



# Communication Service Provider (DaS) Right-of-Way Permit: Special Terms and Conditions

Proposed Action for County Road Commissions

Liability

Strategic Risk Management Guideline

Issue SRM201703-6R1

A necessary tool for Road Commissions to lawfully exercise permit authority over CSPs installing DaS Facilities in highway right-of-ways

### The Problem: Permitting CSP Facilities in the Right-of-Ways Poses Unique Considerations for Road Commissions

County Road Commissions have recently received an influx of right-of-way permit requests from communication service providers (“CSP’s”) to construct or install various types of Distributed Antenna Systems (“DaS”) in the right-of-ways. These systems involve various types of structures to support broadband and wireless network services, including poles, antennae, and associated devices.

A recommended policy has been developed to assist Road Commissions in communicating their right-of-way authority via SRM201701-5R (rev 3/20/2017).

Due to the complexity of balancing the needs of the public, with the requirement of several competing CSPs, a detailed set of special requirements for CSP facilities in the right-of-way is needed to accompany the standard permit applications utilized by our Road Commissions. These special requirements support the recommended policy and help to ensure that the Road Commission discharges their duties fairly and

appropriately. The standard permit applications alone are simply not designed to address the unique safety and legal issues posed by CSP facilities.

### The Solution: CSP Right-of-Way Permit Special Terms and Conditions

To help County Road Commissions navigate these unique issues, MCRCSIP has prepared the attached template for CSP Permit Special Terms and Conditions. The template provides a convenient and consistent way to communicate and enforce the special terms and conditions necessary to permit the construction and continued presence of CSP facilities within right-of-ways. Implementing these special terms and conditions in conjunction with the recommended policy will help Road Commissions fulfill their statutory duty to promote public safety on the highways, and to ensure that access to the right-of-ways is granted on a lawful and even-handed basis.

Any questions regarding these special terms and conditions should be directed to MCRCSIP or your local legal counsel.

### *Road Commission Permit Authority*

*“A person, partnership, association, corporation or governmental entity shall not construct, operate, maintain or remove a facility or perform any other work within the right-of-way of a county road . . . without first obtaining a permit from the county road commission having jurisdiction over the road.” MCL 224.19b(1).*

*“In case it is proposed to construct a telegraph, telephone, power line or cable television line, pipe lines, wires, cables, poles, conduits, sewers, or like structures upon, over or under a county road or bridge, the consent of the board of county road commissioners shall be obtained before the work of such construction shall be commenced.”*

*MCL 247.184.*

**HENN LESPERANCE PLC**  
ATTORNEYS AT LAW



**[\*\*COUNTY NAME] COUNTY ROAD COMMISSION COMMUNICATION SERVICE  
PROVIDER RIGHT-OF-WAY PERMIT: SPECIAL TERMS AND CONDITIONS**

1. Definitions

- 1.1. **Company, Provider, Applicant, Permittee, or Operator**, shall mean \_\_\_\_\_ [type of entity] organized under the laws of the State of \_\_\_\_\_, whose address is \_\_\_\_\_, and who satisfies the definition of “Communication Service Provider” set forth in the Road Commission’s Permit Policy for Safely Allowing Limited Communication Service Provider Facilities Access Within the County Road Right-of-Ways, any Right-of-Way Permit, or these special terms and conditions.
- 1.2. **Effective Date** shall mean the date set forth in Part 13.
- 1.3. **Manager** shall mean the [\*\*COUNTY NAME] County Road Commission’s Manager-Director or his or her designee.
- 1.4. **Communication Service Provider Permit, Right-of-Way Permit, or Permit**, shall mean a Right-of-Way Permit issued to a Communication Service Provider by the [\*\*COUNTY NAME] County Road Commission, and shall include all general terms and conditions applicable to [\*\*COUNTY NAME] County Road Commission Right-of-Way Permits, as well as the special terms and conditions set forth in this document.
- 1.4.1. Company shall obtain both an individual construction/installation Permit for each proposed new Facility or other project within the Right-of-Ways, and also a separate annual maintenance permit applicable to all such Facilities or projects within the Right-of-Ways. These special terms and conditions apply to both the individual and annual Right-of-Way Permits.
- 1.5. **Right-of-Way** shall mean the area on, below, or above any land acquired or dedicated for public roads, highways, streets, alleys, easements, or waterways, to the extent the Road Commission has jurisdiction and the ability to grant the rights set forth here. Right-of-Way does not include a federal, state, or private right-of-way.
- 1.6. **Road Commission** shall mean the Board of County Road Commissioners for the County of [\*\*COUNTY NAME].
- 1.7. **Communication Service Provider** is a person who provides voice, video, and/or data to the public or other end users through Communication Service Provider Facilities as defined in the Road Commission’s Permit Policy for Safely Allowing Limited Communication Service Provider Facilities Access Within County Road Right-of-Ways and these terms and conditions.
- 1.7.1. A person who operates under written agreement with a Communication Service Provider to provide communication services over a communications service facility or to install, maintain, house, manage or operate communications service facilities, shall

Outdated -- Revisions in Progress

be treated as a Communication Service Provider for purposes of any Right-of-Way permit and these terms and conditions.

1.8. **Communication Service Facilities, or Facilities**, shall mean the Company's equipment or personal property, including but not limited to copper and fiber cables, lines, wires, switches, conduits, pipes, antennae, radio devices, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide voice, video, and/or data, to the public or other end users. For purposes of any Right-of-Way permit and these terms and conditions only, and where specifically approved by Franchise, License, Lease or other such agreement by the constitutionally authorized franchising authority, Facilities may include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, 2-way communications device.

1.9. **Person** means an individual, partnership, cooperative, association, private corporation, public corporation, utility, personal representative, receiver, trustee, assignee, governmental entity or other legal entity.

## 2. Grant

2.1. Consideration. The Road Commission may, if at all, grant a Permit or Permits to Company for the construction and installation of individual Facilities, and for the annual access to and ongoing use of the public Right-of-Way to construct, install and maintain Facilities in those portions of the public Right-of-Way identified on **Exhibit A** only in consideration of and upon the terms and conditions set forth herein.

2.1.1. Exhibit A may be modified by written request by Company and only upon approval by the Road Commission.

2.2. Overlapping. Company shall not allow the wires or any other facilities of a third party to be overlapped to the Facilities without the Road Commission's prior written consent, which consent shall not be unreasonably withheld or delayed.

2.3. Non-exclusive. The rights granted by any Right-of-Way permit and these terms and conditions are non-exclusive. The Road Commission reserves the right to approve, at any time, additional permits for access to and ongoing usage of the public Right-of-Way by Communications Service Providers and to enter into such other agreements for use of the public Right-of-Way with other Communications Service Providers.

## 3. Contacts, Maps and Plans

3.1. Company Contacts. The names, addresses and the like for engineering and construction related information for Company and its Facilities are as follows:

3.1.1. The address, e-mail address, phone number and contact person (title or name) at Company's local office (in or near [**\*\*COUNTY NAME**] County) is

3.1.2. If Company's engineering drawings, as-built plans and related records for the Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is \_\_\_\_\_

3.1.3. The name, title, address, e-mail address and telephone numbers of Company's engineering contact person(s) with responsibility for the design, plans and construction of the Facilities is \_\_\_\_\_

3.1.4. The address, phone number and contact person (title or department) at Company's home office/regional office with responsibility for engineering and construction related aspects of the Facilities is \_\_\_\_\_

3.1.5. Company shall at all times provide Manager with the phone number at which a live representative of Company (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency. The phone number is (\_\_\_\_) \_\_\_\_ - \_\_\_\_.

3.1.6. The preceding information is accurate as of the Effective Date. Company shall notify the Road Commission in writing as set forth in Part 12 of any changes in the preceding information.

3.2. Route Maps. At the time of Application and again within ninety (90) days after the substantial completion of construction of new Facilities pursuant to this permit and these terms and conditions, a Communications Service Provider shall submit route maps showing the specific location of the Facilities to the Road Commission.

3.3. As-Built Records. Company, without expense to the Road Commission, shall give the Road Commission access to all "as-built" maps, records, plans and specifications showing the Facilities or portions thereof in the public Right-of-Way following completion of construction. Upon request by the Road Commission, Company shall inform the Road Commission as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by the Road Commission so as to show the location of the Facilities.

#### 4. Use of Public Right-of-Way

- 4.1. No Burden on Public Right-of-Way. Company, its contractors, subcontractors, and the Facilities shall not unduly burden or interfere with the present or future use of any of the public Right-of-Way. Company's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the public Right-of-Way. If the Road Commission reasonably determines that any portion of the Facilities constitutes an undue burden or interference due to changed circumstances, Company, at its sole expense, shall modify the Facilities or take such other actions as the Road Commission may determine is in the public interest to remove or alleviate the burden, and Company shall do so within a reasonable time period. The Road Commission shall attempt to require all occupants of a pole or conduit whose Facilities are a burden to remove or alleviate the burden concurrently.
- 4.2. No Priority. Any Right-of-Way permit and these terms and conditions do not establish any priority of use of the Right-of-Way by Company over any present or future permittees or parties having agreements with the Road Commission or franchises for such use. In the event of any dispute as to the priority of use of the Right-of-Way, the first priority shall be to the public generally, the second priority to Road Commission, the third priority to any other applicable unit of local government, and fourth to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by the Road Commission in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.3. Restoration of Property. Company, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Company's sole expense, in a manner approved by the Road Commission, any portion of the public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Facilities to an equivalent or better condition as that which existed prior to the disturbance. In the event that Company, its contractors or subcontractors fail to make such repair within a reasonable time, the Road Commission may make the repair and Company shall pay the costs the Road Commission incurred for such repair.
- 4.4. Marking. Company shall mark the Facilities as follows:
- 4.4.1. Aerial portions of the Facilities shall be marked with a marker on Company's lines on alternate poles which shall state Company's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Facilities shall have (1) a conducting wire placed in the ground at least several inches above Company's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Company's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Facilities located in conduit, including conduit of others used by Company, shall be marked at its entrance into and exit from each manhole and handhole with Company's name and a toll-free telephone number.

- 4.5. Tree Trimming. Company may trim trees upon and overhanging the public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Facilities, consistent with any standards adopted by the Road Commission. Company shall dispose of all trimmed materials. Company shall minimize the trimming of trees to that essential to maintain the integrity of the Facilities. Except in emergencies, all trimming of trees in the public Right-of-Way shall have the advance approval of the Road Commission.
- 4.6. Installation and Maintenance. The construction and installation of the Facilities shall be performed pursuant to plans approved by the Road Commission. The open cut of any public Right-of-Way shall be coordinated with the Road Commission. Company shall install and maintain the Facilities in a reasonably safe condition. If the existing poles in the public Right-of-Way are overburdened or unavailable for Company's use, or the facilities of all users of the poles are required to go underground then Company shall, at its expense, place such portion of its Facilities underground, unless the Road Commission approves an alternate location. Company may perform routine maintenance on the Facilities only if it has obtained a separate permit to work within the Right-of-Way for the maintenance activity, or a seasonal permit to work within the Right-of-Way for the performance of that activity.
- 4.6.1. All proposed above ground Facilities (poles, guys, pedestal boxes, etc.) shall be staked for field inspection during the Road Commission's plan review of any Right-of-Way Permit application.
- 4.7. Pavement Cut Coordination. Company shall coordinate its construction and all other work in the Right-of-Way with the Road Commission's programs for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").
- 4.7.1. The goals of such coordination shall be to encourage Company to conduct all work in the Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by the Road Commission.
- 4.8. Compliance with Laws and Standards. Company shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. These may include the following list of potential laws, statutes, ordinances, rules and regulations that may apply in addition to this Road Commission's requirements and is provided here as an instructive list and for the benefit of the Company and Road Commission alike. This list, however, creates no duties or obligations upon the Commission whatsoever. Compliance with any such laws, statutes, ordinances, rules and regulations that follow remain the sole responsibility of the Company:
- 4.8.1. Utility line permits and highway permits/agreements with any involved utility, MDOT or FHWA.
- 4.8.2. All applicable national, regional and local codes and industry standards, including but not limited to:
- 4.8.2.1. The National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission); and

- 4.8.2.2. The National Electric Code (latest edition); and
- 4.8.2.3. AASHTO Guidelines including but not limited to guarding of new objects in the right of way and sight distance obstructions; and
- 4.8.2.4. MDOT Guidelines including but not limited to sight distance obstructions; and
- 4.8.2.5. MMUTCD Guidelines; and
- 4.8.2.6. All zoning, land use and building ordinances including setback requirements, fall radius issues and historic preservation ordinances and State Historic Preservation Office regulations as may exist or may hereafter be amended.
- 4.8.2.7. FAA review and approvals; and
- 4.8.2.8. Federal, state or local environmental regulations; and
- 4.8.2.9. Local franchise, license or lease of the Right-of-Way requirements; and
- 4.8.3. In addition, the following checklist of issues and concerns should be addressed and considered by the Company and Commission Staff when submitting and reviewing an application:
- 4.8.3.1. Has the applicant satisfied the Use/Installation Priority Preference Considerations contained in Section 3.3 of the Road Commission's Permit Policy for Safely Allowing Limited Communication Service Provider Facilities Access Within the County Road Right-of-Ways?
- 4.8.3.2. Will the proposed construction methods and duration interfere with public travel?
- 4.8.3.3. Does placement of poles, equipment or appurtenances interfere with, and if so, do the construction plans include adequate provisions for addressing:
- 4.8.3.3.1. Existing or proposed intersections or driveways;
- 4.8.3.3.2. Existing aboveground or underground utilities or other structures;
- 4.8.3.3.3. Existing or proposed drainage systems;
- 4.8.3.3.4. Clear vision requirements;
- 4.8.3.3.5. Clear zone guidelines;
- 4.8.3.3.6. Planned development or construction on adjacent land?

- 4.8.3.4. Is the Route map specific as to the dimensions of the proposed facilities to be installed and precisely where they are proposed—both above and below ground?
- 4.8.3.5. If the facility requires electric supply or back up, has that been included in plans?
- 4.8.3.6. Will routine service and maintenance of the facility require separate driveway permit approval?
- 4.9. Inspections. The Road Commission shall have the right, at the Company's sole expense, to inspect the facility before, during and after construction, and thereafter annually, or more frequently if necessary as determined by the Road Commission.
- 4.10. Street Vacation or Abandonment. If the Road Commission vacates or abandons a Right-of-Way within its jurisdiction, and such vacation or abandonment necessitates the removal and relocation of Company's Facilities in the vacated Right-of-Way, Company shall, as a condition of this permit and these terms and conditions, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by the Road Commission or a court of competent jurisdiction. Company shall relocate its Facilities to such alternate route as the Road Commission and Company mutually agree, applying reasonable engineering standards.
- 4.11. Relocation. If the Road Commission requests Company to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, other public projects, or public safety concerns, Company shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as deemed necessary by the Road Commission. The work shall be completed within a reasonable time period.
- 4.12. Public Emergency. The Road Commission shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Company if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, the Road Commission shall attempt to provide notice to Company. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Company shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by the Road Commission.
- 4.13. Miss Dig. If eligible to join, Company shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to 2013 PA 174; MCL 460.721et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.14. Underground Relocation. If Company has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Company shall relocate its Facilities underground in the same location at Company's sole cost and expense.



4.15. Identification. All personnel of Company and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Company's name, their name and photograph. Company shall account for all identification cards at all times. Every service vehicle of Company and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Company's name and telephone number.

## 5. Indemnification

5.1. Indemnity. Company, its assigns, and successors shall defend, indemnify, protect, and hold harmless the Road Commission, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expense of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees and associated defense costs) arising out of or resulting from the presence of the Company's Facility or Facilities within the Right-of-Way, or the acts or omissions of Company, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Company's use of or installation of Facilities in the Right-of-Way and only to the extent such acts or omissions are the fault or responsibility of Company, its officers, agents, employees, contractors, successors and assigns, or such acts or omissions are the joint fault of the Road Commission and the Company, its officers, agents, employees, contractors, successors and assigns.

5.2. Notice, Cooperation. The Road Commission shall notify Company promptly in writing of any such claim and the method and means proposed by the Road Commission for defending or satisfying such claim. The Road Commission shall cooperate with Company in every reasonable way to facilitate the defense of any such claim. The Road Commission shall consult with Company respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.

5.3. Settlement. Neither the Road Commission nor the Company shall settle any claim subject to indemnification under this Part 5 without the advance written consent of the other.

## 6. Insurance

6.1. Coverage Required. Prior to beginning any construction in or installation of the Facilities in the Right-of-Way, Company shall obtain insurance as set forth below and file certificates evidencing same with the Road Commission. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Company may satisfy this requirement through a program of self-insurance, acceptable to the Road Commission, by providing reasonable evidence of its financial resources. The Road Commission's acceptance of such self-insurance shall not be unreasonably withheld.

6.1.1. Commercial general liability insurance, including, as appropriate and in the Road Commission's discretion, Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than five million dollars (\$5,000,000).

- 6.1.2. Liability insurance for sudden and accidental environmental contamination with minimum limits of two million dollars (\$2,000,000) and providing coverage for claims discovered within three (3) years after the term of the policy.
- 6.1.3. Automobile liability insurance in an amount not less than two million dollars (\$2,000,000).
- 6.1.4. Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
- 6.1.5. The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 6.2. Cancellation.  
All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to the Road Commission. Company shall annually provide the Road Commission with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.
- 6.3. Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.
- 6.4. Deductible. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by the Road Commission in advance in writing. Company shall indemnify and save harmless the Road Commission from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 6.5. Contractors. Company's contractors and subcontractors working in the Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Company, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Company's policies).
- 6.6. Insurance Primary. Company's insurance coverage shall be primary insurance with respect to the Road Commission, its officers, agents, employees, elected and appointed officials,

departments, boards, and commissions (collectively “them”). Any insurance or self-insurance maintained by any of them shall be in excess of Company’s insurance and shall not contribute to it (where “insurance or self-insurance maintained by any of them” includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

## 7. Term

7.1. Term. The term (“Term”) of any Permit shall be until the earlier of:

7.1.1. The expiration date identified in the Permit.

7.1.2. The expiration of any permit or franchise or similar agreements issued by the relevant municipality; or

7.1.3. When the Facility or Facilities have not been used to provide communications services for a period of one hundred and eighty (180) days by the Company or a successor or an assign of the Company; or

7.1.4. One-hundred and eighty (180) days (or sooner if agreed to by the Road Commission) after the Company, at its election and with or without cause, delivers written notice of termination to the Road Commission; or

7.1.5. Upon the Road Commission giving written notice to the Company of the occurrence or existence of a violation or default by the Company of any general or special terms or conditions of any Right-of-Way Permit, where Company fails to cure, or commence good faith efforts to cure, such violation or default within thirty (30) days (or such shorter period of time as expressly required by the Road Commission or elsewhere in general or special terms and conditions) after delivery of such notice; or

7.1.6. Unless the Road Commission grants a written extension, one year from the Permit’s effective date if prior thereto Company has not started the construction and installation of the Facility or Facilities within the Right-of-Way, and two years from the Effective Date if by such time construction and installation of the Facilities is not complete.

## 8. Performance Deposit or Letter of Credit

8.1. Performance Deposit Requirement. The Road Commission may, at its sole discretion, require Company to post a cash performance deposit (or similar security acceptable to the Road Commission) to ensure full compliance with these terms and conditions, including but not limited to the removal of the Facilities at the termination of this Permit, as provided in MCL 224.19b and set forth in the Road Commission’s adopted fee schedule. Proof of such deposit or security shall be attached to these terms and conditions as **Exhibit B**.

8.1.1. Any cash performance deposit tendered to the Road Commission will be held in escrow pending termination of all applicable Right-of-Way Permits and removal of all applicable Facilities to the satisfaction of the Road Commission in its sole discretion and judgement.

9. Fees

- 9.1. Establishment; Reservation. The Road Commission is entitled to full recovery of all costs and fees associated with any Right-of-Way Permit and the general or special terms and conditions as provided in MCL 224.19b, or otherwise at law, and as set forth in the Road Commission's adopted schedule.

10. Removal

- 10.1. Removal; Underground. As soon as practicable after the Term, Company or its successors and assigns shall remove any underground cable or other portions of the Facilities from the Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way. Company shall not remove any underground cable or other portions of the Facilities which requires trenching or the opening of the Right-of-Way except with the prior written approval of the Road Commission. All removals shall be at Company's sole cost and expense.

10.1.1. For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

- 10.2. Removal; Above Ground. As soon as practicable after the Term, Company, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by the Road Commission, remove from the Right-of-Way all above ground elements of its Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

- 10.3. Schedule. The schedule and timing of removal shall be subject to approval by the Road Commission. Unless extended by the Road Commission, removal shall be completed not later than twelve (12) months following the Term. Portions of the Facilities in the Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of the Road Commission exercised by written notice to Company as set forth in Part 12, title to the portions described in such notice shall vest in the Road Commission.

11. Assignment. Company may assign or transfer its rights under this permit and these terms and conditions, or the persons or entities controlling Company may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Company's business, or by other means, subject to the following:

- 11.1. No such transfer or assignment or change in the control of Company shall be effective under this permit and these terms and conditions, without the Road Commission's prior approval (not to be unreasonably withheld), during the time period from the Effective Date until the completion of the construction of the Facilities in those portions of the Right-of-Way identified on Exhibit A.

11.1.1. After the completion of such construction, Company must provide notice to the Road Commission of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.1.2. In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Company's ability to perform under the general and special terms and conditions of any Right-of-Way Permit, and to comply with all applicable law; and Company shall comply with any updated insurance and performance deposit requirements under Sections 6 and 8 respectively.

11.2. Any transferee or assignee of any Right-of-Way permit shall be qualified to perform under all general and special terms and conditions; must comply with all applicable law; shall be subject to the obligations of the Right-of-Way Permit and all general and special terms and conditions, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply the Road Commission with the information required under Section 3.1, and shall comply with any updated insurance and performance deposit or other security requirements under Sections 6 and 8 respectively, which the Road Commission deems necessary, and

11.3. Pole tag replacement will comport with any such assignment or other change.

## 12. Notices

12.1. Notices. All notices under any Right-of-Way Permit and these terms and conditions shall be given as follows:

12.1.1. If to the Road Commission, to \_\_\_\_\_

12.1.2. If to Company, to \_\_\_\_\_

12.2. Change of Address. Company and the Road Commission may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

## 13. Other items

13.1. No Cable, OVS. Any Right-of-Way Permit and these terms and conditions do not authorize Company to provide commercial cable type services to the public, such as "cable service" or the services of an "open video system operator" (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).

13.2. Duties. Company shall faithfully perform all duties required by this permit and these terms and conditions.

13.3. Effective Date. Any Right-of-Way Permit, and all general and special terms and conditions thereto, shall become effective when issued by the Road Commission. It is intended that any Right-of-Way Permit and all general and special terms and conditions not be issued or become binding unless and until:

13.3.1. All laws, regulations and rules of all other government entities with concurrent, coincident, concomitant or other jurisdiction of the affected right-of-ways have been complied with and authorized by such governmental entities and as referenced in section 4.8.

- 13.3.2. All insurance documents and the required cash performance deposit (or similar approved security) are received in proper form.
- 13.4. Authority. Any Right-of-Way Permit, as subject to all general and special terms and conditions, satisfy the requirement for a permit under MCL 224.19b.
- 13.5. Amendment. Any Right-of-Way Permit and any general or special terms and conditions thereto, may be amended by the Road Commission with notice to the Company.
- 13.6. Interpretation and Severability. The provisions of any Right-of-Way permit and all general and special terms and conditions thereto shall be liberally construed to fulfill the Road Commission's Permit Policy for Safely Allowing Limited Communication Service Provider Facilities Access Within the County Road Right-of-Ways, which is incorporated herein by reference, and to protect and preserve the peace, health, safety and welfare of the public. Should any provision or section of any Right-of-Way Permit or any general or special terms and conditions thereto be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining Right-of-Way Permit or general or special terms and conditions. If any provision in any Right-of-Way Permit or any general or special terms and conditions thereto is found to be partially overbroad, unenforceable, or invalid, Company and Road Commission may nevertheless enforce such provision to the extent permitted under applicable law. No provision of any Right-of-Way Permit and these special terms and conditions shall be construed to be a waiver or any rights either the Road Commission or Company may have under applicable federal, state or local law.
- 13.7. Governing Law. This permit and these terms and conditions shall be governed by the laws of the State of Michigan.

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“Company agrees and acknowledges that these Communication Service Provider Right-of-Way Permit: Special Terms and Conditions apply to all CSP Right-of-Way Permits issued to Company by the [\*\*COUNTY NAME] County Road Commission at any and all times prior or subsequent to execution of this agreement.”

\_\_\_\_\_  
[Company Name]

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

[\*\*COUNTY NAME] County Road Commission

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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Exhibit A

Detailed Route Map and Specifications of All Facilities Authorized for  
Access to the Public Right-of-Way by Company

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**EXHIBIT B**

**Evidence of Security as Required By Section 8.1 Above**

**Outdated -- Revisions in Process**