MIDVALE CITY, UTAH
RESOLUTION NO. 2020-R-21

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A TELECOMMUNICATIONS SERVICES AND A WIRELESS COMMUNICATIONS SERVICES FRANCHISE AGREEMENT WITH SQF, LLC.

WHEREAS, Midvale City allows the operation of telecommunications service providers under Midvale Municipal Code Chapter 5.52; and

WHEREAS, Midvale City allows the operation of wireless communications service providers under Midvale Municipal Code Chapter 5.54; and

WHEREAS, SQF, LLC wishes to provide both telecommunications and wireless communications services to the residents of Midvale, Utah; and

WHEREAS, Midvale City Code 5.52.060 and 5.54.060 requires telecommunications and wireless communication service providers to obtain franchises prior to constructing or providing telecommunications or wireless communication service; and

WHEREAS, SQF, LLC wishes to obtain franchises by entering into both a Telecommunications Services and a Wireless Communication Services Franchise Agreement with Midvale City; and

WHEREAS, SQF, LLC has provided the City with the franchise application documentation required under Midvale Municipal Code 5.52.230 and 5.54.230 and has paid the necessary application fees.

NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve the Telecommunications Services and the Wireless Communications Services Franchise Agreements with SQF, LLC, and authorizes the Mayor to sign the same between Midvale City and SQF, LLC.

APPROVED AND ADOPTED this 19th day of May, 2020.

Robert M. Hale, Mayor

ATTEST:

Rori L. Andreason, MMC
City Recorder

MIDVALE CITY STATE OF UTAH INCORPORATED JULY 1, 1909 CORPORATE SEAL

Voting by the City Council	"Aye"	"Nay"
Bryant Brown	✓	
Dustin Gettel	✓	
Paul Glover	✓	
Heidi Robinson	✓	
Quinn Sperry	✓	

TELECOMMUNICATIONS SERVICES FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter "**Agreement**") is entered into by and between the **MIDVALE CITY**, Utah (hereinafter "**City**"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 7505 Holden St., Midvale, Utah 84047, and SQF, a Delaware limited liability company (hereinafter "**Provider**"), with its principal offices at 16 Middle Street, 4th Floor, Portland, Maine.

W I T N E S S E T H :

WHEREAS, the Provider desires to provide telecommunications services within the City and in connection therewith, to establish a telecommunications network in, under, along, over and across present and future Public Ways of the City; and

WHEREAS, the City has enacted Title 5, Chapter 52 of the Revised Ordinances of Midvale City ("**Telecommunications Rights-of-Way Ordinance**"), which governs the application and review process for Telecommunication Franchises in the City; and

WHEREAS, the City, in exercise of its management of Public Ways, believes that it is in the best interest of the public to grant the Provider a nonexclusive franchise to operate a telecommunications network in the City,

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the City and the Provider agree as follows:

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE

1.1 **Agreement.** Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between City and Provider.

1.2 **Ordinance.** The City has adopted the Telecommunications Rights-of-Way Ordinance which is incorporated herein by reference. The Provider acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Rights-of-Way Ordinance, as it may be amended. The definitions in the Telecommunications Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require the Provider to comply with any provision of the Telecommunications Rights-of-Way Ordinance which is determined to be unlawful or beyond the City's authority. If any term or condition of this Agreement shall be in conflict with any State law, City ordinance, rule or regulation, the provision of the ordinance, rule or regulation shall govern and control.

1.3 **Ordinance Amendments.** Nothing herein shall prevent the City from amending the Telecommunications Rights-of-Way Ordinance from time to time, as its City Council may deem necessary. Provided, however, City shall not enact any amendments to the Telecommunications Rights-of-Way Ordinance that will adversely impact Provider without allowing Provider 30 days, or such longer

time as is necessary if 30 days is insufficient, in which to comply with the amendment. The City shall give the Provider notice and an opportunity to be heard concerning any proposed amendment. If there is any inconsistency between the Provider's rights and obligations under the Telecommunications Rights-of-Way Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, the Provider agrees to comply with any such amendments.

1.4 **Franchise Description, No Assignment.** The Telecommunications Franchise provided hereby shall confer upon the Provider, subject to the City's receipt of monetary and services compensation, the nonexclusive right, privilege, and franchise to construct, operate and maintain a telecommunications network in, under, above and across the present and future Public Ways in the City. The grant of this franchise includes the service of providing dark fiber to end users as may be authorized by the Utah Public Service Commission or federal law. The Provider shall not permit the use of its fiber optic system, its duct or pathways, its pole attachments or any plant equipment on the Public Ways in any manner that would avoid or seek to avoid the need for a franchise from the City for the business of another person as provided herein below. Provider shall not provide services directly regulated by the Utah Public Service Commission (PSC) unless authorized by the PSC. Provider shall not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USC §521, *et seq.*, as amended) without first having obtained a separate cable franchise from the City. The Agreement does not grant to the Provider the right, privilege or authority to engage in the community antenna (or cable) television business; although, nothing contained herein shall preclude the Provider from (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the Provider's System within the City for such purposes, or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied. The rights granted by this Agreement may not be subdivided, assigned, or subleased to another person unless agreed to in writing by the City or unless to an affiliate of Provider or to an entity succeeding to acquisition of substantially all of the assets of Provider.

1.5 **Licenses.** The Provider represents that it has obtained the necessary approvals, licenses or permits required by federal and State law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Rights-of-Way Ordinance.

1.6 **Relationship.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with each other.

ARTICLE 2. DEFINITIONS

2.1 For the purposes of this Agreement, the following words and terms shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning. Unless otherwise expressly stated or clearly contrary to the context, words and terms not defined herein shall be given the meaning set forth in the City's Standard Specifications – General Conditions; if a definition is not contained therein, then the word or term shall have the meaning defined in the Revised Ordinances of Midvale City; if not defined in the Revised Ordinances of Midvale City, the meaning set forth in any State orders of general applicability; and if not defined either in the Revised Ordinances of Midvale City or in a State order, their common and ordinary meaning.

2.2 When not inconsistent with the context, words used in the present tense include the future tense and vice versa; words in the plural number include the singular number and vice versa; and the masculine gender includes the feminine gender and vice versa. The words "shall" and "will" are mandatory; the word "may" is permissive. Genders and plurals are understood to refer to a corporation, partnership or other legal entity when the context so requires. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

(a) "**City**" shall mean Midvale City, Utah, and its successors and assigns.

(b) "**City Property**" shall mean all properties, facilities (excluding Company Facilities, and the facilities and property of other utilities or persons), or objects currently or in the future Public Ways or other real property owned or operated by the City within the present and/or future corporate limits of the City.

(c) "**Company**" shall mean Provider and its successors and/or assigns.

(d) "**Company Facilities**" or "**Facilities**" shall include, but not be limited to a network of fiber optic cables and all related property, including conduit, carrier pipe, cable fibers, repeaters, power sources, and other attachments and appurtenances necessary for the telecommunications system located within the Public Ways within the City limits, whether located above or below ground, currently or in the future owned or operated or otherwise controlled by the Provider needed to provide telecommunications service.

(e) "**Construction**" or "**Construct**" shall mean, without limitation, constructing, acquiring, laying, maintaining, testing, operating, extending, renewing, relocating, removing, replacing, repairing, and using Company Facilities.

(f) "**Dark fiber**" is optical fiber infrastructure cabling and repeaters that is currently in place but in which light pulses are not being transmitted.

(g) "**Emergency**" means any unforeseen circumstance or occurrence, the existence of which constitutes an immediate and substantial risk of personal injury or damage to property, or which causes interruption of utility or public services or an interruption of telecommunications services.

(h) "**Gross receipt**s from telecommunications services" or "gross receipts derived from telecommunications services" shall have the meaning defined in Utah Code Anno. Section 10-1-402 or its replacement section for the term "gross receipts from telecommunications services" as the definition may be changed from time to time.

(i) "**Maintenance**," "**maintaining**," **or** "**maintain**" shall mean, without limitation, repairing, replacing, relocating, examining, testing, and inspecting.

(j) "**Person**" shall mean any individual, person, firm, partnership, association, corporation, company, governmental entity, or organization of any kind.

(k) "**Public Ways**" shall mean the surface of and the space above and below any

public street, road, highway, freeway, lane, path, public ways court, boulevard, parks, parkway, or drive owned by the City for the purpose of public use, and shall include other rights of way as are now held or hereafter held by the City which shall, within their proper use and meaning entitle the Provider to the use thereof for the purposes of installing, maintaining and operating Company Facilities.

(l) "**Service**" or "**Services**" shall mean all telecommunications service lawfully provided by the Provider under this Agreement.

(m) "**Standard Specifications**" shall mean the Midvale City Specifications and Standard Details which govern construction in the Public Ways.

ARTICLE 3. FRANCHISE TAX

3.1 **Franchise Tax.** For the Franchise granted herein, the Provider shall pay to the City a tax on the Provider's Gross Receipts from telecommunications services attributed to or services within the City in accordance with the Municipal Telecommunication License Tax Act (Utah Code Ann. 10-1-401 to10-1-410), less any business license fee or business license tax enacted by the City. All payments shall be made to the Utah State Tax Commission, and sent as follows:

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134.

If the Municipal Telecommunication License Tax may no longer be lawfully collected, then to the extent allowed by law, the Provider shall pay to the City a tax levy or franchise fee of three and one-half percent (3.5%) of its Gross Receipts derived from telecommunications services attributed to or services provided within the City.

3.2 **Equal Treatment.** The City agrees any fees or taxes charged to Provider under this Agreement shall be of the same nature and calculation of fees or taxes as to other similarly situated entities.

ARTICLE 4. TERM AND RENEWAL

4.1 **Term and Renewal.** The franchise granted to Provider shall be for a period of **ten (10) years** commencing on the first day of the month following this Agreement, unless this Franchise is sooner terminated as herein provided. At the end of the initial five-year term of this Agreement, the franchise granted herein may be renewed for up to one additional five (5)- year-term extensions upon the mutual written agreement of the parties for the additional five-year extension. The Provider shall notify the City of the expiration date and of its wish to renew the Franchise Agreement for another term at least three months before and not earlier than six months before the termination date of the initial term of this Agreement.

4.2 **Rights and Duties of Provider Upon Expiration or Revocation.** Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between the Provider and the City, or by revocation or forfeiture as provided herein, the Provider shall remove from the Public Ways any and

all of its Company Facilities, but in such event, it shall be the duty of the Provider, immediately upon such removal, to restore the Public Ways from which such System is removed to as good condition as the same was before the removal was effected. In the alternative, Provider may, with the written approval of the City Engineer, abandon some or all of the Company Facilities in place.

ARTICLE 5. PUBLIC USE RIGHTS

5.1 **City Uses of Poles and Overhead Structures.** The City shall have the right, without cost, to use all above-ground electric or telecommunication-wire poles owned solely by the Provider (or co-owned by other telecommunications company providers or public utilities who agree or have agreed with Provider to allow the City to use the poles) within the City for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by the City shall be for activities owned, operated or used by the City for any public purposes, and shall not include the provision of telecommunications service to non-governmental third parties. Nothing in this section shall be construed to allow Provider to place its Facilities above ground without the prior written approval of the City.

5.2 **Limitations on Use Rights.** Nothing in this Agreement shall be construed to require the Provider to increase pole capacity, alter the manner in which the Provider attaches equipment to the poles, or alter the manner in which the Provider operates and maintains its equipment. Such City attachments shall be installed and maintained in accordance with the reasonable requirements of the Provider and the then-current National Electrical Safety Code. City attachments shall be attached or installed only after written approval by the Provider, which approval will be processed in a timely manner and will not be unreasonably withheld.

5.3 **Maintenance of City Facilities.** The City's use rights shall also be subject to the parties reaching an agreement regarding the maintenance of the City attachments.

ARTICLE 6. POLICE POWERS

The City expressly reserves, and the Provider expressly recognizes, the City's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the City's property, the Public Ways, and the health, safety and welfare of its citizens and their properties.

ARTICLE 7. WORK IN THE CITY PUBLIC WAYS

7.1 **Follow City Road-Cut Ordinance.** The Provider shall comply with and follow the City's road excavation ordinance, Title 12 Chapter 12, Revised Ordinances of Midvale, in all work it performs in the Public Ways.

(a) The Provider shall obtain all necessary permits or approvals for construction, maintenance and operations, and shall at all times be subject to and comply with all laws, statutes, codes, rules, regulations, standards, and procedures regarding the construction, operation and maintenance of the Provider's Facilities, whether federal, State or local, now in force or which, hereafter, may be promulgated (including but not limited to zoning, land use, historic preservation ordinances, safety standards, and other applicable requirements) and good industry practices. The City may inspect the manner of such work and require remedies as may be

necessary to assure compliance. In the event the Provider should fail to comply with the terms of any City ordinance, regulation or requirement, the City shall give the Provider written notice of such non-compliance and the time for correction provided by ordinance or as provided herein.

(b) All work in City streets shall be done in a safe manner, and shall follow the City ordinances and Midvale City Standard Specifications and Details for Municipal Construction and the Manual of Uniform Traffic Control Devices (MUTCD) and APWA standard drawings and specifications. Upon the City's request, the Provider will provide the City with a status report of such measures.

(c) All Facilities constructed by the Provider shall be located so as to cause minimum interference with and injury to (i) public use of Pubic Ways; (ii) the City's water mains, storm water infrastructure, street lights, or any other municipal use of the Public Ways; and (iii) trees and other natural features.

7.2 **Workmanlike Manner.** The installation, maintenance, renovation, and replacement of Provider's Facilities in the Public Ways shall be performed in a good and workmanlike manner.

7.3 **Emergency Repairs.** In any Emergency event in which Provider needs to cut or excavate a Public Way, and in which the Provider must act immediately and is unable to obtain a permit for excavating in the Public Ways from the City beforehand, the Provider shall provide the City Public Works Department with notification of such work as soon as practicable by calling the City Public Works Department at its regular number, or if after the Department's business hours, by calling (801) 580-7274 or such other emergency telephone number provided to Provider by the City, and shall report the emergency and all related information requested by the City representative on call. In the event the Provider is unable to reach a City representative by calling the City's emergency telephone number, then the Provider shall continue to try to reach a City representative by calling that number or by reaching the City's Public Works Department by the fastest means possible, but shall in any event call the Public Works Department to report the emergency within the first hour of the next day on which the City is open for business. The Provider shall give the City the telephone number of the Provider's representative for contact in an emergency.

7.4 **Damage to Public Property.** If, during the course of installation, removal, inspection, or work on its Facilities, the Provider causes damage to or alters any Public Ways or City property, the Provider shall (at its own cost and expense, and in accordance with the City's Standard Specifications) replace and restore it to as good a condition as existed before the work commenced. Except in case of Emergency in which the Provider is unable to obtain a permit for excavating in the Public Ways from the City beforehand, the Provider shall, prior to commencing work in the Public Ways, or other City public places, obtain a permit to perform such work from the City. The Provider will abide by all applicable ordinances, rules, regulations, including the City's Standard Specifications for such work. The Provider shall give the City the telephone number of the Provider's representative for contact in an emergency.

7.5 **Removal of City Property.** No City property shall be removed from the Public Way, including signage on utility poles, without prior permission from an authorized representative of the City.

7.6 **Safety.** The Provider shall at all times operate, repair, and maintain its Facilities in a safe and careful manner.

7.7 **Excavations.** The Provider shall comply with all City laws and regulations for excavation and construction, including Chapter 12-12 Rev. Ordinances of Midvale City ("**Road Excavation Ordinance**"), and shall be responsible for obtaining all applicable permits before beginning work in the Public Ways. The City shall have the right to inspect all construction or excavation. All construction, excavation, maintenance and repair work done by the Provider shall be performed in a timely and expeditious way in conformity with the applicable laws and ordinances, including the City Standard Specifications and Details for Municipal Construction, and in a manner which minimizes the inconvenience to the public or individuals. All public and private property in or adjacent to dedicated easements disturbed by Provider's construction or excavation activities shall be restored as soon as possible by the Provider, at its expense, to substantially its former condition or better, subject to inspection by the City and compliance by the Provider with remedial action required by the City Engineer or his representative pursuant to said inspection. The Provider shall comply with the City's requests for prompt action to remedy all damage caused by Provider, its officers, employees, agents and contractors to private and public property adjacent to streets or dedicated easements where the Provider is performing excavation or construction work.

7.8 **Relocation.** Whenever the City shall, in the interest of the public convenience, necessity, health, safety and general welfare require the inspection, maintenance, repair, relocation or reinstallation of any Company Facility within a Public Way, the Provider shall, upon not less than 90 days prior notice, promptly commence and diligently complete such work to remove and relocate or reinstall such Company Facility as may be necessary to meet the requirements of the City. Notwithstanding the foregoing requirement, the Provider shall relocate its facilities upon 45 days prior written notice from the City when requested by the City due to an emergency, or as the parties may otherwise agree in writing. Such relocation, removal or reinstallation by the Provider shall be at no cost to the City. The Provider may ask for a meeting with the City to discuss the relocation, and alignment for the relocated Provider Facilities. If a City project is funded by federal or State monies that specifically includes an amount allocated to defray the expenses of relocation of Provider Facilities, the City shall reimburse the Provider up to the extent of such specified amount for any actual relocation costs mandated by the project to the extent that the City actually receives such federal or State funds earmarked for that purpose. The requirements of this Section 7.8 shall not be construed to be in derogation of any right or cause of action for reimbursement the Provider may have against a developer or other private interest which causes the need to move its lines or Facilities. Such right or cause of action, however, shall not be used as an excuse to delay or avoid its obligations under this section.

7.9 **Protect City Property.** The Provider shall not damage City property in its exercise of any rights or privileges herein granted. The Provider shall be liable for any damage or injury caused by Provider, its officers, employees, agents and contractors suffered by the City as a result of the exercise by the Provider of any rights or privileges herein granted. This section shall be applicable only to City and Provider relationships. Nothing herein contained shall be construed to affect the liability of the Provider to third-party claims.

7.10 **Underground Installations.** The Provider will be permitted to install Facilities overhead if it meets the following conditions: (a) it agrees at its sole cost to place the Facilities underground when the City directs, and so long as the City, at the same time; directs other telecommunication or utility

providers with overhead facilities in the same location to move their facilities underground; (b) it is not feasible to go underground at the time; and (c) lines can be placed on already existing poles. Notwithstanding the foregoing, if other telecommunication or utility lines are currently underground in any Public Way in which Provider installs its Facilities, then Provider shall install its fiber optic cables and other Facilities underground. Only those Facilities may be left above ground which cannot practically be placed underground.

7.11 **Cooperation with Others in Placing Lines Underground.** The Provider shall, when undertaking a project of placing its fiber optic lines and other Facilities underground, cooperate with other utilities, agencies, or companies which have their lines overhead to have all lines placed underground as part of the same project. When other public utility companies or telecommunication companies are placing their lines underground, the Provider shall, where feasible, cooperate with these utilities and companies and undertake to place its Facilities underground as part of the same project. The City shall request that Provider be given at least 60 days notice of such project.

7.12 **Prohibitions.** Except as otherwise provided herein, Facilities maintained or installed by Provider within the City shall be so located and constructed as not to do any of the following acts:

(a) Interfere with access to or use of any water or fire hydrant; obscure the vision of or interfere with the installation of any traffic-control device or traffic or information sign or signal;

(b) Interfere with sight distance established by any ordinance or law;

(c) Obscure the light from any street light;

(d) Cross any water or sewer line except at a 90-degree angle, except in accordance with a specific permit for such crossing issued by the City;

(e) Damage irrigation, landscaping or trees owned or maintained by the City;

(f) Damage any communications lines owned or maintained by the City; and

(g) Install Facilities in the paved sidewalk area unless authorized in advance by the City.

7.13 **Removal and Relocation.** The City shall have authority to require Provider to remove or relocate any facility located in violation of this Article 7 at Provider's sole expense. Such relocation or removal shall be completed within sixty (60) days (or other period of time as the parties may mutually agree to be acceptable for the required work) of written notice from the City. The notice shall prescribe the area where the facility is located and any other special conditions deemed necessary by the City.

7.14 **As-Built Drawings.** After construction of new Company Facilities or extensions of existing Facilities, Provider shall promptly develop and deliver to the City as-built drawings and maps in a format requested by the City.

7.15 **Damage to Others' Facilities.** During construction or maintenance, if Provider, its contractors, subcontractors, employees, agents or assigns causes damage to or a break in any lines, cables, ducts, conduit or other facilities located in or out of the Public Ways, the Provider shall immediately notify the affected party and the City by the fastest practical means.

7.16 **Hazardous Materials.** If contaminated or Hazardous Material is discovered within or adjacent to the Public Way, the Provider shall stop work in that affected area, immediately notify the City Engineer of the hazardous material, and report accurately and in writing the facts of the encounter to the City Engineer. Work in the affected area shall not thereafter be resumed except by written order of the City Engineer unless and until the material is determined not to be a Hazardous Material or the Hazardous Material is remediated as required by law. Response to, remediation of, and liability for Hazardous Materials shall comply applicable federal and Utah law, provided, however, that Provider shall not be liable for any remediation or other work arising from Hazardous Materials unless Provider, its employees, agents, contractor, or subcontractor, is directly responsible for introducing Hazardous Material or causing the release of the Hazardous Material, or is otherwise liable under applicable law. To the extent that Provider is responsible for any remediation or similar work regarding Hazardous Substance, before recommencing work within the Public Way, the Provider shall provide the City Engineer with plans and other documentation that demonstrates that the contaminated or Hazardous Material has been or will be properly handled, and that continued work within the Public Way poses no threat to the environment and/or human health or the safety of public or private property.

The terms of this section shall survive the termination of this Agreement.

7.17 The term "**Hazardous Material**" shall mean any substance:

(a) which is flammable, explosive, radioactive, toxic, corrosive, infectious, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of Utah or any political subdivision thereof; or

(b) which contains asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity or petroleum, including crude oil or any fraction thereof; or

(c) which is or becomes defined as a pollutant, contaminant, hazardous waste, hazardous substance, hazardous material or toxic substance under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6987; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9657; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101-5127; the Clean Water Act, 33 U.S.C. §§ 1251-1387; the Clean Air Act, 42 U.S.C. §§ 7401-7642; the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2655; the Safe Drinking Water Act, 42 U.S.C. §§ 300f - 300j; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001-11050; under title 19, chapter 6 of the Utah Code, as any of the same have been or from time to time may be amended; and any similar federal, State and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to environmental conditions, industrial hygiene or Hazardous Materials on the Public Ways, including all interpretations, policies, guidelines and/or directives of the various governmental authorities responsible for administering any of the foregoing, now in effect or hereafter adopted, published and/or promulgated; or

(d) the presence of which in the Public Ways requires investigation or remediation under any federal, State or local statute, regulation, ordinance, order, action, policy, or common law; or

(e) the presence of which on the Public Ways causes or threatens to cause a nuisance on the Public Ways or to adjacent properties or poses or threatens to pose a hazard to the health and safety of persons on or about the Public Ways.

ARTICLE 8. SEVERABILITY

If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Rights-of-Way Ordinance is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any State or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is 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, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof unless the Agreement cannot reasonably be construed to effectively implement the intent of the parties as provided herein. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate a mutually acceptable amendment to this Agreement. As used herein, "material consideration" for the City is the State of Utah's right or ability to collect the Telecommunication License Tax, or if that tax may no longer be collected for Provider's use of the City's Public Ways, then a lawful franchise fee as provided in Section 3.1 above during the term of this Agreement, and its ability to manage the Public Ways as provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the City's Road Excavation Ordinance. For the Provider, "material consideration" is its ability to use the Public Ways for telecommunication purposes as provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the City's road excavation ordinance.

ARTICLE 9. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES

9.1 **Grounds for Termination.** The City may terminate or revoke this Agreement and all rights and privileges herein provided, upon ninety (90) days prior notice, for any of the following reasons:

(a) The Provider fails to make timely payments of the Telecommunication License Tax, or alternative payments due under Section 3.1 above and does not correct such failure within thirty (30) calendar days after receipt of written notice by the City of such failure;

(b) The Provider, by act or omission, violates a duty herein set forth in any particular within the Provider's control, and with respect to which redress is not otherwise herein provided. In such event, the City determines, after a hearing, that such violation has occurred and thereupon, after written notice to the Provider of such determination, the Provider, within thirty (30) calendar days of such notice, shall commence and diligently pursue efforts to remedy the conditions identified in the notice and shall have thirty (30) calendar days from the date it receives notice (or if the violation is of such nature that a longer time as is necessary to complete the required work, then the time needed to complete the work ("**Correction Time**"), provided that the reason for the

failure to complete the work within time required just above was not the intentional or negligent act or omission of the Provider) to remedy the conditions. After the expiration of such 30-day period (or if the failure is of such nature that a longer time as is necessary to complete the required work, then the time needed to complete the work, provided that the reason for the noncompliance was not the intentional or negligent act or omission of the Provider) and failure to correct such conditions, the City may declare the franchise forfeited and this Agreement terminated, and thereupon, the Provider 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 corrected within the 30-day time period provided above, the City shall provide additional time for the correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Provider; or

(c) The Provider becomes insolvent, unable or unwilling to pay its debts when due; is adjudged bankrupt; or all or part of its Facilities should be sold under an instrument to secure a debt and is not redeemed by the Provider within sixty (60) days.

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

9.3 **Remedies at Law.** In the event the Provider or the City fails to fulfill any of its respective obligations under this Agreement, the City or the Provider, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

9.4 **Third-Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Provider. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

ARTICLE 10. PARTIES' REPRESENTATIVES

10.1 **City Representative and Address.** The City Engineer or his/her designee(s) shall serve as the City's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the Provider to the City pursuant to or concerning this Agreement, shall be delivered to the City's representative at the following address: City Engineer, Public Works Department, 7505 S. Holden Street, Midvale, Utah 84047 ("**City Representative**"), or such other officer and address as the City may designate by written notice to the Provider.

10.2 **Provider Representative and Address.** Liza Quinn ("**Provider's Representative**") or her designee(s) shall serve as the Provider's representative regarding administration of and communication about this Agreement. Provider shall provide to the City's Representative the Provider's Representative's current office and wireless telephone numbers, facsimile and e-mail contact information.

Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the City to the Provider pursuant to or concerning this Agreement, shall be delivered to the Provider's Representative at the following address: 16 Middle Street, 4th Floor, Portland, ME 04101, or such officer and address as the Provider may designate by written notice to the City. Any legal notice to Provider shall also be copied to Provider's Legal Department at the above address.

ARTICLE 11. INSURANCE AND INDEMNIFICATION

11.1 **Insurance.**

(a) On or before the effective date of this Agreement, Provider shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full term of the franchise, at the expense of Provider, a comprehensive general liability insurance policy, including underground property damage coverage, written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX protecting the City against liability for loss of bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the communications system by Provider in 'the following minimum amounts:

(1) Ten Million Dollars ($10,000,000.00) combined single limit, bodily injury and for real property damage in any one occurrence.

(2) Ten Million Dollars ($10,000,000.00) aggregate.

(b) Provider shall also file with the City Recorder a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX for all owned, non-owned, hired and leased vehicles operated by Provider, with limits not less than Two Million Dollars ($2,000,000.00) each accident, single limit, bodily injury and property damage combined.

(c) Provider shall also maintain, and by its acceptance of any franchise granted hereunder, specifically agrees that it will continually maintain throughout the term of the franchise, workers compensation and employers liability, valid in the State, in the minimum amount of the statutory limit for workers compensation and Five Hundred Thousand Dollars ($500,000.00) for employer's liability.

(d) All liability insurance required pursuant to this section shall name the City of Midvale and its officers, employees, board members and elected officials as additional insureds (as the interests of each insured may appear) and shall be kept in full force and effect by Provider during the existence of the franchise and until after the removal or abandonment with the City Engineer's approval of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by Provider incident to the maintenance and operation of the communications system as defined in this Agreement. Failure to obtain and maintain continuously the required insurance shall constitute a substantial violation of this agreement. All policies shall be endorsed to give the City thirty (30) days written notice of the intent to amend or cancel by either Provider or the insuring company.

(e) The City reserves and the Provider acknowledges the right to modify the insurance requirements contained herein based upon changes in the Utah Governmental Immunity Act, Title 63G, Chapter 7, Utah Code Annotated.

11.2 **Indemnification.** Provider hereby agrees to indemnify, defend and hold harmless the City, its officials, officers, employees and insurance carriers, individually and collectively from all losses, claims, suits, judgments, demands, expenses, subrogation, reasonable attorney's fees, costs or actions of any kind and nature resulting from personal or bodily injury to any person, including employees of Provider or of any contractor or subcontractor employed by Provider (including bodily injury and death) or damages to any property, arising directly out of the negligent acts or omissions of Provider, its contractors, subcontractors, officers, agents and employees while exercising any of the rights or privileges granted by this Agreement, except to the extent that such losses, claims, demands, or damages are caused by the negligent acts or omissions of the City, its officers, agents, or employees.

This section and the following section shall survive the termination of this Agreement.

11.3 **City Participation in Litigation.** The Provider shall immediately notify the City of any litigation which would affect the franchise or the City's rights under this Agreement.

ARTICLE 12. SECURITY FOR PERFORMANCE

12.1 Form, Amount. The Provider shall post with the City a security fund in the form of a surety bond, cash, an irrevocable letter of credit or a performance bond in the amount determined by the City Engineer, but not less than $10,000 ("**Bond Amount**"). It is the Provider's responsibility to maintain this security fund throughout the Agreement term.

12.2 Use. The City may draw on or make claim against the security fund to ensure the Provider's faithful performance of its obligations of this Agreement in accordance with applicable law. If Provider fails to perform its obligations under this Agreement in any respect, including making any payment to the City required by this Agreement or by applicable law, and reimbursable costs incurred by the City, the City may, after thirty (30) days' written notice to the Provider, withdraw or make a claim for that amount from the security fund. The City shall notify the Provider of the amount and date of any such withdrawal.

12.3 Restoration of Fund. Within forty-five (45) calendar days after the City gives Provider written notice that an amount has been withdrawn from the security fund or that the value of the surety bond has been reduced pursuant to Section 12.2 above, the Provider must deposit a sum of money in the security fund or shall restore the surety bond sufficient to restore it to the Bond Amount. If Provider fails to do so, such failure to restore shall be a material breach of this Agreement.

12.4 Return of Fund. If the Agreement terminates for any reason, and the Provider has ceased to provide service in the City, the balance of the security fund that remains following termination of the Agreement and satisfaction of all of Provider's obligations secured by the fund shall be returned to Provider. The City shall be under no obligation to return funds until it has had adequate time to evaluate Provider's unmet obligations, but no longer than 180 days, has elapsed for the City to determine that all such obligations have been satisfied.

12.5 Letter of Credit. Any letter of credit used to satisfy any portion of the security fund requirement must:

(a) Be issued by a bank licensed to do and doing business in Utah;

(b) Be irrevocable;

(c) Provide for automatic renewal of the letter of credit unless the bank has given the City written notice of its termination by certified mail at least sixty (60) days prior to expiration of the letter of credit;

(d) Provide that the City may draw against the letter of credit at any time prior to expiration of the letter of credit;

(e) Provide that the City may draw against the letter of credit and hold the funds in escrow after termination of the Agreement:

(1) if the City has filed an action;

(2) if the City has sought to draw against the letter of credit prior to termination and Provider has contested the action or appealed the notice and order prior to termination; or

(3) if the bank or the Provider has challenged or appealed the draw.

ARTICLE 13. GENERAL PROVISIONS

13.1 **Binding Agreement.** The parties represent that (a) when executed by their respective representatives who sign below, this Agreement shall constitute legal and binding obligations of the parties; and (b) that each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement. This Agreement shall be binding upon the successors, administrators and permitted assigns of each of the parties.

13.2 **Utah Law, Litigation.** This Agreement shall be interpreted pursuant to Utah law. Any claim or lawsuit arising out of this Agreement shall be brought in the Third District Court of the State of Utah, or if the Third District Court lacks jurisdiction, then suit shall be brought in the U.S. District Court for the State of Utah located in Salt Lake County, Utah, if that court has jurisdiction. The parties waive any right to trial by jury or to have a jury participate in resolving any dispute, whether sounding in contract, tort, or otherwise, between them arising out of this Agreement or any other instrument, document, or agreement executed or delivered in connection herewith or the transactions related hereto.

13.3 **Meet and Discuss; Mediation.** Notwithstanding any other provision contained herein, before the City or the Provider brings an action or claim before any court or regulatory body arising out of a duty or right arising under this Agreement, the Provider and the City shall first make a good-faith effort to resolve their dispute by discussion and then, if that fails, by nonbinding mediation by a mediator acceptable to both parties, the cost of which shall be borne equally by the parties.

13.4 **Time of Essence.** Time shall be of the essence of this Agreement.

13.5 **Entire Agreement, Modification, No Waiver.** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior negotiations, agreements or understandings between the parties related to the subject matter hereof. None of the provisions of this

Agreement may be altered or modified except through an instrument in writing signed by both parties. No failure by any party to insist on the strict performance of any covenant, duty or condition of this Agreement or to exercise any right or remedy consequent on a breach of this Agreement shall constitute a waiver of any such breach or any other covenant, duty or condition. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. Each of the foregoing genders and plurals is understood to refer to a corporation, partnership or other legal entity when the context so requires.

13.6 **No Presumption.** Both parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

13.7 **Warranty of Authorization.** The person signing for and on behalf of Provider warrants and represents that he or she is duly authorized and empowered to enter into this agreement for and on behalf of Provider, and that Provider is duly organized and validly existing under the laws of the State of Delaware, and that by his or her signature, he or she does bind Provider to the terms of this Agreement. The person signing below for Provider warrants to the City that all necessary company approvals, authorizations and consents have been obtained, and all company procedures required to be taken by Provider's articles of organization, have been followed to enable Provider to enter into this Agreement and to perform its duties hereunder.

13.8 **Effective Date.** This Agreement shall be effective on the day the following requirements have been completed: the Agreement has been signed by the City Council chairman; the Agreement has been signed by both parties; and the Provider has filed with the City the certificates of insurance required in Section 11.1 above.

SIGNED AND APPROVED this ____ day of _____, 2020.

Signature page follows.

SIGNED AND APPROVED this 19th day of May, 2020.

MIDVALE CITY

Mayor

ATTEST:

City Clerk

MIDVALE CITY STATE OF UTAH INCORPORATED JULY 1, 1909 CORPORATE SEAL

APPROVED AS TO FORM:

City Attorney

SQF, LLC

Joshua Broder, CEO

STATE OF MAINE)

: ss.

COUNTY OF CUMBERLAND)

On the 8TH day of May, 2020, personally appeared before me *(name of signer)* Joshua Broder, who, being by me duly sworn on oath did say that he is the CEO, who duly acknowledged to me that he executed the same, and has authority to bind said company by his signature to this Agreement, and that the foregoing instrument was signed on behalf of said company.

NOTARY PUBLIC, Residing in Maine

My commission Expires:

Oct. 2, 2026

SIGNED this 8TH day of May, 2020.

ELIZABETH RANCOURT-SMITH
NOTARY PUBLIC
State of Maine
My Comm. Expires October 2, 2026

Notarized and Witnessed remotely, in accordance with Executive Order 37 FY19/20

WIRELESS COMMUNICATION SERVICES FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") as of the 4th day of May, 2020 ("Effective Date"), is between Midvale City, a Utah municipal corporation ("City"), and SQF, a Delaware Limited Liability Company ("Grantee").

RECITALS

A. Grantee desires to install, maintain and operate wireless communication facilities in the City's rights-of-way. The equipment includes, but is not limited to antennas, power supplies and meters, monitoring devices, communications equipment, radio amplifiers, radio frequency and optical signal converters, fiber optic and other cabling, connectors and other equipment necessary to serve Grantee's WCFs (collectively, the "Facilities").

B. The City is willing to grant Grantee a franchise for the operation of the Facilities under the terms of this Agreement, subject to the approval of the City Council, whose approval shall not be unreasonably withheld. This Agreement is subject to the requirements of Chapter 5.54 'Wireless Communication Services".

C. Grantee desires the use of the Franchised Area within the City for the purpose of installing, maintaining and operating WCFs in order to provide wireless communication service pursuant to federal laws.

D. The installation, maintenance, and operation of Grantee's WCFs within the Franchised Area will be done in a manner consistent with the City's rights-of-way management regulations, and all other applicable local, state and federal regulations.

In consideration of the following mutual covenants, terms and conditions, the parties agree as follows:

1. DEFINITIONS.

All terms shall have the meanings established in Midvale Municipal Code 5.54.040, as amended. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive. For the purposes of this Agreement, the listed terms shall have the following meanings:

"Annual Franchise Fee" means "Right-of-Way Rate" as established in Midvale Municipal Code 5.54.120(B).

"Cost" means any actual, reasonable, and documented costs, fees, or expenses, including but not limited to attorneys' fees.

"Gross Revenue" has the same meaning as 'gross receipts from telecommunications service' as defined in Utah Code Ann. § 10-1-402, as amended.

2. FRANCHISED AREA.

The Franchised Area includes and is limited to the public rights-of-way either owned or regulated by the City. The WCFs of Grantee in the Franchised Area will be used solely to facilitate or provide personal wireless services. The use of the Franchised Area for any other purpose may require additional permits, agreements, and approvals. Nothing in this Agreement shall be interpreted to authorize the installation of macro wireless towers, equipment or facilities, nor the installation on poles of wireless equipment and facilities designed for macro wireless towers.

3. CITY'S REPRESENTATIONS AND WARRANTIES.

A. The City represents and warrants to the Grantee that: (i) the City, and its duly authorized signatory, have full right, power, and authority to execute this Agreement on behalf of the City; (ii) for property which it owns, the City has good and unencumbered title to the Franchised Area free and clear of any liens or mortgages, except those disclosed to the Grantee that will not interfere with Grantee's right to use the Franchised Area; and (iii) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, franchises or other agreements binding on the City.

B. The Grantee has studied and inspected the Franchised Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in Subsection (3)(A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. The Grantee has inspected the Franchised Area and obtained information and professional advice as the Grantee has determined to be necessary related to this Agreement.

4. GRANT OF FRANCHISE; TERM.

A. City hereby grants Grantee, a non-exclusive franchise to use and occupy the Franchised Area for the purpose of developing and installing WCFs, including the right to attach, operate, maintain, install, and replace WCFs as approved by the City subject to the conditions outlined in this Agreement. Grantee shall install its WCFs consistent with the City's Chapter 5.54 'Wireless Communication Services.'

B. The Grantee's right to use and occupy the Franchised Area shall not be exclusive as the City reserves the right to grant a similar use of same to itself or any person or entity at any time during the term of this Agreement.

C. Nothing in this Agreement will be construed as granting the Grantee the authority to use any property that is owned or regulated by any person or entity other than the City including, but not limited to, state-owned or -maintained highways. Nor does it confer any right to use City property other than the Franchised Area.

D. The initial term of this Agreement shall be for a period of ten (10) years (the "Initial Term"), commencing on the Effective Date and ending on the tenth anniversary thereof, unless sooner terminated as stated herein. Provided, however, that if Grantee is not operational and providing services to customers within the City within two hundred seventy (270) days of the effective date of this Agreement, this Agreement may be terminated by the City, in its sole discretion, upon thirty (30) days written notice. Following the expiration of the Initial Term, this Agreement shall be automatically renewed for no more than one successive five-year renewal term, unless either party notifies the other in writing of its intent not to renew this Agreement at least ninety (90) days prior to the expiration of the Initial Term

E. If Grantee continues to occupy the Franchised Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month-to-month franchise. Grantee shall be subject to Chapter 5.54 and the terms of this Agreement throughout the period of such operation. Grantee shall pay the City fees in an amount that is double the amount of the normal franchise fees that would otherwise be due under Section 6. Either party may terminate the month-to-month franchise by providing fourteen (14) days written notice to the other party.

F. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or any other statements or acts by or between the parties, Grantee's rights in the Franchised Area are limited to the rights created by this Agreement. Grantee's rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title regarding the Franchised Area. Grantee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over, the Franchised Area or Grantee's use of the Franchised Area.

5. PERMITTED USE OF FRANCHISED AREA.

A. The Franchised Area may be used by Grantee, seven (7) days a week, twenty-four (24) hours a day, only for the purposes authorized by this Franchise and not for any other purpose. This Agreement shall include new types of WCFs that may evolve or be adopted using wireless technologies. Grantee shall, at its expense, comply with all applicable present and future federal, state, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety and radio frequency emissions) in connection with the use (and installation, operation, maintenance, and replacement of WCFs on) within the Franchised Area.

B. Subject to the terms of this Agreement, WCFs may only be installed on City's poles under the terms of a fully executed pole attachment agreement with the City, on poles under the terms of a fully executed pole attachment agreement with the owner of such poles, or on Grantee's proprietary poles.

C. The use of Franchised Area under this Agreement does not include a franchise to install and operate fiber optic cable, wires, equipment and facilities to provide front-haul or backhaul transmission service, whether provided by a third-party provider or Grantee. Any entity that provides front-haul or backhaul transmission service must have a separate legal authorization from the City to use Public Rights-of-Way outside of this Agreement unless provided otherwise in this Agreement.

D. Nothing under this Agreement shall be interpreted to create or vest in Grantee any easement or other ownership or property interest to any City property or Rights-of-Way. This Agreement shall not constitute an assignment of any City's rights to City property or Rights-of-Way. Grantee shall, at all times, be and remain a franchisee only.

E. Grantee shall not use or permit the WCFs to be used for any activity violating any applicable local, state, or federal laws, rules, or regulations.

6. FRANCHISE FEES; COSTS.

A. Grantee shall pay all rates and fees in accordance with Part 5 of the Small Wireless Facilities Deployment Act (Utah Code Ann. §§ 54-21-101 to 54-21-602), as amended.

B. Grantee shall pay the City an Annual Franchise Fee for every WCF site approved by the City regardless of whether Grantee attaches its WCF to a light or other pole owned by the City, utility pole owned by a third-party, or pole owned by Grantee. Except as otherwise approved by the City, Grantee shall not make multiple installations on a single pole.

C. In addition to Annual Franchise Fees, Grantee shall be responsible for paying administrative fees for the processing of WCF site applications by City staff as prescribed in this Agreement. Starting on the Effective Date, Grantee shall pay a non-refundable administrative fee to the City for each WCF site application submitted for review and approval as set forth under Midvale Municipal Code 5.54. The administrative fee shall be submitted with every WCF site application as a prerequisite to begin review of the WCF site application. Grantee shall have the right to amend the WCF site application to correct errors or provide additional information without having to pay a second administrative fee.

D. Additionally, Grantee shall pay for reimbursement as further set forth in Chapter 5.54 of the Midvale City Code or as provided elsewhere in local laws or regulations.

E. To the extent that Grantee wishes to utilize the Franchised Area for the installation, use or operation of fiber or conduit in connection with the WCF, a separate Franchise for wireline (as opposed to wireless) usage shall be required from the City.

F. In addition to other payments required herein, Grantee shall pay all permit fees and all other required City fees in connection with construction, inspection, traffic and pedestrian

flow and other City requirements without any offset against any other fees or payments required herein.

G. The Grantee shall remit payments of the Annual Franchise Fee on the first day of every month. If the Effective date of this Agreement is not the first day of a month, the Grantee's payment for the first and last month of this Agreement will be prorated accordingly.

H. If the Grantee fails to pay any franchise fee or other amount due in full within ten (10) days after receipt of written notice of delinquency, the Grantee is responsible for paying interest on the unpaid principal balance at the rate charged for delinquent state taxes, from the due date until payment is made in full.

I. Grantee shall pay the City actual costs for inspections, materials testing and other costs incurred by the City as a direct result of the operation, construction, repair, alteration or relocation of the Facilities. All costs shall be paid in full within thirty (30) days of invoice.

J. City agrees that any fees or taxes charged to Grantee under this Agreement shall be of the same nature and calculation of fees or taxes as other similarly situated entities.

7. APPROVAL OF WCF SITES.

A. Grantee shall file with the City a WCF site application in accordance with Chapter 5.54. Said application form may be modified from time-to-time by the City as deemed necessary in order to more efficiently process applications from Grantee.

B. All WCF site applications requesting access to a City pole must include a load bearing study to determine whether the attachment of a WCF may proceed without pole modification or whether the installation will require pole re-enforcement or replacement. If pole re-enforcement or replacement is necessary, Grantee shall provide engineering design and specification drawings demonstrating the proposed alteration to the pole. Moreover, all WCF site applications requesting the installation of a new pole shall include engineering design and specification drawings demonstrating compliance with the Americans with Disabilities Act. For each WCF site application, the City or its designee shall verify that the WCF site application is complete and the appropriate administrative fee has been submitted and review engineering design documents to determine compliance with contractual requirements under this Agreement and that there is no interference with City public safety radio systems, traffic signal light systems or other communications components. If requested by the City, the Grantee will provide a copy of study conducted by a qualified Utah-licensed engineer demonstrating that the proposed WCF will not interfere with City public safety radio systems, traffic signal light systems or other communications components. The Grantee shall include appropriate design of stealth components necessary to comply with historic preservation requirements or aesthetic design elements and compliance with City pole attachment regulations for poles, including replacement of existing electric meters with dual meters.

C. As appropriate, the City or its designee shall require Grantee to make design modifications in order to comply with applicable contractual, regulatory, or legal requirements. Failure to make the requested design modifications shall result in a denied WCF site application which may not be processed under this Agreement.

D. Upon finding that the WCF site application is complete and in compliance with all applicable requirements as outlined above and in Chapter 5.54, the City or its designee shall approve such WCF site application. Grantee shall comply with the requirements of the Wireless Communication Services Ordinance and City Code. Grantee shall pay all appropriate permit fees. Upon obtaining all necessary permits, Grantee may proceed to install the WCF in coordination with any affected City departments. Upon completion of the installation, Grantee shall notify the City, or its designee, in writing and provide a picture of said installation to be included in the WCF site application records.

E. Grantee shall maintain a current inventory of WCFs throughout the term of this Agreement. Grantee shall provide to the City a copy of the inventory of WCF sites every July 1 until the end of the term. The inventory of WCFs shall include GIS coordinates, date of installation, Company Site ID#, type of pole used for installation, pole owner, and description/type of installation for each WCF installation. Concerning WCF sites that become inactive, the inventory of WCF sites shall include the same information as active installations in addition to the date the WCF site was deactivated and the date the WCF was removed from the Right-of-Way. The City shall compare the inventory of WCF sites to its records to identify any discrepancies.

F. Any unauthorized WCF sites that are identified by the City as a result of comparing the inventory of WCF sites to internal records or through any other means will be subject to the payment of unauthorized installation charges by Grantee. The City shall provide written notice to Grantee of any unauthorized WCF site identified by City staff, and Grantee shall have thirty (30) days thereafter in which to submit an approved application for said site. Failure to produce an approved application corresponding with the unauthorized WCF site will result in the imposition of an unauthorized installation charge, which shall be calculated by applying the Annual Franchise Fee formula set out in Section 6 to the period spanning from the original date of installation of the unauthorized WCF site to the date of the written notice sent by the City. The total amount resulting from this calculation shall be assessed an interest rate of eighteen percent (18%) per annum to constitute the applicable unauthorized installation charge. Thereafter, Grantee shall submit an application fee and administrative fee for the unauthorized WCF site and, if approved by the City, Grantee shall become liable for paying Annual Franchise Fees going forward. If the WCF site application for the unauthorized WCF site is not approved based on applicable considerations under this Agreement, Grantee shall remove the WCF and any related facilities from the Right-of-Way within thirty (30) days.

8. UTILITIES.

Grantee is responsible for obtaining and paying for all utilities necessary to operate the Facilities.

9. USE RESTRICTIONS.

A. Subject to the interference provisions set forth below, Grantee shall at all times use reasonable efforts to minimize any impact that its use of the Franchised Area will have on other users of the Franchised Area.

B. Grantee shall not remove, damage or alter in any way any improvements or personal property of the City or third parties in the Franchised Area without the owner's prior written approval. Grantee shall repair any damage or alteration to another's property caused by Grantee's use of the Franchised Area to the same condition that existed before the damage or alteration, reasonable wear and tear excepted.

C. Whenever the Grantee performs construction activities within the Franchised Area, the Grantee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the Franchised Area to the condition existing before construction to the satisfaction of the City Engineer. Grantee represents and warrants that it has obtained all government licenses, permits and authorization by the Federal Communications Commission and the Utah Public Service Commission, which are required to provide the Services.

If the Grantee fails to restore the Franchised Area as required, the City may take all reasonable actions necessary to restore the Franchised Area, and the Grantee, within thirty (30) days of demand and receipt of an invoice, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.

D. Grantee shall use the Franchised Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Facilities. The Facilities are limited to the equipment and facilities approved by the City in writing.

E. Grantee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Facilities. In no event shall the City's use of the Franchised Area be unreasonably interrupted by the Grantee's work. Prior to entering upon the Franchised Area for activities that disrupt vehicular and/or pedestrian traffic, the Grantee shall give the City Engineer or designee at least seven (7) days advance notice in the manner provided in this Agreement or, in the event of emergency repairs, any prior notice as is practical.

F. Grantee shall at all times have on call and at the City's access, an active, qualified, and experienced representative to supervise the Facilities, and who is authorized to act for the Grantee in matters pertaining to all emergencies and the day-to-day operation of the

Facilities. The Grantee shall provide the City Engineer or designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.

G. In the vicinity of any above-ground facilities Grantee may have in the Franchised Area, Grantee shall keep the Franchised Area maintained, orderly and clean at all times.

H. Grantee acknowledges that: i) the Grantee's use of the Franchised Area is subject and subordinate to, and shall not adversely affect, the City's use of the Franchised Area; and ii) the City reserves the right to further develop, maintain, repair, or improve the Franchised Area, provided that the City shall reasonably cooperate with Grantee to ensure that Grantee's use and operation of WCFs is not interfered with or interrupted.

I. Grantee shall not install any signs in the Franchised Area other than required safety or warning signs or other signs necessary for the use of the Franchised Area as requested or approved by the City. Grantee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

10. HAZARDOUS WASTE.

The Grantee shall not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the Franchised Area in violation of any federal, state or local law pertaining to hazardous waste or toxic substances. Grantee shall not use the Franchised Area in a manner inconsistent with any regulations, permits or approvals issued by any federal or state agency. The City and Grantee acknowledge that if Grantee uses sealed batteries, such batteries shall be used and maintained pursuant to industry standards and applicable laws. The Grantee shall defend, indemnify and hold the City harmless against any loss or liability, claims, damages, costs, expenses and attorneys' fees incurred by reason of any hazardous waste or toxic substance release on or affecting the Franchised Area to the extent caused by the Grantee, and shall immediately notify the City of any hazardous waste or toxic substance release at any time discovered or existing upon the Franchised Area. Grantee shall promptly and without request provide the City with copies of all written communications between the Grantee and any governmental agency concerning environmental inquiries, reports or problems in the Franchised Area.

11. GRANTEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

A. The following provisions govern all improvements, repairs; installation and other construction, removal, demolition or similar work of any description by the Grantee related to the Facilities or the Franchised Area (collectively referred to as the "Grantee's Improvements"):

(i) In no event, including termination of this Agreement for any reason, is the City obligated to compensate the Grantee in any manner for any of Grantee's Improvements or other work provided by the Grantee during or related to this Agreement. The Grantee shall timely pay for all labor, materials and work and all professional and other services related to Grantee's Improvements and defend,

indemnify and hold harmless the City against the same for any claims, damages, costs, expenses and attorneys' fees;

(ii) Grantee shall perform all work in a good, workmanlike manner, and shall diligently complete the work in conformance with all building codes and similar requirements. Grantee's Improvements shall be commensurate with high quality industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed;

(iii) Grantee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Grantee's Improvements;

(iv) Grantee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work in the Franchised Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Review shall include all Improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Grantee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance;

(v) Grantee shall keep as-built records of the Grantee's Improvements and upon request, shall furnish copies of records to the City, at no cost to the City, upon completion of Improvements and any changes to the same. Grantee shall participate as a member of Blue Stakes of Utah regarding underground facilities, and submit proof of participation to the City upon request;

(vi) All changes to utility facilities shall be limited to the Franchised Area and shall be undertaken by the Grantee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed;

(vii) All of the Grantee's Improvements shall, be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Franchised Area; and

(viii) Grantee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.

B. The following procedure governs the Grantee's submission to the City of all plans for the Franchised Area and the Grantee's Improvements, including any proposed changes by the Grantee of previously submitted plans:

(i) Grantee shall coordinate with the City as necessary on significant design issues prior to submission of plans;

(ii) Upon execution of this Agreement, the Grantee shall each designate a project manager to coordinate the Grantee's participation in designing and constructing Grantee's Improvements. The project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement;

(iii) No plans are considered finally submitted until the Grantee delivers to the City a formal certification by an Utah-licensed engineer, acceptable to the City Engineer, to the effect that all of the Grantee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification shall be accompanied by and refer to any backup information and analysis as the City Engineer may reasonably require;

(iv) No plans are considered approved until stamped "APPROVED" and dated and signed by the City Engineer;

(v) Grantee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City to initiate or suggest any particular process or course of action;

(vi) The City's issuance of permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. City staff shall be reasonably available to coordinate and assist the Grantee in working through issues that may arise in connection with such plan approvals and requirements;

(vii) The Grantee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performance and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees;

(viii) Subject to federal, state, and local law, any delay in the City's review of or marking Grantee's plans with changes necessary to approve the plans, or approve revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Grantee's construction deadlines. The City agrees to use reasonable efforts to review, mark or approve Grantee's plans in a prompt and timely manner and in conformance with established policies and procedures;

(ix) The Grantee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed if submitted in paper, or the Grantee shall provide the City with one (1) complete set of detailed plans and specifications of the work as completed if submitted electronically;

(x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its sole discretion; and

(xi) Before any construction begins in the Franchised Area, the Grantee shall provide the City with performance bonds and, if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Utah, and acceptable to the City and shall be kept in place for the duration of the work.

12. GRANTEE'S CONSTRUCTION.

Subject to state law, the Grantee shall install the Facilities in the Franchised Area within two hundred seventy (270) days of the City's approval in accordance with the approved application and applicable law.

13. CONSTRUCTION WORK - REGULATION BY CITY.

A. The work done by Grantee in connection with the installation, construction, maintenance, repair, and operation of WCFs on poles within the Franchised Area shall be subject to and governed by all pertinent federal, state, and local laws, rules, and regulations.

B. All pole excavations, construction activities, and aerial installations on poles in the Franchised Area shall be performed as to minimize interference with the use of the Franchised Area and with the use of private property, in accordance with all regulations of the City necessary to provide for public health, safety and convenience.

14. CONSTRUCTION, RESTORATION AND MAINTENANCE ACTIVITIES.

A. The City shall have the authority at any time to order and require Grantee to remove and abate any WCF or other structure that is in violation of the City Code. In case Grantee, after receipt of written notice and thirty (30) days opportunity to cure, fails or refuses to comply, the City shall have the authority to remove the same at the expense of Grantee (which shall be paid to the City within thirty (30) days of receipt of an invoice), all without compensation or liability for damages to Grantee.

B. The parties agree that this Agreement does not in any way limit the City's right to locate, operate, maintain, and remove City poles in the manner that best enables the operation of the City and protect public safety. The City Engineer may deny access to City poles

subject to the Small Wireless Facilities Deployment Act (Utah Code Ann. §§ 54-21-101 to 54-21-602), as amended. Further, nothing in this Agreement shall be construed as granting Grantee any attachment right to install WCFs to any specific pole, other than to an approved WCF site application under the terms of this Agreement.

C. Grantee may construct new poles in order to install WCFs in accordance with Midvale Municipal Code 5.54. Such poles shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location of all Grantee's personal property, poles, and electrical connections placed and constructed by the Grantee in the installation, construction, and maintenance of WCF shall be subject to the lawful, reasonable and proper control, direction and/or approval of the City Engineer.

15. <u>INTERFERENCE WITH OTHER FACILITIES PROHIBITED</u>.

A. Grantee shall not impede, obstruct or otherwise interfere with the installation, existence and operation of any other facility in the Franchised Area including, but not limited to, sanitary sewers, water mains, storm water drains, gas mains, poles, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and City networks, and other telecommunications, utility or municipal property.

B. In the event that Grantee's WCFs interferes with the City's traffic light signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, Grantee will respond to the City's request to address the source of the interference as soon as practicable, but in no event later than two (2) hours of receiving notice.

C. If the interference is creating a public safety hazard, the Grantee shall immediately shut down the WCF pending approval and implementation of a remediation plan. The Grantee shall provide the City Engineer an Interference Remediation Report that includes a remediation plan to stop the event of interference, an expected timeframe for execution of the remediation plan and any additional information relevant to the execution of the remediation plan. In the event that interference with City facilities cannot be timely eliminated, Grantee shall remove or relocate the WCF that is the source of the interference as soon as possible to an approved alternative location.

D. If the interference is not creating a public safety hazard, the Grantee shall provide the City Engineer an Interference Remediation Report that includes a remediation plan to stop the event of interference, an expected timeframe for execution of the remediation plan and any additional information relevant to the execution of the remediation plan. In the event that interference with City facilities cannot be timely eliminated, Grantee shall shut down the WCF and remove or relocate the WCF that is the source of the interference as soon as possible to an approved alternative location.

16. MAINTENANCE.

A. The Grantee has, at its own cost, all responsibilities for improvements to and maintenance of the Facilities in the Franchised Area during the term of this Agreement.

B. Grantee, at its expense, shall use reasonable efforts to minimize the visual and operational impacts of the equipment as required by any City Ordinance, permit, or other permission necessary for the installation or use of the Franchised Area.

C. Subject to state law, Grantee shall provide the City five (5) business days' advanced notice of:

(i) routine maintenance;

(ii) the replacement of a Grantee WCF with a WCF that is substantially similar or smaller in size; and

(iii) the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is strung on a cable between existing utility poles, in compliance with the National Electrical Safety Code.

D. Grantee shall:

(i) install and maintain all parts of its system in a nondangerous condition throughout the entire term of the franchise;

(ii) maintain its system in accordance with standard prudent engineering practices and shall conform with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations; and

(iii) at all reasonable times, permit examination by any duly authorized representative of the City of the system and its effect on the Franchised Area.

E. Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over rights-of-way so as to prevent the branches of such trees from coming in contact with its system.

17. COMPLIANCE WITH UTILITY, HEIGHT AND HISTORIC PRESERVATION REGULATIONS.

Grantee shall comply with all applicable local, state, and federal design and historic preservation regulations, including, but not limited to, the following:

A. Grantee shall comply with all relevant legal requirements for connecting the WCF to electricity and telecommunications service. The City is not responsible for providing electricity or transport connectivity to Grantee.

B. All WCF installations shall be in compliance with height restrictions applicable to poles and other structures in the zoning districts.

C. The design plans for all WCF site installations shall be compatible with the character and aesthetics of the neighborhoods, plazas, boulevards, parks, public spaces and commercial districts. Subject to applicable law and in coordination with the City's Community Development Department, Grantee shall implement design concepts and the use of camouflage or stealth materials, as necessary, to blend its WCF installations with the overall character of the selected site. Grantee shall comply with the City regulations applicable to aesthetics, stealthing, and materials.

18. <u>RELOCATION AND REMOVAL OF FACILITIES</u>.

A. Subject to state law, the City may require the Grantee to relocate or adjust a WCF in the Franchised Area in a timely manner and without cost to the City.

B. Grantee's duty to relocate or adjust its WCFs at its expense under this subsection is not contingent on the availability of an alternative location acceptable for relocation. The City will make reasonable efforts to provide an alternative location in the Franchised Area for relocation, but regardless of the availability of an alternative site acceptable to Grantee, Grantee shall comply with the notice to remove its property as instructed.

C. If Grantee fails to relocate or adjust its facilities to the satisfaction of the City or its designee by the 90th day after the date of notice, the City may remove the WCF at the expense of Grantee (which shall be paid to the City within thirty (30) days of receipt of an invoice).

D. Any damage to the Franchised Area or adjacent property caused by Grantee that occurs during the relocation or adjustment of Grantee's WCF shall be promptly repaired or replaced at Grantee's sole expense. Should Grantee not make nor diligently pursue adequate repairs within thirty (30) days of receiving written notice, the City may make all reasonable and necessary repairs on behalf of Grantee, and reimburse itself from proceeds from the surety bond required under this Agreement. Any remaining amount will be charged to Grantee. Grantee shall within thirty (30) days remit payment of such costs after receipt of an invoice from the City.

E. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Franchised Area or right-of-way in close proximity to the Franchised Area are already located, and the conflict between the Grantee's potential Facilities and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities. Any relocation of City infrastructure is purely discretionary on the part of the City and may not be demanded by the Grantee.

F. If Grantee's relocation effort delays construction of a public project causing the City to be liable for delay or other damages, the Grantee shall reimburse the City for those damages, attorneys' fees, expenses and costs attributable to the delay created by the Grantee. If the Grantee fails to pay the damages, attorneys' fees, expenses and costs in full within thirty (30) days after receiving an invoice, the Grantee is responsible for interest on the unpaid balance at the rate of 18% per annum from that date until payment is made in full.

19. COLLOCATION.

A. Subject to subsection (B) below, the Grantee shall, at all times, use reasonable efforts to cooperate with the City or any third parties with regard to the possible collocation of additional equipment, facilities or structures in and around the Franchised Area ("Collocation"). If a Collocation on a City-owned pole is feasible, the City may, in its sole discretion, negotiate a Collocation franchise agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Grantee's consent in connection with the final determination of Collocation of a third party is not required, provided that Grantee's operations are not unreasonably interfered with or interrupted. Any fees or charges paid by an additional collocation company belong solely to the City.

B. Prior to permitting the installation of a Collocation by any third party in or around the Franchised Area which may interfere with the Grantee's operations, the City shall give the Grantee forty-five (45) days' notice of the proposed Collocation so that the Grantee can determine if the Collocation will interfere with the Facilities. If the Grantee determines that interference is likely, the Grantee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate the Grantee's position. The City and the Grantee shall promptly use reasonable efforts to resolve any interference problems before the City permits a Collocation to the third party. If a subsequent franchisee is permitted to operate near the Franchised Area, and the subsequent franchisee's operations materially interfere with Grantee's Facilities, then the City shall direct the subsequent franchisee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent franchisee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Grantee with respect to any Collocation existing and as configured prior to the installation of Grantee's Facilities.

20. RECORDS.

A. Grantee shall keep complete and accurate GIS and mapping information, deployment plans, equipment inventories and other relevant records of its WCF deployments in the Franchised Area.

B. The City may, at reasonable times and for reasonable purposes, examine, verify and review the maps, plans, equipment inventories and other records of Grantee pertaining to

WCFs installed in the Franchised Area. Grantee shall make the above records available to the City for review within ten (10) business days after requested by the City.

21. RIGHT TO AUDIT.

A. The City, or its designees, shall have the right to audit, examine or inspect, at the City's election and at City's expense, all of the Grantee records at any and all Grantee's locations relating to WCF deployments under this Agreement ("Grantee's Records") during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by the City' designee, which may include internal City auditors or outside representatives engaged by the City. The Grantee agrees to retain the Grantee's records for a minimum of two (2) years following termination or expiration of the Agreement, unless there is an ongoing dispute under the Agreement. Then, such retention period shall extend until final resolution of the dispute beyond the two (2) year retention period.

B. Grantee's records shall be made available at the Grantee's place of business, if within fifty (50) miles from the City, or the City's designated offices within thirty (30) calendar days of the City's request and shall include any and all information, materials and digital data of every kind and character generated as a result of this Agreement. Examples of Grantee's records include, but are not limited to, copies of inventory of WCF sites, WCF site applications, supplemental franchises, ROW Permits, third-party pole Attachment Permits, payment records for Annual Franchise Fees and administrative fees, equipment invoices, subcontractor invoices, engineering documents, vendor contracts, network diagrams, internal network reports and other documents related to installation of WCFs at WCF sites. The Grantee bears the cost of producing, but not reproducing any and all requested business records.

C. If an audit inspection or examination discloses that Grantee's Annual Franchise Fee payments to the City as previously remitted for the period audited were underpaid, Grantee shall pay within thirty (30) days to the City the underpaid amount for the audited period together with interest at the interest rate of eighteen percent (18%) per annum from the date(s) such amount was originally due.

22. ASSIGNMENT.

A. Grantee may not assign or transfer this Agreement nor may there be a change in control to any person or entity controlling, controlled by or under common ownership with the Grantee or Grantee's parent company, or to any person or entity that, acquires the Grantee's business and assumes all obligations of the Grantee under this Agreement without the prior written consent of the City which consent may not be unreasonably withheld, delayed or conditioned.

B. Control means actual working control in whatever manner exercised. Control includes, but may not necessarily require, majority stock ownership. The requirements of Subsection 22 shall also apply to any change in control of Grantee. A rebuttable

presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty-one percent (51%) or more of the voting shares of Grantee. The consent required shall not be unreasonably withheld or delayed, but may be conditioned upon the performance of those requirements necessary to ensure compliance with the specific obligations of this Agreement imposed upon Grantee by City. For the purpose of determining whether it should consent to transfer of control, the City may inquire into the qualifications of the proposed transferee and Grantee shall assist the City in the inquiry.

C. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit reasonable evidence of its financial, technical and operational ability to fully perform under the terms of this Agreement to the City at least thirty (30) days prior to any transfer of the Grantee's interest. In no event will the City unreasonably withhold, condition or delay its approval to a proposed assignment.

D. The Grantee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Facilities, and may assign this Agreement and the Facilities to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If so, the City shall execute consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Grantee grant or attempt to grant a security interest in any of the real property underlying the Franchised Area.

E. Subject to subsections (A) and (B) above, Grantee shall not sublease any of its interest under this Agreement, nor permit any other person to occupy the Franchised Area. The Parties acknowledge that Facilities deployed by Grantee in the Franchised Area pursuant to this Agreement may be owned and/or remotely operated by a third-party wireless carrier customer ("Carriers") and installed and maintained by Grantee pursuant to existing agreements between Grantee and a Carrier. Grantee shall provide the City of prior written notice of any such Facilities and identify the associated Carrier. Such Facilities shall be treated as Grantee's Facilities for all purposes under this Agreement and any applicable pole attachment agreements. A Carrier's ownership and/or operation of such Facilities shall not constitute an Assignment under this Agreement, provided that Grantee shall not actually or purport to sell, assign, encumber, pledge, or otherwise transfer any part of its interest in the Franchised Area or this Agreement to a Carrier, or otherwise permit any portion of the Franchised Area to be occupied by anyone other than itself. Grantee shall remain solely responsible and liable for the performance of all obligations under this Agreement and applicable pole attachment agreements with respect to any Facilities owned and/or remotely operated by a Carrier.

23. BOND/LETTER OF CREDIT REQUIREMENT.

Before undertaking any of the work authorized by this Agreement, as a condition precedent to the City's issuance of any permits, Grantee shall, upon the City's request, furnish an annually

renewed performance bond or letter of credit from a Utah-licensed financial institution in the amount of at least twenty-five thousand dollars ($25,000). Every July 1 during the term of this Agreement, except for the initial year of this Agreement, the amount of the Grantee's performance bond or letter of credit shall be adjusted to one-hundred ten percent (110%) of the value of the Grantee's system and its associated installation costs or twenty-five thousand dollars ($25,000), whichever is greater. The bond or letter credit shall remain in effect for the entirety of the term of this Agreement as well as an additional year after the expiration or termination of this Agreement. The bond shall be conditioned so that Grantee shall observe all the covenants, terms and conditions and shall faithfully perform all of the obligations of this Agreement, and to repair or replace any defective work or materials discovered in the Franchised Area, and to remove any WCFs and their associated equipment that are not in service or remain in the Franchised Area after the termination or expiration of this Agreement. The bond shall ensure the faithful performance of Grantee's obligations under the Agreement, including, but not limited to, Grantee's payment of any penalties, claims, liens, or fees due the City that arise by reason of the operation, construction, or maintenance of the Facilities within the Franchised Area. Grantee shall pay all premiums or other costs associated with maintaining the bond.

24. REGULATORY AGENCIES, SERVICES AND BANKRUPTCY.

A. The Grantee shall upon request provide to the City:

(i) All non-proprietary and relevant petitions, applications, communications and reports submitted by the Grantee to the Public Service Commission or other state or federal authority having jurisdiction that directly relates to Grantee's operations in the Franchised Area;

(ii) Non-proprietary licensing documentation concerning all services of whatever nature being offered or provided by the Grantee over Facilities in the Franchised Area. Non-proprietary copies of responses from regulatory agencies to the Grantee shall be available to the City upon request. To the extent permitted by the Utah Government Records Access and Management Act, the City will treat all documentation and information obtained pursuant to this Section 24 as proprietary and confidential.

B. The Grantee shall upon request provide the City copies of any petition, application, communications or other documents related to any filing by the Grantee of bankruptcy, receivership or trusteeship.

25. DEFAULT; TERMINATION BY CITY.

A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days' written notice to Grantee:

(i) Failure of Grantee to perform any obligation under this Agreement, after Grantee fails to cure a default within the notice and cure period. However, if a cure cannot

reasonably be implemented within the notice period, Grantee must commence and diligently pursue to cure within thirty (30) days of the City's notice.

(ii) The taking of possession for a period of ten (10) days or more of substantially all of Grantee's personal property in the Franchised Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.

(iii) The filing of any lien against the Facilities in the Franchised Area, or against the City's underlying real property, due to any act or omission of the Grantee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by the Grantee.

B. The City may place the Grantee in default of this Agreement by giving the Grantee fifteen (15) days written notice of the Grantee's failure to timely pay the fees required under this Agreement or any other charges required to be paid by the Grantee pursuant to this Agreement. If Grantee does not cure the default within the notice period, the City may terminate this Agreement or exercise any other remedy allowed by law or equity.

C. If the Grantee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Grantee, immediately terminate this Agreement or secure the required insurance at Grantee's expense (which shall be paid to the City within thirty (30) days of receipt of an invoice).

D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. The City's acceptance of the franchise fee or any other fees or charges for any period after a default by the Grantee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Grantee to comply with its obligations.

26. <u>TERMINATION</u>.

A. This Agreement may be terminated for any of the following reasons:

(i) By either party upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Grantee's use of any portion of the Facilities in the Franchised Area and remaining in force for a period of thirty (30) consecutive days.

(ii) By either party upon the inability of the Grantee to use any substantial portion of the Facilities in the Franchised Area for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, flood or other acts of God or the public enemy.

(iii) By either party upon ninety (90) days' written notice, if the Grantee is unable to obtain or maintain any franchise, permit or governmental approval necessary for the construction, installation or operation of the Facilities or the Grantee's business.

B. In order to exercise the termination provisions above, the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and must provide reasonable written notice to the other party.

27. INDEMNIFICATION.

A. The Grantee shall defend, indemnify and hold harmless the City and its elected and appointed officials, agents, boards, commissions and employees from all loss, damages or claims of whatever nature, including attorneys' fees, expert witness fees and costs of litigation, that arise out of any act or omission of the Grantee or its agents, employees or invitees in connection with the Grantee's operations in the Franchised Area and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of Grantee to comply with any provision of this Agreement. The City shall in all instances, except for loss, damages or claims resulting from the negligence or willful acts of the City, be indemnified by Grantee against all losses, damages or claims, attorneys' fees, expenses and costs. The City shall give the Grantee prompt written notice of any claim made or suit instituted that may subject the Grantee or the City to liability under this Section, and Grantee shall have the right to compromise and defend the same at Grantee's cost and expense provided that Grantee may not enter into any settlement imposing liability or cost on the City. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Grantee of any obligations under this Agreement. Grantee's obligations under this Section survive any termination of this Agreement or the termination of Grantee's activities in the Franchised Area.

B. The City shall not be liable to Grantee, or its customers, agents, representatives or employees for any claims arising from this Agreement for lost revenue, lost profits, loss of equipment, interruption or loss of service, loss of data or incidental, indirect, special, consequential or punitive damages, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

28. INSURANCE.

A. On or before the effective date of this Agreement, Grantee shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full term of the franchise, at the expense of Grantee, a comprehensive general liability insurance policy, including underground property damage coverage, written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX protecting the City against liability for loss of bodily injury and

property damage occasioned by the installation, removal, maintenance or operation of the communications system by Grantee in the following minimum amounts:

(i) Ten Million Dollars ($10,000,000.00) combined single limit, bodily injury and real property damage in any one occurrence; and

(ii) Ten Million Dollars ($10,000,000.00) aggregate.

B. Grantee shall also file with the City Recorder a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX for all owned, non-owned, hired and leased vehicles operated by Grantee, with limits not less than Two Million Dollars ($2,000,000.00) each accident, single limit, bodily injury and property damage combined.

C. Grantee shall also maintain, and by its acceptance of any franchise granted hereunder, specifically agrees that it will continually maintain throughout the term of the franchise, workers compensation and employers liability, valid in the State, in the minimum amount of the statutory limit for workers compensation and Five Hundred Thousand Dollars ($500,000.00) for employer's liability.

D. All liability insurance required pursuant to this section, except for employers' liability, shall name the Midvale City and its officers, employees, board members and elected officials as additional insureds (as the interests of each insured may appear) and shall be kept in full force and effect by Grantee during the existence of the franchise and until after the removal or abandonment with the City Engineer's approval of all WCFs, poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by Grantee incident to the maintenance and operation of the system as defined in this Agreement. Failure to obtain and maintain continuously the required insurance shall constitute a substantial violation of this agreement. All policies shall be endorsed to give the City thirty (30) days written notice of the intent to cancel by either Grantee or the insuring company. Grantee may utilize primary and umbrella liability insurance policies to satisfy insurance policy limit requirements in this Section.

E. The City reserves and the Grantee acknowledges the right to modify the insurance requirements contained herein based upon changes in the Utah Governmental Immunity Act, Title 63G, Chapter 7, Utah Code Annotated.

F. In addition to any other remedies the City may have upon the Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order the Grantee to stop work hereunder until the Grantee demonstrates compliance with the requirements hereof.

G. Nothing herein contained shall be construed as limiting in any way the extent to which the Grantee may be held responsible for payments of damages to persons or property

resulting from the Grantee's or its subcontractors' performance of the work covered under this Agreement.

H. It is agreed that the Grantee's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this Agreement.

I. Any self-insurance by the Grantee may be disapproved by the City in its sole and absolute discretion.

29. <u>DAMAGE OR DESTRUCTION OF REPLACEMENT POLES</u>.

A. The City has no obligation to reimburse the Grantee for the loss of or damage to fixtures, equipment or other personal property of the Grantee, except for loss or damage caused by the negligence of the City or its officers, employees or agents. The Grantee may insure such fixtures, equipment or other personal property for its own protection if it so desires.

B. If the City approves a Grantee proposal to install antennas on a City-owned pole, then in addition to the other requirements of this Agreement the following shall apply:

(i) Grantee shall provide and deliver to the City replacement poles so that a replacement is immediately available to City in case an original pole is damaged.

(ii) If the City uses a replacement pole, then Grantee shall provide another replacement pole.

(iii) Grantee shall remove any pole which is damaged and replace it with a pole that meets the original approved standard within sixty (60) days, weather permitting.

(iv) All performance under this paragraph shall be at Grantee's expense. The City owns the original pole and all replacement poles.

(v) If applicable, Grantee will provide the City with five (5) replacement light poles. Annually, the City may reasonably request additional poles directly in proportion to the number of light pole attachments added by Grantee, but in no event greater than 10% of the total number of Grantee-provided light poles then in the City's possession.

(vi) This paragraph does not diminish the plan approval or any other requirement of this Agreement.

C. If the Grantee installs or replaces a pole, the replacement pole shall meet the requirements of Chapter 5.54.

30. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, the Grantee's right to occupy the Franchised Area and exercise the privileges and rights granted under this Agreement shall cease, and it shall surrender and leave the Franchised Area in good condition, normal wear and tear excepted. Unless otherwise provided, all trade fixtures, equipment, and other personal property installed or placed by the Grantee in the Franchised Area shall remain the property of the Grantee, and the Grantee may, at any time during the term of this Agreement, and for an additional period of ninety (90) days after its expiration, remove the same from the Franchised Area so long as Grantee is not in default of any of its obligations, and shall repair at its sole cost any damage caused by the removal. Any property not removed by the Grantee within the 90-day period becomes a part of the Franchised Area, and ownership vests in the City; or the City may, at the Grantee's expense, have the property removed (which shall be paid to the City within thirty (30) days of receipt of an invoice). Grantee's indemnity under this Agreement applies to any post-termination removal operations.

31. NOTICE.

A. Except as otherwise provided, all notices required or permitted to be given under this Agreement may be mailed by certified mail, return receipt requested, postage prepaid; or sent via national overnight courier to the following addresses:

TO THE CITY:
Midvale City
7505 South Holden Street
Midvale City, Utah 84047
Attention: City Engineer

TO THE GRANTEE:
SQF, LLC
16 Middle Street, 4th Floor
Portland, Maine 04101
Attention: Liza Quinn

B. Any notice given by certified mail or overnight courier is considered to be received on the date delivered or refusal to accept. Either party may designate in writing a different address for notice purposes pursuant to this Section.

C. All notices of Grantee's intent to enter the Franchised Area shall be provided to the project manager, or designee, at telephone numbers to be provided to Grantee by separate correspondence upon execution of this Agreement.

32. TAXES AND FRANCHISES.

A. The Grantee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax, use tax or other exaction assessed or assessable as a direct result of its occupancy of the Franchised Area under authority of this Agreement, including any tax assessable on the City. If laws or judicial decisions result in the

imposition of a real property tax on the interest of the City as a direct result of Grantee's occupancy of the Franchised Area, the tax shall also be paid by the Grantee on a proportional basis for the period this Agreement is in effect.

B. The Grantee shall, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all permits required for all activities authorized by this Agreement.

33. GOVERNING LAW AND VENUE.

This Agreement is governed by federal laws, the laws of the State of Utah and local laws. Venue for any litigation or dispute between the parties shall be in the Third District Court of Salt Lake County in Utah. If any claim or litigation between the City and the Grantee arises under this Agreement, the successful party is entitled to recover its reasonable attorneys' fees, expert witness fees and other costs and expenses incurred in connection with the claim or litigation.

34. RULES AND REGULATIONS.

The Grantee shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations in the Franchised Area, including all laws, ordinances, rules and regulations adopted after the Effective Date. The Grantee shall display to the City, upon request, any permits, or other reasonable evidence of compliance with the law.

35. RIGHT OF ENTRY RESERVED.

A. The City may, at any time, enter upon the Franchised Area for any lawful purpose, so long as the action does not unreasonably interfere with the Grantee's use or occupancy of the Franchised Area. The City shall have access to the Facilities itself only in emergencies.

B. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Franchised Area at any time to make repairs, replacements or alterations that may, in the opinion of the City, be necessary or advisable and from time to time to construct or install over, in or under the Franchised Area all necessary systems or parts and in connection with maintenance, use the Franchised Area for access to other areas in and around the Franchised Area. Exercise of rights of access to repair, to make alterations or commence new construction will not unreasonably interfere with the use and occupancy of the Franchised Area by the Grantee.

C. Exercise of any of the foregoing rights by the City or others pursuant to the City's rights do not constitute an eviction of the Grantee, nor are grounds for any abatement of fees or any claim for damages.

36. FORCE MAJEURE.

Notwithstanding any other provision of this Agreement, the Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to an event or events reasonably beyond the ability of the Grantee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes and work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Grantee's facilities are attached or are to be attached, or conduits in which Grantee's facilities are located or are to be located.

37. SEVERABILITY.

If any Section, subsection, paragraph or provision of this Agreement becomes void, voidable, or unenforceable for any reason, such provision or provisions shall be deemed severable from the remaining provisions of this Agreement and shall have no effect on the legality, validity, or constitutionality of any other Section, subsection, paragraph or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement.

38. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the subject matter stated and supersedes all prior negotiations, understandings and agreements between the parties concerning those matters. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. The captions in this Agreement are for convenience of reference only and shall in no way limit or enlarge the terms and conditions of this Agreement. No provision of this Agreement may be waived or modified except in writing. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The relationship between the City and Grantee is at all times solely that of City and Grantee, and not that of partners or joint venturers. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. The terms of this Agreement are binding upon the parties hereto and inure to the benefit of the parties' permitted successors and assigns. There are no third-party beneficiaries of this Agreement.

Signature Page to follow.

MIDVALE CITY

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

MIDVALE CITY STATE OF UTAH
INCORPORATED
JULY 1, 1909
CORPORATE SEAL

SIGN HERE

SQF, LLC

Joshua Broder, CEO

ELIZABETH RANCOURT-SMITH
NOTARY PUBLIC
State of Maine
My Comm. Expires October [illegible], 2020

Witnessed remotely, in accordance with Executive Order 37 FY19/20