-535-7683
Kimberly.Chytraus@slcgov.com

DOCUMENT TYPE: Ordinance

RECOMMENDATION: Pass the Ordinance granting the telecommunications franchise to Crown Castle NG West, LLC

BUDGET IMPACT: None

BACKGROUND/DISCUSSION: Doing business as Crown Castle NG West, LLC ("Crown Castle") is a telecommunications company, authorized to provide telecommunications services throughout the State of Utah servicing telecom providers specifically, small cell infrastructure including, but not limited to cell site front-haul and back-haul capacity using fiber optic cables. Crown Castle wishes to obtain a new, non-exclusive franchise to provide telecommunications services within Salt Lake City. The Franchise allows Crown Castle to place its facilities within the City rights-of-way, governed by certain conditions and after securing permits, and provides for the payment of the telecommunications tax pursuant to state statute. Crown Castle and the City negotiated the terms of the proposed Franchise Agreement, attached as Exhibit "A".

PUBLIC PROCESS: None

EXHIBITS:

1) Franchise Agreement

SALT LAKE CITY ORDINANCE
No. __ of 2018
(Granting a Telecommunication Franchise to
Crown Castle NG West LLC)

WHEREAS, Crown Castle NG West LLC, a Delaware limited liability company (the "Company"), desires to provide certain telecommunication services within Salt Lake City, Utah (the "City"), and in connection therewith to establish a network in, under, along, over, and across present and future streets, alleys and rights-of-way of the City, consisting of telecommunication lines and cables, together with all necessary and desirable appurtenances; and

WHEREAS, the City, in the exercise of its police power, ownership, use or rights over and in the public rights-of-way, and pursuant to its other regulatory authority, believes it is in the best interest of the public to provide to the Company, and its successors, a non-exclusive franchise to operate its business within the City; and

WHEREAS, the City and the Company propose to enter into a Franchise Agreement, the substantially final form of which has been presented to the City Council at the meeting at which this Ordinance is being considered for adoption; and

WHEREAS, the City desires to approve the execution and delivery of such Franchise Agreement and to otherwise take all actions necessary to grant the referenced Franchise to the Company; and

WHEREAS, the City believes this Ordinance to be in the best interest of the citizens of the City,

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah, as follows:

SECTION 1. Purpose. The purpose of this Franchise Ordinance is to grant to the Company, and its successors and assigns, a non-exclusive right to use the present and future streets, alleys, viaducts, bridges, roads, lanes and public way within and under control of the City for its business purposes, under the constraints and for the compensation enumerated in the Franchise Agreement attached hereto as Exhibit A, and by this reference incorporated herein, as if fully set forth herein (the "Franchise Agreement").

SECTION 2. Short Title. This Ordinance shall constitute the Crown Castle Telecommunications Franchise Ordinance.

SECTION 3. Grant of Franchise. There is hereby granted to the Company, and its successors and assigns, in accordance with the terms and conditions of the Franchise Agreement, the right, privilege, and franchise (collectively, the "Franchise"), to construct, maintain and operate in, under, along, over and across the present and future streets, alleys, and rights-of-way and other property of the City, all as more particularly described in the Franchise Agreement.

SECTION 4. Term. The term of the Franchise is for a ten (10) year period from and after the recordation of the executed Franchise Agreement with the Salt Lake City Recorder's Office.

The Company shall pay all costs of publishing this Ordinance.

SECTION 5. Acceptance by Company. Within thirty (30) days after the effective date of this Ordinance, the Company shall execute the Franchise Agreement and return it to the City, otherwise, this Ordinance and the rights granted hereunder shall be null and void.

SECTION 6. No Franchise revocation or termination may be effected until the City Council shall first adopt an ordinance terminating the Franchise and setting forth the reasons therefor, following not less than thirty (30) days prior written notice to the Company of the proposed date of the ordinance adoption. The Company shall have an opportunity on said ordinance adoption date to be heard upon the proposed termination.

SECTION 7. This Ordinance shall take effect immediately upon publication.

Passed by the City Council of Salt Lake City, Utah, this ____ day of _____, 2018.

_____
CHAIRPERSON

ATTEST:

_____
CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____Approved. _____Vetoed.

_____
MAYOR

ATTEST:

_____
CITY RECORDER

(SEAL)

Salt Lake City Attorney's Office
Approved As To Form
By: _____
Kimberly Chytraus
Date: _____

Bill No. _____ of 2018.
Published: _____.
HB_ATTY-#73432-v1-ORD_Franchise_Agreement_Crown_Castle

EXHIBIT “A”

FRANCHISE AGREEMENT

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (this "**Agreement**"), dated as of its date of recordation with the Salt Lake City Recorder, by and between SALT LAKE CITY CORPORATION, a Utah municipal corporation (the "**City**"), and CROWN CASTLE NG WEST LLC, a Delaware limited liability company (the "**Company**").

RECITALS

A. The Company desires a non-exclusive franchise to provide telecommunication services to residents, businesses, and other customers within the boundaries of Salt Lake City, Utah, and to utilize City rights-of-way for such purpose.

B. The City considers it to be in the best interests of the City, and in furtherance of the health, safety, and welfare of the public, to grant such franchise to the Company, and in connection therewith desires to authorize the use of City rights-of-way in accordance with the provisions of this Agreement, and all applicable City ordinances and state and federal law, including, without limitation, the Federal Telecommunications Act of 1996 (the "**Telecommunications Act**").

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration and, further, in contemplation of subsequent approval by legislative action of the City Council as hereinafter provided, the parties mutually agree as follows.

ARTICLE I
FRANCHISE ORDINANCE

1.1 Ordinance. The City Council has adopted a franchise ordinance entitled Crown Castle Telecommunications Franchise Ordinance (the "**Ordinance**"), approving the execution of this Agreement. Execution of this Agreement constitutes the unqualified acceptance of the Ordinance by the Company. Such Ordinance is incorporated herein by reference, and made an integral part of this Agreement.

1.2 Franchise Description. The Ordinance confers upon the Company, and its successors and assigns, the right, privilege, and franchise (the "**Franchise**"), to construct, maintain and operate in, under, along, over, across, and through portions of the City's Right-of-Way (as defined in Section 3.1 hereof), facilities consisting of telecommunication lines and cables (including, without limitation, fiber-optic and copper lines and cables), together with all necessary and desirable appurtenances (including without limitation underground and above ground conduits and structures, poles, towers, wire and cable) (collectively the "**Company Facilities**"). Upon the annexation of any territory to the City, all rights hereby granted, and the Franchise, shall automatically extend to the territory so annexed, to the extent the City has authority to so extend the Franchise. All facilities owned, maintained, or operated by the Company located within, under, or over rights-of-way of the territory so annexed shall thereafter

be subject to all terms hereof. The Company Facilities may be used by the Company (and others, as provided herein), for the purpose of providing any of the services contemplated to be provided by telecommunications providers under the Telecommunications Act, and involving any switched or other one-way or two-way transmission of voice or data, including but not necessarily limited to (i) services interconnecting interexchange carriers for the purpose of any transmission of voice or data; (ii) services connecting interexchange carriers or competitive access carriers to local exchange providers for the purpose of any transmission of voice or data; (iii) services connecting interexchange carriers to any entity, other than another interexchange carrier or the local exchange provider for the purpose of any transmission of voice or data; (iv) services providing private line point-to-point service for end users for the purpose of any transmission of voice or data; (v) video, video conferencing or point-to-point private line service, or (vi) any service regulated by state regulatory agencies or the Federal Communications Commission which the state of Utah or Federal Communications Commission has authorized the Company to provide.

Anything in this Agreement to the contrary notwithstanding, the Company may not use the Company Facilities to (i) provide, to any customer within the City, cable television services as defined in the federal Cable Communication Policy Act of 1984, as amended, or (ii) install wireless facilities or support structures for such wireless facilities in the right of way, without a separate franchise or license agreement therefor.

1.3 Term. The term of the Franchise is for a period from and after the date hereof, until the date that is ten (10) years from the date hereof.

ARTICLE II
FRANCHISE FEE; ADMINISTRATION FEE

2.1 Franchise Fee. (a) For and in consideration of the Franchise, and as fair and reasonable compensation to the City for the use by the Company of the City's Right-of-Way, the Company will pay to the City an annual franchise fee (the "**Franchise Fee**"), in an amount equal to, and consisting of, the municipal telecommunications license tax (the "**Municipal Telecommunications Tax**") authorized pursuant to the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated 1953, as amended (the "**Municipal Telecommunications Tax Act**"). Such Franchise Fee shall be calculated in the manner provided in the Municipal Telecommunications Tax Act, and shall be paid by the Company to the Utah State Tax Commission, as agent for the City under an Interlocal Cooperation Agreement by and among the City, the Utah State Tax Commission, and others, at the times and in the manner prescribed in the Municipal Telecommunications Tax Act, and any rules and regulations promulgated thereunder. Compliance by the Company with the terms and provisions of the Municipal Telecommunications Tax Act, and any rules and regulations promulgated thereunder, shall satisfy all requirements of this Agreement with respect to the calculation and payment of the Franchise Fee.

(b) Notwithstanding the provisions of Section 2.1(a) above, the Franchise Fee shall be

calculated and payable as described therein only so long as the Company and the services provided within the City by the Company by means of the Company Facilities are subject to the Municipal Telecommunications Tax. In the event all or any portion of the Company Facilities ceases to be used by the Company to provide services subject to the Municipal Telecommunications Tax, the Company shall pay, in lieu of the Franchise Fee, a charge with respect to such portion of the Company Facilities, payable from and after the (i) the date Company ceases to provide such services, or (ii) the date the Municipal Telecommunications Tax ceases to apply to the services provided by the Company, which shall be calculated in the same manner as the charge then imposed by the City on other Companies occupying the Right-of-Way with similar facilities, and which do not provide telecommunication services subject to the Municipal Telecommunications Act. The City and the Company agree to negotiate in good faith any amendments to this Agreement as shall be necessary to accommodate the change or elimination of the Municipal Telecommunications Act, including payment provisions; provided such new or changed provisions shall conform substantially with the provisions contained in any permits held by other similarly situated companies.

(c) The Company represents to the City that one of the purposes for entering into this Agreement is to obtain authority to build or maintain a network within the City to provide telecommunication services to customers within the City. Upon completion of the Company Facilities, the Company will actively market customer services and generate local gross receipts within the meaning of the Municipal Telecommunications Tax Act. The Company represents that it expects to generate more than a nominal amount of gross receipts from local customers, and that the use of the Company Facilities for other purposes, or to otherwise provide services to customers located outside of the City, is not the sole or preeminent objective of the Company.

(d) Upon the written request of the City no more than once per year, the Company shall submit to the City a certificate signed by a corporate officer of the Company certifying whether or not all elements of the Company Facilities have been used to provide services which generate gross receipts attributed to the City (within the meaning of the Municipal Telecommunications Tax Act) during the preceding calendar year. Any elements of the Company Facilities not so used shall be identified.

(e) For each calendar year, those elements of the Company Facilities that are not used to provide services which generate gross receipts attributed to the City within the meaning of the Municipal Telecommunications Tax Act shall be subject to the per linear foot charge provided for in Salt Lake City Code § 14.32.425, or successor ordinance, as if such elements of the Company Facilities were installed and maintained pursuant to a telecommunications right of way permit (the "**Non-Taxed Facilities**"). On or before March 1st each year, Company shall pay to City the per linear foot charges for its Non-Taxed Facilities for the preceding calendar year, as provided for in Salt Lake City Code § 14.32.425, regardless of whether City requests the report pursuant to Section 2.1(d). In the event an element of Company Facilities is changed from a Non-Taxed Facility to a facility that provide services which generate gross receipts attributable to the City within the meaning of the Municipal Telecommunications Tax Act, the per linear foot charges for that particular element for the preceding year shall be pro-rated to the date of

dedication to such local services.

2.2 Report of Franchise Fee Payment. Upon the written request of the City, the Company shall prepare and deliver to the City, at such frequency as the City shall request, but not more frequently than once per year, a report summarizing Company payments to the Utah State Tax Commission for the requested period. Such report shall include such information related to such payment as the City shall reasonably request, including by way of example, and not limitation, the gross receipts of the Company from telecommunications service that are attributed to the City during such period, and the methodology for calculating such gross receipts.

2.3 Record Inspection. The records of the Company pertaining to the reports and payment required in this Agreement, including but not limited to any records deemed necessary or useful by the City to calculate or confirm gross receipts, and all other records of the Company reasonably required by the City to assure compliance by the Company with the terms of this Agreement ("**Company Confidential Information**"), shall be open to inspection by the City and its duly authorized representatives upon reasonable notice at all reasonable business hours of the Company. The Company may require such inspection to be performed at any Company Facilities where such Company Confidential Information may be located; provided that in the event such Company Confidential Information is not located at Company Facilities within the City, such Company Confidential Information shall be delivered by the Company for inspection by the City at the address of the City set forth in Section 13.1 hereof. City will hold in strict confidence and will keep confidential all Company Confidential Information. City will use reasonable care to avoid publication or dissemination of such Company Confidential Information. City will not disclose Company Confidential Information to any third person. Notwithstanding the previous sentence, City may disclose Company Confidential Information to its employees, officers, directors, consultants, advisors and agents (collectively, "**Representatives**") to the extent reasonably necessary to carry out the inspection; provided, however, that such Representatives are informed of the confidential nature of the Company Confidential Information, and are bound by confidentiality obligations no less stringent than those set forth herein. Notwithstanding the forgoing, Company acknowledges that City is subject to the requirements of GRAMA as provided for in Paragraph 15.7 below. Company specifically waives any claims against City related to disclosure of any materials as required by GRAMA.

2.4 Service of Process. The Company agrees to use its best efforts to provide a local office within the State of Utah for purposes of acceptance of process. Otherwise, the Company agrees to advise City of a person or office where such process may be served.

2.5 Administrative Fee. In addition to the annual Franchise Fee described above, the Company shall pay to the City, upon execution and delivery hereof, a one-time administrative fee of $5,000, which shall compensate the City for (but which does not exceed), the direct costs and expenses incurred by the City in preparing, considering, approving, executing and implementing the Ordinance and this Agreement.

ARTICLE III
COMPANY USE OF RIGHT-OF-WAY

3.1 Franchise Rights to Use Right-of-Way. (a) The Company shall have the right to excavate in, and use any present and future City-owned or controlled street, alley, viaduct, bridge, road, lane and public way within the City, including the surface, subsurface and airspace (collectively the "**Right-of-Way**"), subject to the terms and conditions of this Agreement and in locations where Company obtains appropriate permits. In addition, the Company shall have the right to utilize any easement across private property granted to the City for utility purposes, provided (i) the prior written consent of the director of the City department which controls such easement is obtained in each case, and (ii) the documents granting such easement to the City authorize such use. In all cases, the precise location of the Company Facilities within, on, over, under, across or through the Right-of-Way shall be subject to City approval, and the right to use such Rights-of-Way shall be subject to the terms of this Agreement, and all applicable federal, state, and City laws, ordinances, rules, and regulations now existing or from time to time adopted or promulgated.

(b) The rights granted to the Company herein do not include the right to (i) excavate in, occupy or use any City park, recreational areas or other property owned by the City, or (ii) attach or locate any of the Company Facilities to or on, or otherwise utilize any of, any City-owned property or facilities or structures, including without limitation light poles, towers, buildings and trees. The use of such City-owned property or facilities by the Company shall be considered by the City on a case-by-case basis, and shall be subject to payment of additional compensation to the City. Similarly, the rights granted herein by the City to the Company do not include the right to situate any Company Facilities on poles or other property owned by entities other than the City and situated in the City's Right-of-Way. It shall be the responsibility of the Company to negotiate any pole-attachment agreements or similar agreements with the owners of such poles or facilities, and to pay to such owners any required compensation.

3.2 Duty to Relocate. (a) Whenever the City shall require the relocation or reinstallation of any of the Company Facilities situated within the Right-of-Way, it shall be the obligation of the Company, upon notice of such requirement and written demand made of the Company, and within a reasonable time thereof, but not more than thirty (30) days from the date of notice, to commence to remove and relocate or reinstall such Company Facilities as may be reasonably necessary to meet the requirements of the City, which relocation shall be completed within a reasonably practicable time thereafter, but in no event longer than one hundred twenty (120) days, unless extended by mutual agreement. Such relocation may be required by the City for any lawful purpose, including, without limitation, the resolution of existing or anticipated conflicts or the accommodation of any conflicting uses or proposed uses of the Right-of-Way, whether such conflicts arise in connection with a City project or a project undertaken by some other person or entity, public or private. The City will cooperate with the Company to provide alternate space where available, within the Right-of-Way, at no additional cost to the Company.

(b) Such relocation shall be accomplished by the Company at no cost or expense to the City. In the event the relocation is ordered to accommodate the facilities of an entity other than the City or the Company, the cost and expense of such relocation shall be borne by such other entity. Any money and all rights to reimbursement from the State of Utah or the federal government to which the Company may be entitled for work done by the Company pursuant to this paragraph, shall be the property of the Company. City shall assign or otherwise transfer to the Company all rights it may have to recover costs for such work performed by the Company and shall reasonably cooperate with the Company's efforts to obtain reimbursement.

3.3 City Duty to Obtain Approval to Move Company Property; Emergency Exception. Except as otherwise provided herein, the City shall not, without the prior written approval of the Company, intentionally alter, remove, relocate or otherwise interfere with any portion of the Company Facilities. However, if it becomes necessary, in the judgment of the City Representative (as defined in Section 6.1 hereof), to cut or move any of the Company Facilities because of a fire, flood, emergency, earthquake disaster or other imminent threat thereof, or to relocate any portion of the Company Facilities upon the Company's failure to do so following a request by the City under Section 3.2 hereof, these acts may be done without prior written approval of the Company and the repairs thereby rendered necessary shall be made by the Company, without charge to the City. Any written approval required shall be reviewed and processed by the Company within seven calendar days and approval shall not be unreasonably withheld, conditioned, or delayed.

3.4 Annual Information Coordination. On or before February 28 of each calendar year, or such other date as the Company and City may agree upon from year to year, the Company and the City shall meet for the purpose of exchanging information and documents regarding construction and other similar work within the City, with a view toward coordinating their respective activities in those areas where such coordination may prove mutually beneficial. Such information exchange shall be subject to the confidentiality requirements set forth in Section 2.3 above and shall be in addition to, and not in lieu of, the requirements of Title 14, Chapter 32 of the Salt Lake City Code.

3.5 Common Use of Facilities. (a) In order to minimize the adverse impact to the Right-of-Way and to City facilities, and inconvenience to the public, caused by construction, repair and maintenance activities multiple utility franchisees, it is the policy of the City to encourage and require the shared use of telecommunication facilities by City franchisees and permittees whenever practicable.

(b) Except when necessary to service a subscriber, and subject to the written approval and conditions of the City, the Company shall, prior to constructing any Company Facilities, fully utilize any excess capacity reasonably and cost-effectively available on any existing poles or within any existing conduit, under such terms and agreements as the Company negotiates with the owners of such poles or conduits. The City shall cooperate with the Company in negotiating and obtaining permission to use such facilities.

(c) Whenever another franchisee or permittee of the City which is subject to a provision substantially similar to this provision of this Agreement requests permission to utilize any poles or other equipment of the Company for the purpose of attaching or locating therein or thereon any facilities of such franchisee or permittee, the Company shall negotiate in good faith with such franchisee or permittee to grant such permission under terms and conditions which (i) are commercially reasonable, (ii) do not place such franchisee or permittee at a competitive disadvantage relative to the Company or any other franchisee or permittee of the City, (iii) would not constitute a "barrier to entry" under the Telecommunications Act, and (iv) are, in any event, no less onerous than those permitted or required under the Telecommunications Act. Without limiting the generality of the foregoing, the provisions of this subsection (c) shall apply to all co-location of fiber optic lines or other cables within excess conduit installed by the Company pursuant to Section 14.32.095 of the Salt Lake City Code. The Company shall be required to grant such permission only to the extent the facilities of such requesting franchisee or permittee do not (i) interfere with the Company Facilities, (ii) conflict with uses proposed by the Company, or anticipated within the reasonably foreseeable future, (iii) create a safety or quality of services hazard, or (iv) do not conflict with any existing contractual relationships between the Company and any other parties.

(d) No Company Facilities shall be installed or the installation thereof commenced on any existing pole within the Right-of-Way until the proposed location, specifications and manner of installation thereof are set forth upon a plot or map showing the existing poles, where such installations are proposed. The plot or map shall be submitted for approval to the City Representative.

(e) If the Company is required to locate Company Facilities within the Right-of-Way other than Company Facilities which may be attached to utility poles, the nature of such Company Facilities shall be disclosed to the City Representative for approval as to the need thereof and as to the location within the Right-of-Way. The installation shall be made under such conditions as the City Representative shall reasonably prescribe.

(f) The Company may trim trees overhanging the Right-of-Way of the City to prevent the branches of such trees from coming in contact with Company Facilities. All trimming on City property shall be done with the approval of and under the direction of the City's Urban Forester and at the expense of the Company.

(g) The Company shall, at the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same and the Company shall have the authority to require such payment in advance. The City agrees to cause prior written notice of the necessity to move wires to be given as far in advance as possible, provided that in no event shall less than forty-eight (48) hours advance notice be given.

3.6 Duty to Underground. It is the policy of the City to have lines and cables placed

underground to the greatest extent reasonably practicable in accordance with applicable law. In furtherance of this policy, the Company agrees as follows:

(a) In addition to the installation of underground lines as provided in the applicable rules and regulations of the Public Service Commission, the Company shall, upon payment of the charges provided in its tariffs or their equivalent, place newly constructed lines and cables underground in (i) new residential subdivision areas, if required by subdivision regulations adopted by the City, and (ii) within the Central Business District of the City.

(b) In any area of the City in which there are no aerial facilities other than antennas or other facilities required to remain above ground in order to be functional, or in any portion of the Right-of-Way in which all telephone wires and cables reasonably capable of undergrounding have been placed underground, the Company shall not be permitted to erect poles except where permitted by applicable law, but shall lay wires, cables, or other facilities on existing poles or underground in the manner required by the City. The Company acknowledges and agrees that if the City does not require the undergrounding of Company Facilities at the time of initial installation, the City may, at any time in the future, require the conversion of the Company's above-ground and/or aerial facilities to underground installation at the Company's expense whenever telephone or other utilities are placed underground in the immediate vicinity of Company's Facilities.

3.7 Company Duty to Comply With Rules and Regulations. Company Facilities located on, upon, over or under the Right-of-Way shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with such lawful rules and regulations as the City may issue. The Company shall acquire, and any fees with respect to, such permits as may be required by such rules and regulations, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance.

3.8 Intentionally Deleted.

3.9 Compliance with Applicable Law. All Company Facilities installed or used under color of this Agreement shall be used, constructed and maintained in accordance with applicable federal, state and City laws and regulations, including without limitation environmental laws; provided that this provision shall not be construed to require the Company to modify or retrofit any existing facilities to meet new code standards unless otherwise required by law. Nothing in this Agreement shall constitute a waiver of either party's right to challenge any portion of this Agreement which is not in accordance with applicable federal, state and local laws.

3.10 Location to Minimize Interference. All Company Facilities shall be reasonably located so as to cause minimum interference with the use of the Right-of-Way by others, and so as to cause minimum interference with the rights of the owners of property which abuts any portion of the Right-of-Way.

3.11 Repair Damage. If during the course of work on Company Facilities, the

Company causes damage to or alters any portion of the Right-of-Way, or any City facilities or other public property or facilities, the Company shall (at its own cost and expense and in a manner approved by the City Representative), replace and restore such portion of the Right-of-Way or any City facilities or other public or private property or facilities, in accordance with applicable City ordinances, policies and regulations relating to repair work of similar character.

3.12 Guarantee of Repairs. For a period of three years following the completion of any work in the Right-of-Way or any repair work performed pursuant to Section 3.11, the Company shall maintain, repair, and keep in good condition those portions of the Right-of-Way or property or facilities restored, repaired or replaced, to the reasonable satisfaction of the City Engineer.

3.13 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices in accordance with applicable safety regulations or standards imposed by law.

3.14 Landscaping. The Company shall maintain the general appearance of any of its buildings located within the City in a manner consistent with the surrounding properties, and the appearance of Company Facilities in a manner consistent with best industry practice. Such obligation to maintain the appearance of property shall include but not be limited to the landscaping of front yards and parkways in residential zones; the installation of curb, gutter, sidewalk and parkway landscaping in those areas where similar improvements have been, or are being, installed on contiguous properties; and the screening of such property directly abutting a public street or abutting residential property with appropriate landscaping or screening material as required by the City's Planning Commission.

3.15 Inspection by the City. The Company Facilities shall be subject to inspection by the City to the extent reasonably necessary to assure compliance by the Company with the terms of this Agreement. The City shall inspect Company Facilities at reasonable times and upon reasonable notice to the Company; provided, however, the inspection shall not interrupt or interfere with any services provided by the Company.

3.16 Company's Duty to Remove Company Facilities from the Right-of-Way.

(a) Subject to subsection (c) below, the Company shall promptly remove from the Right-of-Way all or any part of the Company Facilities, when one or more of the following conditions occur:

(i) The Company ceases to operate such Company Facilities for a continuous period of twelve (12) months, except when the cessation of service is a direct result of a natural or man-made disaster;

(ii) The construction or installation of such Company Facilities does not meet the requirements of this Agreement; or

(iii) The Franchise is terminated or revoked pursuant to notice as provided

herein.

(b) Upon receipt by the Company of written notice from the City setting forth one or more of the occurrences specified in subsection (a) above, the Company shall have (90) days from the date upon which said notice is received to remove such Company Facilities, or, in the case of subsection (a), to begin operating the Company Facilities.

(c) The Company may abandon any underground Company Facilities in place, subject to the reasonable requirements of the City, and with the prior written consent of the City, which may be granted or withheld in the City's sole and absolute discretion. In such an event, the abandoned system shall become the property of the City and the Company shall have no further responsibilities or obligations concerning those facilities. The City shall not use the possibility of obtaining ownership of the abandoned system as a rationale for terminating or revoking this Agreement.

3.17 Operational Reports. During the period of construction of any Company Facilities, the Company shall furnish the City with written progress reports indicating in detail the area of construction. Such periodic reports shall be furnished at three-month intervals, the first report to be made three (3) months after the construction commencement date.

3.18 Removal of Facilities upon Request. Upon termination of service to any subscriber, the Company shall promptly remove Company Facilities and equipment from the premises of such customer at the written request of such customer, and at no cost to the subscriber, unless the Company's agreement with such subscriber provides otherwise. Notwithstanding the foregoing, as long as regulations of the Utah Public Service Commission govern the removal of Company Facilities, and the Company is in compliance with such regulations, this Section 3.18 shall not apply.

ARTICLE IV
CITY USE RIGHTS

4.1 City Use of Poles and Overhead Structures. The City shall have the right, without cost, to use all poles and suitable overhead structures owned by the Company within the City for fire alarms, police signal systems, or any other lawful use; provided, however, any said uses by the City shall be for activities owned, operated or exclusively used by the City for any public purposes and shall not include the provision of telecommunication services to third parties.

4.2 Use of Trenches. Whenever the Company proposes to install new underground conduits or replace existing underground conduits within or under the Right-of-Way, it shall notify the City Representative as soon as practical and shall allow the City, at its own expense, and without charge to the Company, to use any such trench opened by the Company to lay the City's facilities therein; provided, that such action will not unreasonably interfere with Company Facilities or delay the accomplishment of the Company's project; and provided further that the Company may require the City to agree to reasonable terms and conditions of such use.

4.3 Use of Company Corridors. The City may identify corridors which the Company now or in the future owns in fee within the City and which are similar in nature to transmission corridors of electric utility companies. The City may identify portions of such corridors, if any, as being desirable locations for public parks, playgrounds or recreation areas. In such event, and upon notice by the City, the Company shall negotiate with the City in good faith to reach an agreement providing for such uses by the City; provided that such use shall not be allowed where the Company in good faith believes such use would interfere with the Company's use of the corridor or materially prejudice its interests in safety. The Company shall assume no liability nor shall it incur, directly or indirectly any additional expense in connection therewith.

4.4 Limitation on Use Rights. Nothing in this Article 4 shall be construed to require the Company to increase pole capacity or trench size, alter the manner in which the Company attaches equipment to the poles or installs facilities, or alter the manner in which it operates and maintains its equipment. The City may attach to or otherwise utilize Company Facilities only after written approval by the Company. Such approval may include requirements regarding maintenance of such City facilities, either to be done for a reasonable fee by the Company or by a qualified party who shall fully indemnify and hold the Company harmless from any liability and whose service would not materially prejudice the Company's interests in safety and insulation from liability.

ARTICLE V
POLICE POWER

The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances, rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its residents and their properties. This Agreement is subordinate to City's exercise of its police power.

ARTICLE VI
CITY REPRESENTATIVE

6.1 City Representative. Except as provided hereinafter, the City Engineer, or his/her designee, or such other person as the Mayor may designate from time to time (which designation shall be communicated to the Company in writing), is hereby designated the official of the City having full power and authority, along with a representative of the City Attorney's Office, to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Agreement and to investigate any alleged violations or failures of the Company to comply with said provisions or to adequately and fully discharge its responsibilities and obligations hereunder. The City Engineer or such other designee is referred to herein as the City Representative. The failure or omission of the City Representative to so act shall not constitute a waiver or estoppel. The City Representative shall be the Company's initial point of contact with the City. Unless specifically provided otherwise, all decisions, consents or approvals required of the "City" shall be made or given by the City through the City Representative. The City

Representative shall coordinate with other City officials, personnel and departments in all matters relating to this Agreement.

6.2 Company Duty to Cooperate. In order to facilitate such duties of the City Representative, the Company agrees:

(a) To allow the City Representative to inspect Company Facilities in accordance with Section 3.15.

(b) That the City Representative may convey to the Company, and, with notice to the Company in accordance with this Agreement, to the Federal Communications Commission, the Utah Public Service Commission and any other regulatory agency having jurisdiction, any complaint of any customer of the Company within the City with respect to the quality and price of telecommunication services and the appropriate standards thereof; provided, however, that City Representative's failure to provide any such notice to the Company shall not constitute a breach of this Agreement.

(c) To submit to the City Representative a letter advising the City of any application by the Company which, if approved, would materially affect the Franchise Fee. A copy of such letter shall also be submitted to the City Attorney.

ARTICLE VII
Intentionally Deleted

ARTICLE VIII
CONTINUATION OF SERVICE

In the event the Company is or becomes the exclusive local exchange carrier providing basic telephone exchange services within the City, the removal of Company Facilities, and the discontinuation of telecommunication services by the Company within the City, shall be subject to applicable regulations and procedures of the Public Service Commission, or any successor regulatory body and, in the event the Utah Public Service Commission or such successor regulatory body no longer regulates local exchange carriers providing basic telephone exchange services within the City, such removal of facilities and discontinuation of services shall be subject to the applicable regulations and procedures of any public body (including the City) then regulating such carriers.

ARTICLE IX
TRANSFER OF FRANCHISE

(a) The Company shall not sell, transfer, lease, assign, sublet or otherwise make available to any person or entity other than the Company, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the Franchise or any rights or privileges under this Agreement (each, a "Transfer"), to Proposed Transferee, without the prior written consent of the City. The following events (by way of illustration and not

limitation) shall be deemed to be a Transfer of the Franchise requiring compliance with this Article: (i) the sale, assignment or other transfer of all or a majority of the Company's assets to another Person; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in the Company by one or more of its existing shareholders, partners, members or other equity owners, so as to create a new Controlling Interest in the Company; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by the Company so as to create a new Controlling Interest in the Company; or (iv) the entry by the Company into an agreement with respect to the management or operation of the Company or its facilities (including the Company Facilities).

(b) The consent required shall be given or denied by the City not later than one-hundred twenty (120) days following receipt by the City of a written request for consent, and shall not be unreasonably withheld. For the purpose of determining whether it shall grant its consent, the City may inquire into the qualifications of the Proposed Transferee, and the Company shall assist the City in the inquiry. City may condition or deny its consent based on any or a combination of the following or similar criteria. The Proposed Transferee shall indicate by affidavit whether it:

(i) has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(ii) has ever had a judgment entered against it in an action for fraud, deceit, or misrepresentation by any court of competent jurisdiction;

(iii) has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a system similar to the Company Facilities, except that any such claims, suits or proceedings relating to insurance claims, theft or service, or employment matters need not be disclosed;

(iv) is financially solvent, by submitting financial data, including financial statements, that have been audited by a certified public accountant, along with any other data that the City may reasonably require;

(v) has the financial and technical capability to enable it to maintain and operate the Company Facilities for the remaining term of this Agreement; and

(vi) the use of the Company Facilities and Right of Way by the Proposed Transferee are consistent with the uses by the Company permitted under this Agreement.

The Company shall provide to the City information regarding any failure by the Company to comply with any provision of this Agreement or of any applicable customer or consumer service standards promulgated or in effect in the City's jurisdiction at any point during the term of this Agreement.

(c) Notwithstanding the foregoing, the City's consent shall not be required in connection with the following circumstances, provided that Company is not released from the obligations under this Agreement and such transferee assumes this Agreement and agrees in writing to comply with the terms and conditions of this Agreement:

(i) The intracorporate Transfer by Company to a Proposed Transferee that is another business entity in the tier of business entities owned or controlled by Company that (a) controls Company; or (b) is controlled by Company; or (c) is under common control with Company.

For the Transfer to be effective, Company must: (1) provide to City not less than 30 days prior written notice of that proposed transaction; (2) provide information concerning ownership a in the proposed transferee and their telecommunications-related experience and expertise; (3) represent that the proposed transaction will have no foreseeable effect on the management and operation of the Wireless Facilities in the Public Way; ;

(ii) Any transfer in trust, a mortgage, or other instrument of hypothecation of the assets of the Company, in whole or in part, to secure an indebtedness, provided that such pledge of the assets of the Company shall not impair or mitigate the Company's responsibility and capability to meet all its obligations under this Agreement, and provided further that such Proposed Transferee subordinates to this Agreement;

(iii) Any sale or other transfer by the Company of worn out or obsolete equipment or property no longer required by the Company in connection with its operations in the normal course of business; or

(iv) interconnection or use agreements pursuant to which the Company Facilities may be used by another entity providing telecommunication services within the City, provided that any such other entity has obtained a franchise from the City, and further provided that such interconnection or use agreement is subordinate to this Agreement.

(d) Transfer by the Company shall not constitute a waiver or release of any rights of the City in or to its Right-of-Way and any transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement.

(e) Except as otherwise provided in this Section, a sale, transfer or assignment of this Agreement will only be effective upon the Proposed Transferee becoming a signatory to this Agreement by executing an unconditional acceptance of this Agreement.

(f) For purposes of this Article IX, the following terms shall have the following meanings:

(i) "Control" or "Controlling Interest" means actual working control in

whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the Company Facilities or of the Company. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly, by any person, or group of persons or entities acting in concert, of more than fifty percent (50%) of the Company. "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person.

(ii) "Person" means any individual, sole proprietorship, partnership, association or corporation, or any other form of organization, and includes any natural person.

(iii) "Proposed Transferee" means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the Company.

(g) As contemplated by Section (c)(iii) above, the parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Company Facilities deployed by Company in the Right-of-Way pursuant to this Agreement may be owned and/or operated by Company's third-party wireless carrier customers ("**Carriers**") and installed and maintained by Company pursuant to license agreements between Company and such Carriers. Such license agreements shall be subordinate to this Agreement. Such Company Facilities shall be treated as the Company's for all purposes under this Agreement provided that (i) Company remains responsible and liable for all performance obligations under the Agreement with respect to such Company Facilities; (ii) City's sole point of contact regarding such Company Facilities as it relates solely to this Agreement shall be Company; and (iii) Company shall have the right to remove and relocate such Company Facilities pursuant to the terms of this Agreement.

ARTICLE X
EARLY TERMINATION OR REVOCATION OF FRANCHISE

10.1 Grounds for Termination. The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) The Company fails to make timely payments of the Franchise Fee as required under Article II of this Agreement, or any other fee due to the City under the terms of this Agreement, and does not correct such failure within twenty (20) business days after receipt of written notice by the City of such failure.

(b) The Company, by act or omission, violates a material term or condition herein set forth within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may after public hearing, determine that such failure is of a material nature and thereupon, after written notice given to the Company of such determination, the Company shall, within thirty (30) days of such notice, commence efforts to remedy the conditions identified in the notice, and shall have six (6) months from the date it receives notice to remedy the conditions. After the expiration of such six (6)

month period and upon failure by the Company to correct such conditions, the City may declare the Franchise forfeited and this Agreement terminated, and thereupon the Company shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further that in the event such failure is of such nature that it cannot be reasonably corrected within the six (6) month period above, the City shall provide additional time for the reasonable correction of such alleged failure if the Company (i) commences corrective action during such six (6) month period, and (ii) diligently pursues such corrective action to completion.

(c) The Company becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its facilities are sold under an instrument to secure a debt and is not redeemed by the Company within sixty (60) days.

(d) In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a member of the Board of Directors or an officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City, that is fraudulent or in violation of a felony criminal statute of the State of Utah.

(e) Company abandons use of all Company Facilities for 12 consecutive months.

10.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the Company from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

ARTICLE XI
COMPANY INDEMNIFICATION; INSURANCE

11.1 No City Liability. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death of, any person that may occur in the construction, operation or maintenance by the Company of the Company Facilities. City will be liable only for its own conduct, subject to and without waiving any defenses, including limitation of damages, provided for in the Utah Governmental Immunity Act (Utah Code §§ 63G-7-101 *et seq.*) or successor provision. Company agrees that the Rights-of-Way are delivered in an "AS IS, WHERE IS" condition and City makes no representation or warranty regarding their condition, and disclaims all express and implied warranties.

11.2 Company Indemnification of City. Company shall indemnify, save harmless, and defend City, its officers and employees, from and against all losses, claims, counterclaims, demands, actions, damages, costs, charges, and causes of action of every kind or character, including attorneys' fees, arising out of Company's intentional, reckless, or negligent performance hereunder or under the Ordinance. Company's duty to defend City shall exist regardless of whether City or Company may ultimately be found to be liable for anyone's negligence or other conduct. If City's tender of defense, based upon this indemnity provision, is rejected by Company, and Company is later found by a court of competent jurisdiction to have

been required to indemnify City, then in addition to any other remedies City may have, Company shall pay City's reasonable costs, expenses, and attorneys' fees incurred in proving such indemnification, defending itself, or enforcing this provision. Nothing herein shall be construed to require Company to indemnify the indemnitee against the indemnitees' own negligence. The provisions of this section 11.2 shall survive the termination of this Agreement.

11.3 Notice of Indemnification. City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to City. If such defense is not assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the City or any of its officers or employees.

11.4 Insurance.

(a) The Company, at its own cost and expense, shall maintain, and shall ensure that any subcontractor to the Company shall secure and maintain, during the term of this Agreement the following policies of insurance:

(i) Commercial General Liability Insurance. Commercial general liability insurance with the City as an additional insured on a primary and non-contributing bases in comparison to all other insurance including City's own policy or policies of insurance, in the minimum amount of $2,000,000 per occurrence with a $3,000,000 general aggregate and $3,000,000 products completed operations aggregate. These limits can be covered either under a CGL insurance policy alone, or a combination of a CGL insurance policy and an umbrella insurance policy and/or a CGL insurance policy and an excess insurance policy. The policy shall protect the City, Company, and any subcontractors from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the Company's operations under this Agreement, whether performed by Company itself or on its behalf by any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, products, and completed operations.

(ii) Commercial Automobile Liability Insurance. Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, used in connection with this Agreement in the minimum amount of with a combined single limit of $2,000,000 per occurrence. These limits can be covered either under a commercial automobile liability insurance policy alone, or a combination of a commercial automobile liability insurance policy and an umbrella insurance policy and/or a

commercial automobile liability insurance policy and an excess insurance policy. If the policy only covers certain vehicles or types of vehicles, such as scheduled autos or only hired and non-owned autos, Company shall only use those vehicles that are covered by its policy in connection with any work performed under this Agreement.

(iii) Workers' Compensation and Employer's Liability. Worker's compensation and employer's liability insurance sufficient to cover all of the Company's employees pursuant to Utah law, unless a waiver of coverage is allowed and acquired pursuant to Utah law. In the event any work is subcontracted, the Company shall require its subcontractor(s) similarly to provide worker's compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

(b) General Insurance Requirements.

(i) Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (A) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (B) be maintained for a period of at least three (3) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the City.

(ii) All policies of insurance shall be issued by insurance companies authorized to do business in the state of Utah and either:

(A) Currently rated A- or better by A.M. Best Company*; and*

—OR—

(B) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570), as amended.*

(iii) The Company shall furnish certificates of insurance, reasonably acceptable to the City, verifying the foregoing matters concurrent with the execution hereof and thereafter as required.

(iv) In the event any work is subcontracted, the Company shall require its subcontractor, at no cost to the City, to secure and maintain substantially the same coverage with substantially the same limits as required of the Company hereunder.

(v) Company shall provide the City with thirty (30) days' prior written notice of cancellation to the City or 10 days' prior written notice for cancellation due to non-payment of premiums, if such policy is not replaced prior to the cancellation of the original policy with a policy meeting the minimum requirements hereunder. Company shall also provide City with evidence of such replacement policy.

ARTICLE XII
REMEDIES

12.1 Duty to Perform. The Company and the City agree to take all reasonable and necessary actions to assure that the terms of this Agreement are performed and neither will take any action for the purpose of securing modification of this Agreement before either the Public Service Commission or any court of competent jurisdiction; provided, however, that neither Party shall be precluded from taking any action it deems necessary to resolve differences in interpretation of this Agreement.

12.2 Remedies at Law. In the event the Company or the City fails to fulfill any of its respective obligations under this Agreement, the Party that is not in default may exercise any remedies available to it provided by law; however, no remedy that would have the effect of amending the provisions of this Agreement shall become effective without a formal amendment of this Agreement.

ARTICLE XIII
NOTICES

13.1 City Designee and Address. Unless otherwise specified herein, all notices from the Company to the City pursuant to or concerning this Agreement shall be delivered to the City at Housing and Neighborhood Development Division, Real Estate Services Manager, at 451 South State Street, Room 248, P.O. Box 145460, Salt Lake City, Utah, 84114-5460, with a copy to the City Attorney, at 451 South State Street, Room 505A, P.O. Box 145478 Salt Lake City, Utah 84114-5478, and (b) such other offices as the City may designate by written notice to the Company.

13.2 Company Designee and Address. The Company shall maintain an office and telephone number for the conduct of matters relating to this Agreement and the Franchise during normal business hours. Unless otherwise specified herein, all notices from the City to the Company pursuant to or concerning this Agreement or the Franchise shall be delivered to (a)

Crown Castle NG West LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317
Attn: Ken Simon, General Counsel

With a copy to:

Crown Castle NG West LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317
Attn: SCN Contracts Management

and (b) such other offices as the Company may designate by written notice to the City.

ARTICLE XIV
AMENDMENT

14.1 Changing Conditions; Duty to Negotiate. (a) The Company and the City recognize that many aspects of the telecommunications business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way the Company conducts its business. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, at the request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

(b) Either party may propose amendments to this Agreement by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s).

14.2 Amendment Approval Required. No amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the Company and an ordinance or resolution approving such amendments is approved by the City Council.

ARTICLE XV
MISCELLANEOUS

15.1 Conditions. If any section, sentence, paragraph, term or provision of this Agreement or the Ordinance becomes for any reason illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof or thereof, all of which will remain in full force and effect for the term of this Agreement and the Ordinance or any renewal or renewals thereof, except for Article II hereof.

15.2 No Waiver or Estoppel. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any of such terms and conditions.

15.3 Fee Article Essential. (a) Article II hereof is essential to the adoption of this Agreement. In the event the Franchise Fee provisions hereof are determined to be illegal,

invalid, unconstitutional, or are superseded by legislation, in whole or in part, the parties agree that the fee shall be reduced to comply with such law(s). Furthermore, if the City grants any other person or entity a franchise for the installation of telecommunications equipment in the City's Rights-of-Way for a fee less than the compensation provided in this Franchise Agreement, the parties agree that the compensation provided in this Franchise Agreement shall be reduced to be equal to that lesser amount charged the other person or entity.

15.4 Intentionally deleted.

15.5 Lease Terms upon Termination. In the event this Agreement is terminated pursuant to Section 10.1 hereof, the City grants to the Company a lease according to the same terms and conditions as set forth in this Agreement. Accordingly, the Company shall pay, as fair market rental value, the same amounts, at the same times, required for the payment of the Franchise Fee pursuant to Article II hereof, and shall be bound by all other terms and conditions contained herein; provided, however, that in no event will the Company be obligated to pay a higher percentage of gross receipts than is paid by other similarly situated franchisees serving within the City.

15.6 Parity among Providers. The City and Company mutually agree that Company will at all times be treated, regarding fees assessed and charges and all other franchise rights and privileges hereunder, on parity with other telecommunications providers.

15.7 Utah Governmental Records Management Act. Whenever the Company is required to deliver to the City, or make available to the City for inspection, any records of the Company, and such records are delivered to or made available to the City with a written claim of business confidentiality which meets, in the judgment of the City Representative, the requirements of the Utah Governmental Records Management Act ("GRAMA"), such records shall be classified by the City as "protected" within the meaning of GRAMA, and shall not be disclosed by the City except as may otherwise be required by GRAMA, by court order, or by applicable City ordinance or policy.

15.8 Timeliness of Approvals. Whenever either party is required by the terms of this Agreement to request the approval or consent of the other party, such request shall be acted upon at the earliest reasonable convenience of the party receiving the request, and the approval or consent so requested shall not be unreasonably denied or withheld.

15.9 Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees. The Company represents that it has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby

promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

15.10 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah without reference to its conflict of laws principles.

15.11 Entire Agreement. This Agreement contains all of the agreements of the parties with respect to any matter addressed in this Agreement, and supersedes all prior discussions, agreements or understandings pertaining to any such matters for all purposes.

15.12 Authority. Each individual executing this Agreement on behalf of the City and Company represents and warrant that such individual is duly authorized to execute and deliver this Agreement on behalf of the City or Company (as applicable).

WITNESS WHEREOF, this Franchise Agreement is executed in duplicate originals as of the day and year first above written.

SALT LAKE CITY CORPORATION, a Utah municipal corporation

_____
Jacqueline M. Biskupski, Mayor

Date: _____

Attest and Countersign:

_____
City Recorder

Date of Recordation: _____

Approved As To Form:

_____
Kimberly K. Chytraus
Senior City Attorney

CROWN CASTLE NG WEST LLC, a
Delaware limited liability company

By _____
Name: _____
Title: _____

Date: _____

State of _____)
:ss
County of _____)

On the _____ day of _____, 2018, personally appeared before me _____, who, being by me duly sworn did say that he/she is the _____ of CROWN CASTLE NG WEST LLC, a Delaware limited liability company, and that the foregoing instrument was signed on behalf of said company and said person acknowledged to me that he/she is authorized to execute such instrument on behalf of said company.

_____

NOTARY PUBLIC, residing in _____ County,

My Commission Expires:

_____