

**CITY OF DAYTON, KENTUCKY
ORDINANCE 2024#19**

AN ORDINANCE AMENDING SECTIONS 7.0, 10.15, 10.16, 10.17
AND 10.18 OF CHAPTER 154 OF THE CITY OF DAYTON,
KENTUCKY, ZONING CODE TO REGULATE THE
OPERATION OF LIQUOR STORES, VAPE STORES, AND
MEDICAL CANNABIS OPERATIONS IN THE CITY.

WHEREAS, the City of Dayton has adopted a Zoning Ordinance (“Zoning Code”), Zoning Map, Subdivision Regulations, and Appendixes (collectively, “Zoning Regulations”) within the City of Dayton, Kentucky (“City”); and

WHEREAS, the Dayton Planning & Zoning Commission (“P&Z Commission”) serves as the planning unit related to Zoning Regulations in the City and makes recommendations to the Dayton City Council (“City Council”) regarding these regulations; and

WHEREAS, the City Council requested that P&Z Commission review and act upon a request to amend the Zoning Regulations to add regulate liquor store, vape stores, and medical cannabis operations in the Zoning Regulations; and

WHEREAS, the Dayton Planning & Zoning Commission held a public hearing, pursuant to advertised legal notice in accordance with KRS Chapters 100 and 424, on September 19, 2024, in Dayton, Kentucky, to review and recommend modifications to the Zoning Regulations; and

WHEREAS, at this public hearing and after due consideration of the evidence and testimony presented there, the Planning & Zoning Commission voted to recommend approval of text amendments to the Zoning Regulations as set forth below; and

WHEREAS, the Dayton City Council, having reviewed the proposed text amendments to the Zoning Regulations, hereby concurs with the recommendation of the Dayton Planning & Zoning Commission to approve this text amendment;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE DAYTON CITY COUNCIL AS FOLLOWS:

That the City of Dayton Zoning Code is hereby amended as follows, with words being deleted being ~~lined through~~ and words being added underlined.

Chapter 154, Zoning, Article VII, Section 7.0, is hereby amended as follows:

ARTICLE VII, DEFINITIONS, SECTION 7.0, WORDS AND PHRASES:

CANNABIS: See MARIJUANA

CANNABIS CULTIVATOR: An entity licensed as such under KRS Chapter 218B

CANNABIS PROCESSOR: An entity licensed as such under KRS Chapter 218B

CANNABIS PRODUCER: An entity licensed as such under KRS Chapter 218B

ELECTRONIC SMOKING DEVICE: Any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. “Electronic smoking device” includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. “Electronic smoking device” does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

ELECTRONIC SMOKING RETAIL STORE. A business operation with at least 85% of sales dedicated to the sale of electronic smoking devices, accessories, and/or products.

MARIJUANA: All parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation that contains any quantity of these substances. The term “marijuana” does not include:

1. Industrial hemp that is in the possession, custody, or control of a person who holds a license issued by the Department of Agriculture permitting that person to cultivate, handle, or process industrial hemp;
2. Industrial hemp products that do not include any living plants, viable seeds, leaf materials, or floral materials;
3. The substance cannabidiol, when transferred, dispensed, or administered pursuant to the written order of a physician practicing at a hospital or associated clinic affiliated with a Kentucky public university having a college or school of medicine;
4. For persons participating in a clinical trial or in an expanded access program, a drug or substance approved for the use of those participants by the United States Food and Drug Administration;
5. A cannabidiol product derived from industrial hemp, as defined in KRS 260.850; or
6. A cannabidiol product approved as a prescription medication by the United States Food and Drug Administration.

MEDICINAL MARIJUANA DISPENSARY: An entity licensed as such under KRS Chapter 218B

SAFETY COMPLIANCE FACILITY: An entity licensed as such under KRS Chapter 218B

PACKAGE LIQUOR SALES: Any establishment primarily engaged in the sale of alcoholic beverages for off-site consumption.

TOBACCO PRODUCT PARAPHERNALIA: Any product that is used to assist in chewing, smoking, absorbing, dissolving, inhaling, or any other consumption of tobacco to include, but not limited to pipes and rolling papers.

TOBACCO RETAILER: Any individual, firm, partnership, joint venture, association, joint stock company, corporation, unincorporated business entity, or any other group or combination acting

as a unit that owns or operates any manufacturer, producer, distributor, supplier, vending machine, wholesaler or retailer of tobacco products. Tobacco retailer shall not mean the employees of an owner or operator of any manufacturer, producer, distributor, supplier, vending machine company, wholesaler or retailer of tobacco products.

TOBACCO PRODUCT: Any product that is made from or derived from tobacco and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. The term also includes electronic smoking devices and tobacco product paraphernalia, whether or not they contain nicotine. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.
VAPE SHOP: See Electronic Smoking Retail Store.

ARTICLE X, ZONE REGULATIONS

* * *

SECTION 10.15, CENTRAL BUSINESS DISTRICT (CBD) ZONE

* * *

C. PERMITTED USES: These are the uses which are permitted on property zoned CBD as outlined on the official zoning map providing that they are in general conformance with the CBD plan:

1. Retail sales and service businesses as listed below:

* * *

~~qq. Package liquor and alcoholic beverage store~~

~~rr. Paint and wallpaper store~~

~~ss. Pet shops, excluding boarding and outside runs~~

~~tt. Plant shop~~

~~uu. Printing shop~~

~~vv. Radio and television stores, including repair~~

~~ww. Service station, including auto repair facilities~~

~~xx. Shoe store and repair~~

~~yy. Sporting goods~~

~~zz. Studios for professional work on teaching of any form of fine arts, photography, music, drama or dance~~

~~aaa. Tailor shop~~

~~bbb. Toy store~~

~~ccc. Travel bureau~~

~~ddd. Variety store, including notations and five and ten stores~~

~~eee. Medicinal marijuana dispensary~~

SECTION 10.16, INDUSTRIAL ONE (I-1) ZONE

A. PERMITTED USES: The following uses are permitted providing all uses are in compliance with the performance standards as set forth in Article XV of this ordinance.

* * *

11. Medicinal cannabis cultivators, processors, producers, and safety compliance facilities.

SECTION 10.17, NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) ZONE

* * *

C. PERMITTED USES:

* * *

ccc. Medicinal marijuana dispensary.

E. CONDITIONAL USES:

* * *

2. Tobacco Retailer or Electronic Smoking Retail Store with the following conditions

a. Shall not be located within one thousand (1,000) feet of any school or daycare center.

b. Shall not be located within six hundred (600) feet of another tobacco retailer.

c. Shall not allow any minors in the building.

d. Shall not sell alcoholic beverages.

e. Shall not be licensed as a Food Service Establishment.

f. Shall not have an entrance that opens to a common area with other retail establishments.

SECTION 10.18 INDUSTRIAL TWO (I-2) ZONE:

A. PERMITTED USES: The following uses are permitted, except that the retail sale of firearms shall not be permitted within this zone, providing all uses are in compliance with the performance standards set forth in Article XV of this ordinance.

* * *

15. Medicinal cannabis cultivators, processors, producers, and safety-compliance facilities.

PASSED by City Council of the City of Dayton, Campbell County, Kentucky assembled in regular session.

First Reading: October 8, 2024

Second Reading: _____

MAYOR BEN BAKER

ATTEST:

TRISTIAN KLEIN
CITY CLERK/TREASURER

**CITY OF DAYTON, KENTUCKY
ORDINANCE 2024#20**

AN ORDINANCE AMENDING SECTIONS 150.15 THROUGH 150.18 OF CITY OF DAYTON, KENTUCKY, CODE OF ORDINANCES (“CODE”) TO REFLECT THE CITY’S CONTRACT WITH THE CAMPBELL COUNTY PLANNING, ZONING, AND BUILDING INSPECTIONS DEPARTMENT TO PROVIDE ZONING AND BUILDING INSPECTION SERVICES TO THE CITY AND TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF THESE SECTIONS CONSISTENT WITH SECTION 38.15 OF THE CODE.

WHEREAS, the City of Dayton, Kentucky (“City”) contracts with the Campbell County Planning, Zoning, and Building Inspections Department to provide zoning and building inspection services to the City; and

WHEREAS, the City needs to amend Sections 150.15 through 150.18 of the Code to reflect this contract and to impose civil penalties for violations of these sections.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE DAYTON CITY COUNCIL AS FOLLOWS:

The City of Dayton Code of Ordinances -- Title XV: Land Usage, Chapter 150, Permits, Sections 150.15 through 150.18 -- is hereby amended as follows, with words being deleted being ~~lined through~~ and words being added underlined.

PERMITS

§ 150.15 ZONING, BUILDING, AND WRECKING DEMOLITION, AND OTHER PERMITS REQUIRED; EXCEPTION.

(A) It shall be unlawful to construct, enlarge, alter, remove, or demolish a building or to install or alter any equipment in, on, or to a building without first filing application (s) in writing with the City’s designated Building Inspector and/or ~~/Zoning~~ Administrator (“Inspector/Administrator”) ~~writing~~ and obtaining the required permit (s) therefor, except that ordinary repairs as defined in division (B) of this section shall be exempt from this provision.

(B) Ordinary repairs to buildings may be made without application or notice to the Inspector/ ~~Zoning~~ Administrator; ~~however, but those these~~ repairs shall not include the removal or cutting away of any wall, partition, or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of ingress and egress, or the rearrangement of parts of a structure affecting the exit-way requirements. Ordinary repairs shall not include any addition to, alteration of, or replacement of any standpipe, water supply, sewer, drainage,

drain leader, gas, soil, waste, vent, or similar piping, electrical wiring, or mechanical or other work affecting public health and safety.

§ 150.16 ZONING, BUILDING, AND WRECKING DEMOLITION, AND OTHER PERMITS FEE SCHEDULE.

(A) The Campbell County ~~building and permit fee schedule & Municipal Planning & Zoning Department fee schedule~~, as amended from time to time, is hereby adopted by reference ~~by the City~~ as if ~~this schedule was~~ fully ~~set forth written~~ in this ~~code~~ Code of Ordinances. ~~Copies of the fee schedules and any amendments thereto shall be placed on file in the office of the City Clerk/Treasurer where they shall be available for public inspection during normal business hours. This fee schedule may be viewed at https://campbellcountyky.gov/egov/documents/9bed0876_17b3_80e0_329d_ba2cc6303988.pdf or at the offices of the Campbell County Planning, Zoning, and Building Inspections Department at 1098 Monmouth Street, Suite 343, Newport, Kentucky 41071 However, n~~

(B) Neither the city nor its agencies shall be required to pay any zoning, building, demolition, or other permit fee established hereunder.

§ 150.17 ELECTRICAL PERMITS.

(A) Electrical permits ~~shall~~ must be obtained prior to the installation, addition, alteration, repair, relocation, or removal of electrical wiring.

(B) The cost of the permit for electrical installation, additions, alterations, repair, relocation, or removal shall be as set forth in §150.16 above.

(C) All electrical permits shall be obtained from the City Inspector's Department.

§ 150.18 ENFORCEMENT.

(A) Dayton Code Enforcement Department and the Campbell County Planning, Zoning, and Building Inspections Department both shall have dual authority to enforce this subchapter of the City of Dayton, Kentucky, Code of Ordinances ("Code").

(B) Violations of this Code subchapter are civil offenses, which may be enforced through the City's Code Enforcement Board, pursuant to the provisions of Chapter 38 of the Code.

(C) Any person, firm, corporation, or titled owner who violates a provision in this Chapter shall be subject to a civil fine of not less than fifty dollars (\$50.00) per day per violation, but not more than one hundred dollars (\$100.00) per day per violation for the first thirty (30) days if the violation(s) remains uncorrected, and thereafter, a civil fine of not less than one hundred dollars (\$100.00) per day per violation, but not more than two hundred fifty dollars (\$250.00) per day per violation, until the violation(s) are corrected. The city may also recover any costs it incurs in abating the violation(s).

(D) Each day a violation continues after due notice has been served shall be deemed a separate offense, up to a maximum of five thousand dollars (\$5,000.00) per citation. The Inspector/Administrator may suspend daily fines if a property owner submits documentation or provides other substantial evidence showing it has taken action to remediate the code violation(s). If so, the Inspector/Administrator shall enter a written notation in the case file outlining the remediation efforts undertaken and the date on which the daily fines were suspended. The Inspector/Administrator may revoke the suspension if, in his or her opinion, remediation efforts at the property have discontinued; this revocation also shall be recorded in the case file.

(E) If the property owner timely appeals violation(s) to the Code Enforcement Board, the Board may waive the fines accrued under this section if the property owner can show an attempt to remediate the code violation(s) in a timely fashion.

(F) The City of Dayton shall possess a lien on a property for all fines, penalties, charges, attorney's fees, and other reasonable costs associated with enforcing the provisions of this Chapter and may place a lien on this parcel of real property with the County Clerk pursuant to Kentucky law. The lien shall be superior to and have priority over all other subsequently filed liens, except state, county, school board, and city taxes. Pursuant to KRS 65.8834, the City may elect to include the amount of any unpaid lien that has been recorded pursuant to KRS 65.8835 on the City's property tax bill for the property.

§ 150.18 ZONING PERMITS, APPEALS, APPLICATIONS.

~~The following schedule for zoning permits, appeals, zoning applications, and other matters required under Chapter 154 is adopted as a fee schedule for the respective permits. The schedule applies in all situations where a permit is required with the exception that the city or any of its agencies is not required to obtain a permit nor pay a fee and does not apply to qualified buildings in the enterprise zone:~~

~~(A) Site Development Plan Review:~~

~~(1) Industrial, Commercial and Special Zones: I-1, I-2, NCD, CBD, RO, PUD, MLU:~~

~~(a) Rate (0-10,000 square feet of building) = \$0.20/sq. ft. (flat fee) + \$15.00/acre (land area) + \$100.00 inspection fee + \$15.00 Certificate of Land Use Restriction (CLUR):~~

~~(b) Rate (10,001 - 60,000 square feet of building) = \$0.25/sq. ft. (flat fee) + \$15.00/acre (land area) + \$100.00 inspection fee + \$15.00 CLUR:~~

~~(c) Rate (60,001 - 100,000 square feet of building) = \$0.30/sq. ft. (flat fee) + \$15.00/acre (land area) + \$100.00 inspection fee + \$15.00 CLUR:~~

~~(d) Rate (over 100,000 square feet of building) = \$0.35/sq. ft. (flat fee) + \$15.00/acre (land area) + \$100.00 inspection fee + \$15.00 CLUR:~~

~~(2) Zones: CO, R-1bC, R-1c, R-1d, R-1e, R-1g, R-1h, R-1j, R-2, R-3, R-4, RCD, RMHP. Rate = \$0.10/sq. ft. (flat fee) + \$15.00/acre (land area) + \$100.00 inspection fee + \$15.00 CLUR:~~

~~(3) Cellular/telecommunications tower site plan review: all zones. Rate = \$1,000.00 (flat fee):~~

~~(4) Minimum fee for all zones = \$250.00 + \$100.00 inspection fee (co-locations on cell towers):~~

~~(5) All zones:~~

<i>Item</i>	<i>Rate</i>
Extension of time of site plan construction work	\$50.00 (flat fee) plus
Revision fee of approved site plans	50% of original fee
Any project started before obtaining a permit shall be charged double the regular permit rate, but still must comply	

~~(B) Subdivision Review:~~

<i>Item</i>	<i>Rate</i>
Item	Rate
Preliminary Plat	\$500.00 (flat fee) plus \$10.00 per acre (area) plus \$15.00 CLUR

Improvement Plan	\$500.00 (flat fee) plus \$10.00 per acre (area) plus \$15.00 CLUR
Final Plat	\$400.00 (flat fee) plus \$10.00 per acre (area)
Grading Plan	\$400.00 (flat fee) plus \$10.00 per acre (area)
Waiver	\$400.00 (flat fee)
Resubmission or charges to above	50% of original fee
Conveyance	\$200 (flat fee)
Identification Plat	

—(1) Inspection Fees: Improvement Plan Review.

—(a) Earthwork, Grading, and Final Inspection for Street Inspections. Rate = \$1.50 per lineal foot along street centerlines.

—(b) Storm drainage systems. Rate = \$0.75 per lineal foot of pipe.

—(2) The Sanitation District No. 1 and the Northern Kentucky Water Service District shall inspect sanitary sewer and water systems construction and installation, respectively. Results of the inspection(s) shall be forwarded to the Planning Commission's duly authorized representative upon completion. Fire Access and hydrant installation shall be inspected by the governing Fire District Chief and/or Inspector. Approval from these three agencies must be received before Final Plat approval can be granted.

—(3) (a) Construction Inspection fees shall be limited to improvement items to be dedicated for public use and maintenance and grading work on the site.

—(b) Construction inspection fees shall be calculated by the applicant and verified by the Campbell County Planning Commission's duly authorized representative upon review of the submitted improvement drawings.

—(4) Storm Drainage Systems (if part of the proposed Grading Plan). Rate = \$0.75 per lineal foot of pipe.

—(5) (a) Construction inspection fees shall be limited to improvement items to be dedicated for public use and maintenance and grading work on the site.

—(b) Construction inspection fees shall be calculated by the applicant and verified by Campbell County Planning Commission's duly authorized representative upon review of the submitted improvement drawings.

—(c) One hundred percent of the total for inspection fees shall be submitted prior to approval of the grading plan. Grading plan fees that are paid in full are not required as part of the improvement plan and final plat review inspection fee unless changes are made to the grading and storm sewer plans.

—(d) Any project started before obtaining a permit shall be charged double the regular permit rate, but still must comply with all the requirements of the county.

—(C) Zone map amendment.

—(1) Zones: CO, R-1bC, R-1c, R-1d, R-1e, R-1g, R-1h, R-1j, R-2, R-3, R-4, RCD, RMHP. Rate = \$1,000.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$10.00 per acre (land area) + \$15.00 CLUR.

—(2) Zones: NCD, CBD, RO, PUD, MLU. Rate = \$1,200.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$10.00 per acre (land area) + \$15.00 CLUR.

~~—(3) Zones: I-1,1-2. Rate = \$1,500.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$10.00 per acre (land area) + \$15.00 CLUR.~~

~~—(4) Postponement or continuance of a zoning map amendment request or concept.~~

~~—(5) Development plan approval requiring a new public hearing (when requested by the applicant and as a result of the applicant's action). Rate = 50% of the above flat fee + \$5.00 per adjoining property owner + \$100.00 publication fee.~~

~~—(D) Board of Adjustment and Zoning Appeal Review:~~

~~—(1) Appeals:~~

~~—(a) Agricultural and Residential Zones = \$350.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$15.00 CLUR.~~

~~—(b) All other zones. Rate = \$650.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$15.00 CLUR.~~

~~—(2) Change of non-conforming use to another.~~

~~—(a) Agricultural and Residential Zones. Rate = \$250.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$15.00 CLUR.~~

~~—(b) All other zones. Rate = \$500.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$15.00 CLUR.~~

~~—(3) Variance:~~

~~—(a) Agricultural and Residential Zones. Rate (Each Variance) = \$350.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$15.00 CLUR.~~

~~—(b) All other zones. Rate (Each Variance) = \$600.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$15.00 CLUR.~~

~~—(4) Conditional use permit.~~

~~—(a) Agricultural and Residential Zones. Rate = \$400.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$15.00 CLUR.~~

~~—(b) All other zones. Rate = \$700.00 (flat fee) + \$5.00 per adjoining property owner + \$100.00 publication fee + \$15.00 CLUR.~~

~~—(E) Zoning permit fees:~~

~~—(1) In all Residential Zones:~~

~~—(a) Building types:~~

<i>Building type</i>	<i>Rate</i>
Single Family	\$50.00
Two Family, Multi-Family	\$100.00
Manufactured Home	\$50.00
Accessory Structures	\$50.00

~~—(b) Additions to existing buildings (excluding construction of new units, but including detached buildings):~~

<i>Item</i>
Increase in size up to 150 square feet
Each additional 1,000 square feet

~~—(2) All other zones. New construction or additions to existing buildings.~~

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<i>Item</i>

Up to 5,000 square feet of gross floor area
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Each 1,000 square foot over 5,000 square foot of gross floor area
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Each 1,000 square foot over 100,000 square foot of gross floor area
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~~—(3) General All Zones.~~

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<i>Item</i>

Change in Use/Occupancy, when zoning classification and building dimensions are not changed (a building inspector
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-

~~—(4) Certificate of Occupancy.~~

-

<i>Item</i>

Conforming uses and structures

Non-conforming uses and structures

-

~~—Note: A certificate of occupancy shall not be issued unless all construction items have been completed (including sidewalks, driveway aprons, decks, and all items required under the current building code):~~

~~—(5) Sign permit review. All classes (1-9) = \$100.00 per sign.~~

~~—(6) Swimming pool permit. All zones = \$50.00 (flat fee).~~

~~—(7) Fence permit. All zones = \$50.00 (flat fee).~~

~~—(8) Other accessory uses. All zones = \$30.00 (flat fee).~~

~~—(9) Parking and Loading/Unloading areas. Off-street parking and loading/unloading areas (when developed separately and not included in residential or commercial listings above) where total area is less than 5,000 square feet.~~

-

<i>Item</i>

0-5,000 square feet

Each 1,000 square feet over 5,000 square feet
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~~—(F) Fees not returnable. Fees required in any of the foregoing regulations or in any parts of this chapter shall not be returnable for any cause, regardless of the outcome of decision on any application. No fee or part thereof shall be refunded once an application has been advertised for public hearing.~~

CITY OF DAYTON, KENTUCKY
ORDER/RESOLUTION NO. 2024#25

AN ORDER/RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, KENTUCKY, AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE DAYTON INDEPENDENT SCHOOL DISTRICT TO HAVE THE CITY INVOICE AND COLLECT PILOT PAYMENTS ASSOCIATED WITH CERTAIN REAL ESTATE LOCATED IN THE MANHATTAN DEVELOPMENT AREA THAT HAVE BEEN OR WILL BE FINANCED WITH INDUSTRIAL REVENUE BONDS.

WHEREAS, certain real estate located in the Manhattan Harbour development area in Dayton, Kentucky, has been or will be financed through Industrial Revenue Bonds (“IRBs”), which make these properties exempt from city and school *ad valorem* property taxes (“Subject Properties”);

WHEREAS, through an agreement that the City of Dayton, Kentucky (“City”) and Dayton Independent School District (“School District”) have reached with the owners of the Subject Properties being developed by Brendan Sullivan-related companies, the City and School District authorized the use of IRBs to develop these properties and the owners of the Subject Properties have agreed to make Payments In Lieu of Taxes (“PILOTs”) to the City and School District in lieu of the payment of property taxes on the Subject Properties;

WHEREAS, the School District wishes to retain the City to invoice and collect PILOTs on behalf of the School District, and the City is willing invoice and collect these payments on behalf of the School District; and

WHEREAS, the City and School District would like to memorialize their responsibilities and obligations with respect to the invoicing and collection of these PILOTs in a written contract between the parties.

NOW, THEREFORE, BE IT ORDERED AND RESOLVED BY THE CITY COUNCIL OF DAYTON, KENTUCKY, AS FOLLOWS:

Section I

The City Council of the City of Dayton, Kentucky, hereby authorizes the Mayor to enter into an interlocal agreement with the Dayton Independent School District to provide services to the School District to invoice and collect Payments In Lieu of Taxes in connection with certain tracts of real estate located in the Manhattan Harbour development area in Dayton, Kentucky, which have been financed in the past or will be financed in the future through the issuance of Industrial Revenue Bonds.

A copy of this interlocal agreement is attached hereto as Exhibit "A" and is made a part hereof and incorporated by reference into this Order/Resolution as if fully rewritten herein.

Section II

That this Order/Resolution shall be maintained and indexed in the Official Order Book by the City Clerk/Treasurer.

MAYOR BEN BAKER

ATTEST:

TRISTAN KLEIN
CITY CLERK/TREASURER
October 8, 2024

CERTIFICATION

I, Tristan Klein, do hereby certify that I am the duly qualified and acting Clerk/Treasurer of the City Council of Dayton, Kentucky, and as such, I further certify that the foregoing as well as attached Exhibit "A," incorporated therein, is a true, correct, and complete copy of an Order/Resolution duly adopted by the City Council of the City at a regular meeting properly held on October 8, 2024, signed by the Mayor and is now in full force and effect, all as appears from the official records of the City in my possession and under my control.

IN WITNESS WHEREOF, I have hereunder set my hand this _____ day of _____
2024.

Tristan Klein
City Clerk/Treasurer

EXHIBIT "A"

Interlocal Agreement Between the City of Dayton, Kentucky, and
the Dayton Independent School District to Allow the City to
Invoice and Collect Payments in Lieu of Taxes on Behalf of the School District

(See attached)

INTERLOCAL COOPERATION AGREEMENT

Between

City of Dayton, Kentucky

And

Dayton Independent School District

THIS INTERLOCAL COOPERATION AGREEMENT (“**Agreement**”) is made by and between the City of Dayton, Kentucky, a Kentucky City of the Home Rule Class (the “**City**”), and the Dayton Independent Board of Education (the “**School District**”).

WITNESSETH THAT:

WHEREAS, the Kentucky Interlocal Cooperation Act (the “**Act**”), KRS 65.210 through 65.300 permits the City and the School District to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage and thereby provide services and facilities in a manner and form that will best accord with geographic, economic, population and other factors which influence the needs and development of local communities; and

WHEREAS, to promote economic development within the City, the City Council of the City determined to authorize certain incentives within a riverfront development area commonly referred to as the Manhattan Harbour Development Area (the “**Project Area**”); and

WHEREAS, the incentives authorized within the Project Area included the issuance and sale by the City of Industrial Building Revenue Bonds (“**IRBs**”) pursuant to Sections 103.200., *et. seq.* of the Kentucky Revised Statutes (the “**IRB Act**”) to facilitate the financing and construction of commercial and residential development; and

WHEREAS, in conjunction with the issuance and sale of the IRBs within the Project Area and the corresponding exemption from *ad valorem* real property taxes pursuant to Section 103.285 of the IRB Act, the City, the School District and Manhattan Development Group, LLC, a Kentucky limited liability company (the “**Developer**”), entered into an Agreement in Lieu of Taxes Agreement dated March 26, 2020, as amended by that certain First Amendment to Agreement In Lieu of Taxes dated November 1, 2020 (together, the “**PILOT Agreement**”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, pursuant to Section 5 of the PILOT Agreement, the City has agreed to collect payments in lieu of taxes (“**PILOT Payments**”) from the owners of applicable properties within the Project Area and transfer such PILOT Payments to the applicable taxing jurisdictions, including those PILOT Payments due and owing to the School District (the “**School District PILOT Payments**”); and

WHEREAS, the City and School District desire to enter into an agreement which will establish a framework by which the City will collect the School District PILOT Payments from owners of property within the Project Area.

NOW, THEREFORE, in consideration of the mutual covenants and understandings contained herein, the City and the School District agree to as follows:

1. Effective Date and Term. The initial term of this Agreement shall commence on the date upon which this Agreement is fully valid and binding pursuant to Section 14 below (the “**Effective Date**”) and automatically renew for successive one (1) year terms commencing on each July 1 until such time that there are no longer any outstanding IRBs on the tax rolls of the Campbell County Property Valuation Administrator (the “**Campbell County PVA**”). Notwithstanding anything to the contrary contained herein, either party may elect to terminate this Agreement with ninety (90) days advance written notice delivered to the other party prior to the expiration of the then-current annual term. Notwithstanding anything to the contrary contained herein, the School District hereby confirms and ratifies the services rendered by the City for the School District prior to the Effective Date, in preparing invoices for the collection of the School District PILOT Payments (as defined herein) as herein contemplated.

2. Services:
 - A. The City agrees that it shall perform the following services:
 - i. Beginning with calendar year 2024, using (i) the most recent assessed valuation for each parcel exempted pursuant to an IRB (each an “Exempt Parcel”) as shown on the official records of the Campbell County PVA, (ii) the effective *ad valorem* real property tax rate for the School District, and (iii) any other official records of the School District or the Campbell County PVA, the City shall determine the amounts required to be paid by each owner of an Exempt Parcel to the School District pursuant to the PILOT Agreement for the then-current calendar year, and create and deliver invoices for such amounts for further distribution to the owners of the Exempt Parcels;
 - ii. Pursuant to Sections 5 and 6 of the PILOT Agreement, the City will prepare invoices for the School District PILOT Payments attributable to each Exempt Parcel by no later than October 15 of each year during the term of this Agreement. All School District PILOT Payment invoices for the current year will first be delivered to the School District no later than October 15 of each year during the term of this Agreement for review and comment within five (5) business days and then shall be delivered by the City to the owners of the Exempt Parcels by no later than October 30 of each year.
 - iii. By December 15 of each year, the City shall determine whether any School District PILOT Payments are delinquent, and if so, the City shall send updated invoices to each owner of any Exempt Parcel for all delinquent amounts (“**Updated Invoices**”). In accordance with the PILOT Agreement, the City shall add a twelve percent (12%) delinquent penalty to the outstanding balances on each invoice and include a statement informing owners of Exempt Parcels of the ongoing penalty of interest accruing as described in Section 4 of the PILOT Agreement. The City shall deliver to the School District copies of all Updated Invoices by December 31 of each year.

- iv. By January 15 of each year, the City shall prepare and deliver to the School District a report in Microsoft Excel Format setting forth (i) the total amount of School District PILOT Payments collected as of December 31; (ii) the aggregate amount of the delinquent School District PILOT Payments with penalties thereon; and (iii) the City's annual City Collection Fee retained based upon the School District PILOT Payments actually collected for the corresponding year.
 - v. By February 1 of each year, the City shall disperse all School District PILOT Payments actually received, including delinquent payment fees. Such disbursement shall be exclusive of the City Collection Fee (defined herein).
 - vi. If the City receives any delinquent School District PILOT Payments after February 1, then the City shall deposit such delinquent School District PILOT Payment, withhold the City Collection Fee (defined herein), and transfer the balance to the School District within 30 days of the City's receipt of each delinquent School District PILOT Payment.
 - vii. In consideration for the services provided herein, the City shall retain an amount equal to one and one-half percent (1.5%) of the aggregate School District PILOT Payments actually collected for the then-current year (the "**City Collection Fee**").
 - viii. The City, at the written request of the School District, shall provide access to all documents reasonably necessary for the School District's ongoing collection of delinquent School District PILOT Payments.
- B. The City will supply all tools and means necessary to perform the services, duties and actions and production of those work products specified herein.
- C. Should any errors caused by the City be found in any services or work products, the City will correct those errors, and if the errors are in final services or products, make such corrections at no additional charge, by revising the services and work products as necessary to eliminate the errors, which may include the City delivering additional invoices to the owners of Exempt Parcels.
3. In the event any School District PILOT Payments remain delinquent as of February 1 of any calendar year, the School District shall pursue any and all remedies available to it at law and under the PILOT Agreement at its sole cost and expense with the City's cooperation, which may include providing statements of such delinquent School District PILOT Payments together with copies all correspondence pertaining to the Exempt Parcels to which such delinquent School District PILOT Payments are attributable.
4. The School District, at the written request of the City, shall provide access to all documents reasonably necessary for the performance of its services and duties under this Agreement. Except as necessary for the performance of its duties under this Agreement, and to the extent not generally known as available to the public, the City

8. The School District represents and warrants to the City that on the date of this Agreement:
 - A. The School District (i) is a duly organized, validly existing school district in the Commonwealth of Kentucky and (ii) possesses all requisite authority, permits, and power to conduct its business as is now being, or is contemplated by this Agreement to be, conducted.
 - B. This Agreement will, upon execution and delivery by all parties thereto, constitute a legal and binding contract between the City and the School District, enforceable against the School District according to its terms.
 - C. The School District is not subject to, or aware of the threat of, any litigation that is reasonably likely to be determined adversely to it and that, if so adversely determined, would have a material adverse effect on its financial condition relevant to this Agreement.
9. The School District agrees that to the fullest extent permitted by law, no council member, officer, mayor, principal or employee of the City shall have personal liability under this Agreement or for any matter in connection with the professional services provided pursuant to this Agreement. The City agrees that to the fullest extent permitted by law, no board member, officer, superintendent, principal or employee of the School District shall have personal liability under this Agreement or for any matter in connection with the School District's duties within this Agreement.
10. This Agreement does not call for nor will there be any separate legal or administrative entity created for its administration, nor will there be any separate manner of financing or budget which is not already established in accordance with the parties' orders, resolutions, and/or ordinances.
11. This Agreement does not call for nor will there be any joint or cooperative acquisition, holding or disposition of real or personal property between the parties hereto.
12. This Agreement will be jointly administered by the City Council and the School District Board of Education, or their respective designees, who shall have authority to enact jointly applied rules and regulations, created per written mutual agreement, to implement and carry out this Agreement.
13. It is expressly understood and agreed that, with the exception of the provisions herein, the execution of this Agreement does not alter or constitute a waiver in whole or in part of any of the privileges or immunities otherwise enjoyed by any of the governmental entities which are parties hereto.
14. Miscellaneous Provisions:

- A. This Agreement shall be governed by the laws of the Commonwealth of Kentucky.
 - B. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one Agreement.
 - C. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer upon any other person rights or remedies under or by reason of this Agreement.
 - D. This Agreement, including any exhibits, schedules, and other documents incorporated herein by reference, supersedes any and all agreements, either oral or written, between the parties, and contains all of the covenants and agreements between the parties with respect to the rendering of such services. To the extent there is a conflict between this Agreement and the PILOT Agreement, the PILOT Agreement shall govern. The parties acknowledge that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement (including any modification to an exhibit) will be effective if it is in writing and signed by the parties to this Agreement.
 - E. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision of this Agreement.
 - F. No party to this Agreement shall be deemed in default or breach of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without negligence, such as natural disasters or "Acts of God."
 - G. If any provision of this Agreement or the application to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected but shall be enforced to the greatest extent permitted.
 - H. This Agreement shall not be assigned by either party to this Agreement without the prior written consent of the other party.
15. This agreement shall be valid and binding only when all of the following acts have occurred:
- a. Execution by the Mayor of the City of Dayton, Kentucky which is authorized by the City Council of the City pursuant to a duly enacted City Order/Resolution.

- b. Execution by the Superintendent of the School District as authorized by the School Board pursuant to a duly enacted resolution.
- c. Approval by the Kentucky Department for Local Government pursuant to KRS 65.260.
- d. Filing the attested copies with the Secretary of State of the Commonwealth of Kentucky and the County Clerk of Campbell County, Kentucky, as required by KRS 65.290.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties acting under authority of their respective governing bodies have caused this Interlocal Cooperation Agreement to be duly executed by their duly elected and authorized officials.

CITY OF DAYTON, KENTUCKY

City of Dayton, Kentucky Mayor Ben Baker

Date: _____

Signature: _____

DAYTON INDEPENDENT BOARD OF EDUCATION

Dayton Independent Board of Education Superintendent Rick Wolf

Date: _____

Signature: _____

CERTIFICATION OF APPROVAL WITH DEPARTMENT FOR LOCAL GOVERNMENT

This Interlocal Cooperative Agreement is in proper form and is compatible with the laws of the Commonwealth of Kentucky; therefore, it is approved this ____ day of _____, 2024.

Matt Sawyers, Commissioner
Department of Local Government
Commonwealth of Kentucky

CITY OF DAYTON, KENTUCKY
ORDER/RESOLUTION NO. 2024#26

AN ORDER/RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, KENTUCKY, AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CAMPBELL COUNTY FISCAL COURT AND THE CITY OF BELLEVUE, KENTUCKY, TO PARTICIPATE IN A SHARED POLICE SOCIAL WORKER PROGRAM OPERATED BY THE CAMPBELL POLICE DEPARTMENT AND PAYING FOR THE COST OF PARTICIPATION IN THIS PROGRAM FROM MONEY THE CITY HAVE RECEIVED FROM SETTLEMENT AGREEMENTS THE KENTUCKY ATTORNEY GENERAL HAS ENTERED INTO WITH PHARMACEUTICAL COMPANIES.

WHEREAS, starting in 2022 and continuing thereafter, the Kentucky Attorney General has entered into settlement agreements with pharmaceutical manufacturers and distributors that require these companies to provide payments (“Opioid Settlement Funds”) to the Commonwealth of Kentucky for their role in creating and fueling the opioid epidemic in the state (“AG Settlements”); and

WHEREAS, pursuant to legislation passed by the Kentucky General Assembly, the proceeds from the AG Settlements must be allocated on a 50-50 basis between Kentucky’s local governments and the state itself, and the state has established a formula that determine the shares that each local government has received or will receive of the Opioid Settlement Funds; and

WHEREAS, the terms of the AG Settlements are restrictive on how these proceeds may be used by local governments; and

WHEREAS, the Campbell County Fiscal Court (“Fiscal Court”) has obtained a legal opinion that the creation of a multi-jurisdictional Police Social Worker Program (“PSW Program”) is an authorized expenditure of Opioid Settlement Funds under the AG Settlements to address Opioid Use Disorders, Substance Use Disorders/Mental Health issues, and other issues; and

WHEREAS, the Fiscal Court already operates a PSW Program in unincorporated Campbell County using Opioid Funds and has offered to expand this program into other cities in Campbell County; and

WHEREAS, the Cities of Dayton, Kentucky, and Bellevue, Kentucky, wish to participate in the PSW Program by using Opioid Settlement Funds these cities have received from the AG

Settlements to assist their respective police departments better deal with substance-use and -abuse disorders, mental-health issues, and other social-service issues in their cities; and

WHEREAS, under the terms of this interlocal agreement, these cities may discontinue participation in PSW Program when their Opioid Settlement Funds have been expended and exhausted or upon notice to the Fiscal Court.

NOW, THEREFORE, BE IT ORDERED AND RESOLVED BY THE CITY COUNCIL OF DAYTON, KENTUCKY, AS FOLLOWS:

Section I

The City Council of the City of Dayton, Kentucky, hereby authorizes the Mayor to enter into an interlocal agreement with the Campbell County Fiscal Court and the City of Bellevue, Kentucky, to participate in a multi-jurisdictional Police Social Worker Program to assist police in addressing substance-use and -abuse disorders, mental-health issues, and other social-service issues in their cities. A copy of this interlocal agreement is attached hereto as Exhibit "A" and is made a part hereof and incorporated by reference in this Order/Resolution as if fully rewritten herein.

Section II

That this Order/Resolution shall be maintained and indexed in the Official Order Book by the City Clerk/Treasurer.

MAYOR BEN BAKER

ATTEST:

TRISTAN KLEIN
CITY CLERK/TREASURER
October 8, 2024

CERTIFICATION

I, Tristan Klein, do hereby certify that I am the duly qualified and acting Clerk/Treasurer of the City Council of Dayton, Kentucky, and as such, I further certify that the foregoing as well as attached Exhibit "A," incorporated therein, is a true, correct, and complete copy of an Order/Resolution duly adopted by the City Council of the City at a regular meeting properly held on October 8, 2024, signed by the Mayor and is now in full force and effect, all as appears from the official records of the City in my possession and under my control.

IN WITNESS WHEREOF, I have hereunder set my hand this _____ day of _____
2024.

Tristan Klein
City Clerk/Treasurer

EXHIBIT "A"

Interlocal Agreement Between the City of Dayton, Kentucky, and
the Campbell County Fiscal Court, and the City of Bellevue, Kentucky,
to Participate in a Multi-Jurisdictional Police Social Worker Program
(See attached)

CITY OF DAYTON, KENTUCKY
ORDER/RESOLUTION NO. 2024#27

ORDER/RESOLUTION OF THE CITY
COUNCIL OF THE CITY OF DAYTON,
KENTUCKY, IDENTIFYING, AUTHORIZING
AND APPROVING A LIST OF THE ROADS IN
THE CITY'S ROAD SYSTEM.

WHEREAS, the Dayton City Council agrees that the following roads identified on attached Appendix A are part of the city road system.

WHEREAS, the Dayton City Council agrees the following roads identified on attached Appendix B are not part of the city road system.

WHEREAS, the Dayton City Council maintains these roads identified on Appendix A and identifying unnamed alleys in the map attached as Appendix C.

NOW, THEREFORE, BE IT ORDERED AND RESOLVED BY THE CITY COUNCIL OF DAYTON, KENTUCKY, AS FOLLOWS:

Section I

The City Council of the City of Dayton, Kentucky ("City"), hereby agrees that the roads identified in Appendix "A" are part of the city road system and those listed identified in Appendix "B" are not part of the city road system. Unnamed alleys in the City that are a part of the city road system also are identified in the map attached as Appendix "C". These appendices are attached hereto and made a part hereof and incorporated by reference into this Order/Resolution as if fully rewritten herein.

Section II

That this Order/Resolution shall be maintained and indexed in the Official Order Book by the City Clerk/Treasurer.

MAYOR BEN BAKER

ATTEST:

TRISTAN KLEIN
CITY CLERK/TREASURER
October 8, 202

CERTIFICATION

I, Tristan Klein, do hereby certify that I am the duly qualified and acting Clerk/Treasurer of the City Council of Dayton, Kentucky, and as such, I further certify that the foregoing as well as attached Appendices "A", "B", and "C" incorporated therein, are a true, correct, and complete copy of an Order/Resolution duly adopted by the City Council of the City at a regular meeting properly held on October 8, 2024, signed by the Mayor and is now in full force and effect, all as appears from the official records of the City in my possession and under my control.

IN WITNESS WHEREOF, I have hereunder set my hand this _____ day of _____
2024.

Tristan Klein
City Clerk/Treasurer

APPENDICES

Dayton Unnamed Streets



**Dayton City Commission
Appendix A**

ROUTE	ROAD NAME	LENGTH (MI)
CS-3000	DODD DR	0.17
CS-3001	CLARK ST	0.111
CS-3003	MANHATTAN BLVD	1.336
CS-3005	BENHAM ST	0.167
CS-3006	SECOND AVE	0.574
CS-3007	MAIN ST	0.276
CS-3008	SIXTH AVE	0.57
CS-3009	BENHAM ALY	0.037
CS-3010	BOONE ST	0.165
CS-3011	KENTON ST	0.164
CS-3012	UNNAMED ALY	0.178
CS-3040	UNNAMED ALY	0.09
CS-3041	UNNAMED ALY	0.094
CS-3043	UNNAMED ALY	0.381
CS-3044	FOURTH AVE	0.604
CS-3045	SEVENTH AVE	0.821
CS-3046	CLAY ST	0.188
CS-3047	EDWARDS AVE	0.016
CS-3050	WALNUT ST	0.539
CS-3051	VINE ST	0.39
CS-3052	ERVIN TER	0.53
CS-3053	MCKINNEY ST	0.414
CS-3054	9TH AVE	0.097
CS-3055	DAYTON AVE	0.818
CS-3056	BROOKLYN AVE	0.101
CS-3057	BERRY AVE	0.308
CS-3059	THIRD AVE	0.992
CS-3060	FIFTH AVE	1.199
CS-3061	UNNAMED ALY	0.093
CS-3062	UNNAMED ALY	0.09
CS-3063	UNNAMED ALY	0.38
CS-3064	UNNAMED ALY	0.1
CS-3065	REID ALY	0.104
CS-3067	EIGHTH AVE	0.586
CS-3068	UNNAMED ALY	0.107
CS-3069	SEVENTH AVE	0.09
CS-3070	UNNAMED ALY	0.109
CS-3071	UNNAMED ALY	0.039

CS-3072	TENTH AVE	0.322
CS-3074	BELMONT RD	0.353
CS-3075	BLUE ASH CIR	0.047
CS-3076	LOCUST AVE	0.101
CS-3077	FAIRVIEW AVE	0.151
CS-3081	COTTONWOOD PL	0.124
CS-3082	CHATEAU DR	0.112
CS-3083	ROSE DR	0.204
CS-3084	NORTH RIDGE LN	0.073
CS-3085	DAYTON PIKE	0.716
CS-3087	BEECHWOOD PL	0.106
CS-3088	OSAGE DR	0.032
CS-3089	CHESAPEAKE AVE	0.077
CS-3090	NINTH AVE	0.3
CS-3091	UNNAMED ALY	0.108
CS-3092	UNNAMED ALY	0.089
CS-3093	LINDSEY ST	0.09
CS-3095	THORNTON ST	0.232
CS-3096	UNNAMED ALY	0.069
CS-3097	MAPLE AVE	0.218
CS-3098	SILVER ST	0.049
CS-3099	GREENDEVIL LN	0.249
CS-3101	LINCOLN AVE	0.553
CS-3102	UNNAMED ALY 36	0.061
CS-3103	UNNAMED ALY 2	0.088
CS-3104	UNNAMED ALY 3	0.13
CS-3105	UNNAMED ALY 4	0.05
CS-3107	UNNAMED ALY 5	0.035
CS-3108	UNNAMED ALY 6	0.035
CS-3109	UNNAMED ALY 7	0.03
CS-3110	KREIDLER ALY	0.07
CS-3111	UNNAMED ALY 9	0.041
CS-3112	UNNAMED ALY 10	0.026
CS-3113	UNNAMED ALY 11	0.109
CS-3114	UNNAMED ALY 12	0.027
CS-3115	UNNAMED ALY 13	0.029
CS-3116	UNNAMED ALY 14	0.091
CS-3117	UNNAMED ALY 15	0.086
CS-3118	UNNAMED ALY 16	0.116
CS-3119	UNNAMED ALY 17	0.089
CS-3121	SARGEANT DR	0.056
CS-3122	LYNN DR	0.066
CS-3123	UNNAMED ALY 1	0.346

CS-3124	RIVERPOINTE DR	0.482
CS-3125	GRANT PARK DR	0.43
CS-3126	MICHIGAN AVE	0.1
CS-3127	RIVERPOINTE CT	0.093

**Dayton City Commission
Appendix B**

ROUTE	ROAD NAME	LENGTH (MI)
CS-3120	UNNAMED ALY 18	0.061

**CITY OF DAYTON, KENTUCKY
ORDINANCE NO. 2024#21**

AN ORDINANCE GRANTING FRANCHISES TO INSIGHT SPECTRUM MID-AMERICA, LLC, LOCALLY KNOWN AS CHARTER COMMUNICATIONS, AND CINCINNATI BELL EXTENDED TERRITORIES LLC, DBA ALTA FIBER CONNECTED SERVICES, TO OPERATE A CABLE COMMUNICATION SYSTEMS WITHIN THE TERRITORIAL LIMITS OF THE CITY OF DAYTON, KENTUCKY, AND AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY TO EXECUTE FRANCHISE AGREEMENTS BETWEEN THE CITY AND SPECTRUM MID-AMERICA, LLC AND CINCINNATI BELL EXTENDED TERRITORIES LLC TO PROVIDE AND OPERATE CABLE COMMUNICATION SYSTEMS WITHIN THE CITY.

WHEREAS, Insight Spectrum Mid-America, LLC, locally known as Charter Communications, and Cincinnati Bell Extended Territories LLC, dba Altafiber Connected Services, “Grantee” individually and “Grantees” collectively) currently operate a cable communication systems (“CATV Systems”) within the territorial limits of the City of Dayton, Kentucky (the “City; and

WHEREAS, Grantees have responded to a Notice of Bids for Franchise issued by the City pursuant to the provisions of the Cable Act and the Kentucky Constitution of its intent and desire to renew CATV Systems franchises in the City and to negotiate new franchise agreements with the City; and

WHEREAS, Grantees’ performance under its existing franchise have been satisfactory, and the franchisees have substantially complied with all material terms of the existing franchises and with applicable law; and

WHEREAS, the City and Grantees have negotiated franchises to authorize Grantees the right to operate a new CATV System not to exceed 20 years, pursuant to Section 164 of the Kentucky Constitution.

NOW, THEREFORE, THE BOARD OF COUNCIL OF THE CITY OF DAYTON, KENTUCKY, HEREBY ORDAINS AS FOLLOWS:

SECTION I

The City hereby grants to Grantees a non-exclusive franchise to provide and operate a CATV System within the territorial limits of the City for a period not to exceed 20 years, in accordance with the terms and conditions set forth in the respective Franchise Agreements with the Grantees.

The Mayor is hereby authorized and directed to execute on behalf of the City the above-referenced Franchise Agreement with Insight Spectrum Mid-America, LLC and Cincinnati Bell Extended Territories LLC.

SECTION II

This Ordinance shall be adopted according to law, executed, recorded, and published and shall be effective upon publication, according to law.

First Reading: November 12, 2024
Second Reading:

CITY OF DAYTON, KENTUCKY

By: _____
Mayor Ben Baker

ATTEST:

Tristan Klein, City Clerk

COMPETITIVE CABLE FRANCHISE AGREEMENT

THIS NONEXCLUSIVE CABLE FRANCHISE AGREEMENT, dated this _____ day of _____, 20____, but made effective when legally adopted by an ordinance approving this Franchise Agreement, by and between the City of Dayton, Kentucky and Insight Spectrum Mid-America, LLC, locally known as Charter Communications (hereinafter referred to as “Franchisee”) with its principal place of business at 601 Massachusetts Ave NW, Suite 400, Washington, DC 20001 (“this Agreement”).

WHEREAS, pursuant to Kentucky Constitution Section 164 and Kentucky Revised Statutes Section 67.083, the City is authorized and empowered to award a cable television franchise;

WHEREAS, the City has conducted a full public hearing after giving notice as required by statute, the purpose of said public hearing being to analyze and consider the following:

1. The technical ability, financial condition, and legal qualification of the Franchisee to provide the services, facilities and equipment for that system; and
2. Whether Franchisee’s plans for its Cable System are adequate in light of community needs; and
3. Whether the Franchisee can meet the future cable-related needs and interests in light of the costs;

WHEREAS, the City, after such consideration, analysis, and deliberation has found that the Franchise to the Franchisee should be granted; and

WHEREAS, the City recommends that the Franchise to the Franchisee be granted pursuant to 47 U.S.C. 541 for said Cable Communication System in the City limits.

NOW, THEREFORE, in consideration of the mutual and reciprocal terms and provisions hereof, the City hereby grants a non-exclusive Franchise to the Franchisee from the date of this Agreement (“Effective Date”) for an initial period of five (5) years. This Franchise Agreement shall be automatically renewed for an additional three (3) five-year terms unless either the City or by Franchisee provides at least six months written notice before of the end of the five-year term then in effect that either party does not wish to exercise the automatic renewal of the Franchise. The Franchisee and City further agree as follows:

SECTION 1. CONSTRUCTION

This Agreement shall be construed in light of applicable federal and state laws and regulations governing cable television.

SECTION 2. SCOPE

This Agreement shall be effective within the geographical limits of the City of Dayton, including any areas subsequently annexed by the City.

SECTION 3. SEVERABILITY

If any word, phrase, sentence, part, section, subsection, or other portion of this agreement, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The City declares that no invalid or proscribed provision or application was an inducement to this Agreement, and that it would have enacted this agreement regardless of the invalid or proscribed provision or application.

SECTION 4. DEFINITIONS

- A. "Access channel" means a government, education, or public channel which is carried on the cable system, but which is not part of any institutional network.
- B. "Authority" means the City of Dayton.
- C. "Basic cable television service" means any service tier that includes the retransmission of local television broadcast signals.
- D. "City" means the City of Dayton, Kentucky.
- E. "County" means the Campbell County Fiscal Court, Kentucky, or its lawful successor.
- F. "FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to oversee cable television and other multi-channel video provider regulation on a national level.
- G. "Federal" means the government of the United States, including its legislative, executive, and judicial branches, and the statutes, rules and regulations enacted by those branches of government.
- H. "Franchise" means the initial non-exclusive authorization or subsequent renewal granted by the City that authorizes a person to construct, operate, and maintain a cable system in all or part of the City.
- I. "Franchisee" means the legal entity granted the cable television Franchise by the

City and any entity having any rights, liabilities or interest to the Franchise whether by assignment, transfer or other means.

- J. “Pay-Per-View Event(s) or Pay-Per-View Movie(s)” means the delivery over the cable system of audio and video signals in an unintelligible form for a set fee or charge over and above the charge for standard or basic service and in addition to any premium channel on a per event or per movie basis where said unintelligible or unusable form is made intelligible for viewing only to subscribers paying a separate fee or charge for the viewing of the event or events.
- K. “Premium channel” means the delivery over the cable system of audio and video signals in an unintelligible form to subscribers for a monthly fee or charge (over and above the charge for standard or basic service) on a per channel basis where said unintelligible or unusable form for viewing is made intelligible only to subscribers paying a separate fee or charge for the viewing or use of the signals.
- L. “Public, Educational or Governmental access facilities” means:
 - 1. Channel capacity designated for public, educational or governmental use; and
 - 2. Facilities and equipment for the use of such channel capacity.
- M. “Rate” means the monthly price paid by a subscriber to receive cable service.
- N. “Service day” means every calendar day, except Sundays and Federal holidays.
- O. “Service outage” means the loss of picture or sound on all basic subscriber channels, or one (1) or more auxiliary programming channels (including tiers and pay programming), and which is not caused by the failure or malfunction of a subscriber’s television receiver or by the error of the subscriber.
- P. “State” means the Commonwealth of Kentucky.
- Q. “Subscriber” means a person lawfully receiving service delivered over a cable system by Franchisee.
- R. “System” or “Cable System” means the Cable Communication System provided in the City of Dayton, Kentucky under this Franchise Agreement.

SECTION 5. FAILURE OF THE CITY TO ENFORCE THIS FRANCHISE AGREEMENT

- A. Franchisee shall not be excused from complying with any of the requirements of this Agreement, or any subsequently adopted amendments to this Agreement, by any failure of the City on any one (1) or more occasions to seek, or insist upon, compliance with such requirements or provisions.
- B. This Agreement and the rights and responsibilities it imposes on Franchisee may not be

unilaterally amended, except as otherwise expressly provided herein in Section 49, without the prior written consent of Franchisee.

SECTION 6. RESOLUTION OF INCONSISTENCIES WITH FEDERAL OR STATE RULES, REGULATIONS OR LAWS

In any case of an actual inconsistency between any provision or section of this agreement, and any provision or section of a Federal or State rule, regulation, or law, then the Federal or State rule, regulation, or law shall not only supersede the effect of this Agreement, but also control in any local application.

SECTION 7. NOTICES

Both the City and Franchisee shall provide the other party with the name and address of the contact person designated to receive notices, filings, reports, records, documents, and other correspondence. All notices shall be delivered to each party's contact person by certified mail, return receipt requested, personal service with a signed receipt of delivery, or overnight with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to facsimile transmission ("faxing"); electronic mail ("email"); personal service; overnight mail or package delivery; or delivery via cable. The delivery of all notices, reports, records, and other correspondence shall be deemed to have occurred at the time of receipt (unless otherwise designated by State law).

SECTION 8. INDEMNITY

- A. To the extent permitted by law, Franchisee shall at all times defend, indemnify, protect, save harmless, and exempt the City, Mayor, and Members of the Dayton City Council, their officers, and employees, agents, and representatives from any and all claims, suits, demands, causes of action, or award of damages whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might be claimed now or in the future that may arise out of or be caused by (i) the construction, erection, location, products' performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the system within the City or (ii) a wrongful or negligent act or omission of Franchisee, its agents or employees, contractors, subcontractors, independent contractors, or implied or authorized representatives. With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees and costs are included as those costs which may be recovered by the City.
- B. The City, Mayor, and City Council specifically reserve the right to retain counsel of their own choice, at their own expense.
- C. If Franchisee obtains counsel for the City, the Mayor, the City Council, or City employees then any one of them shall have the right to approve counsel; provided, however, that the City shall not unreasonably withhold their approval of counsel.
- D. With respect to Franchisee's own defense of such actions noted in this Section, it is

understood that such Franchisee reserves the right to select and retain, without the City's approval, counsel of the Franchisee's choice, at Franchisee's own expense.

- E. The City acknowledges that Franchisee shall not be required to indemnify the City for demands, claims, suits, actions, proceedings, liability, and judgments for damages arising from the negligence of the City or its employees, agents, or representatives.

SECTION 9. LIABILITY INSURANCE

- A. Franchisee shall obtain, and by its acceptance of the Franchise specifically agrees that it will maintain throughout the term of the Franchise, liability insurance insuring the City as an additional insured, in the minimum amount of \$1,000,000 for bodily injury and/or property damage in any one occurrence. This limit may include a self-insured retention and may be increased by mutual agreement of the parties.
- B. The insurance policy obtained by the Franchisee in compliance with this section shall be issued by a company or companies duly licensed to do business in the State, carrying a rating by Best's, or some other nationally recognized rating service, of not less than A-.
- C. Copies of certificates of insurance for all policies required hereunder shall be filed and maintained with the City or its designated agent during the term of the Franchise and may be changed from time to time to reflect changing liability limits.
- D. Neither the provisions of this section nor any damages recovered by the City, thereunder, shall be construed to limit the liability of the Grantee under any franchise issued hereunder or for damages.
- E. Certificates of insurance must be provided to the City within thirty (30) days of the execution of this franchise.
- F. Certificates of Insurance for renewal or replacement insurance policies shall be delivered to the City at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- G. Neither the provisions of this section nor any damages recovered by the City hereunder shall be construed to limit the liability of the Franchisee under any Franchise issued hereunder or for damages.

SECTION 10. FURNISHING OF REPORTS

- A. Franchisee shall timely submit those reports, statements, and logs required by this Franchise.

- B. Franchisee shall submit a report to the City, within 90 days after the close of its fiscal year, which contains the following for the previous year:
1. A subscriber complaint log that identifies service-related complaints by subscribers and the resolution of those complaints;
 2. The number of additional subscribers to the system;
 3. Changes that have occurred in the programming offered by the system;
 4. Additional line extensions and construction activity;
 5. A compliance report on the system's compliance with the franchise's subscriber service standards; and
 6. A list of all reports and petitions filed by the system with the Federal Communications Commission.

SECTION 11. BOOKS AND RECORDS

- A. Franchisee shall fully cooperate in making available at reasonable times, and the City, or its designated agent, shall have the right to inspect the Franchisee's books, records, maps, plans, and similar materials needed to enforce this Franchise at any time during normal business hours. However, when volume and convenience necessitate, the Franchisee may require inspection to take place on the Franchisee's premises at the local office.
- B. Confidentiality. The City shall maintain as confidential any information provided to it by Franchisee under the terms of this Franchise that Franchisee has designated as confidential. In the event that the City believes at any time that it is required by law or subpoena to disclose such information to a third party, it will so notify Franchisee at a time prior to any such disclosure that affords Franchisee a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.
- C. Copies of all petitions, applications, communications, and reports submitted by the Franchisee to the Federal Communications Commission, Securities and Exchange Commission (specifically 10K and 8K filings), or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the Franchise, shall be provided to the City, or its designated agent, upon its written request.
- D. Upon request, the Franchisee shall provide the City, or its designated agent, no later than one hundred and twenty (120) days after the end of the Franchisee's fiscal year, a copy of Franchisee's or Franchisee's parent company's Form 10-K for the preceding twelve (12) month period. The City may hire an independent Certified Public Accountant to audit the

Franchisee's revenue records related to Franchise Fees that may be collected directly by the City, in which case the Franchisee shall provide all necessary records to the Certified Public Accountant.

SECTION 12. NOTIFICATION OF SUBSCRIBERS' AND FRANCHISEE'S RIGHTS AND RESPONSIBILITIES; GENERAL POLICY

- A. To provide Subscribers with the variety of information needed to make an informed decision and to ensure that subscribers are notified of the rights and responsibilities of the Subscriber and the Franchisee with respect to the Cable System, Franchisee shall provide subscribers with a written or electronic "Notice of a Subscriber's and Franchisee's Rights and Responsibilities."
- B. Unless expressly prohibited by the Federal or State law, Franchisee may comply with any notice requirements by providing said "Notice" by mail to the subscriber, through newspaper publication, or over the Cable System on a channel clearly designated for the dissemination of such information; such a channel need not be solely designated for dissemination of such information, and may, in fact, be used at other times for any lawful purpose.

SECTION 13. NOTIFICATION OF SUBSCRIBERS' AND FRANCHISEE'S RIGHTS AND RESPONSIBILITIES; MINIMUM CONTENTS

- A. When the Franchisee provides a Notice to subscribers concerning their rights, such "Notice" should contain the following:
 - 1. An up-to-date listing of services provided;
 - 2. Notification of a subscriber's ability to purchase or lease from the Franchisee parental-control mechanisms or other devices that will prohibit the viewing of a particular program service during a period selected by the subscriber;
 - 3. A listing and explanation of rates and charges, credit refund policy, and connection and involuntary disconnection policies;
 - 4. The complaint-resolution procedures;
 - 5. A listing and explanation of billing options available (such as monthly or yearly billing options and/or discounts for prepayments);
 - 6. The subscriber service office hours and telephone number(s);
 - 7. The method of securing a voluntary disconnection; and
 - 8. The equipment use-and-return policy, together with any required security deposits.
- B. The "Notice" shall be in plain, simple, understandable English.

- C. The “Notice” may be delivered to a subscriber via an insert in the subscriber’s periodic invoice, through a special mailing, by newspaper, or publication over a channel clearly designated for the dissemination of such information.

SECTION 14. BILLING PRACTICES

- A. Whenever there is a change in Franchisee’s billing practices or payment requirements, Franchisee shall notify subscribers within thirty (30) days of the effective date of such billing practices or payment requirements.
- B. In any case where a subscriber requests a cancellation or reduction of service within thirty (30) days after the notification of a scheduled rate or charge adjustment, then the subscriber’s liability for the newly implemented rate or charge shall cease from the moment that the rate or charge adjustment becomes effective.

SECTION 15. BILLING CREDIT OR REFUNDS FOR SERVICE OUTAGES, INTERRUPTIONS; SUBSTANDARD SIGNAL OR PICTURE QUALITY OR UNSOLICITED SERVICE

Franchisee shall, upon request by a subscriber, provide that subscriber with a pro-rata credit for a service outage or interruption exceeding one service day in duration, provided that the outage is not caused or is not a result of matters beyond the immediate control of Franchisee.

SECTION 16. SUBSCRIBER SERVICE PERFORMANCE

A. Definitions

1. “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve subscribers. This will include some evening hours (at least one night per week) and/or some weekend hours.
2. “Normal Operating Conditions” means conditions that are within the control of the operator. Those conditions that are not within the control of the operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather. Those conditions that are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.
3. “Service Interruption” means a service outage that is not caused by the failure or malfunction of a subscriber’s television receiver or by the error of the subscriber. This term affects the timing of when the Franchisee must respond to a service problem.

B. Subscriber Service Standards

1. The Franchisee will maintain a local, toll-free or collect-call telephone access line that will be available to its subscribers 24 hours a day, seven days a week.
 - (a) Trained Franchisee representatives will be available to respond to subscriber telephone inquiries during normal business hours.
 - (b) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by trained Franchisee representatives on the next business day.
2. Under normal operating conditions, telephone answer time by a Franchisee representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. Franchisee shall not be required to acquire equipment or perform surveys to measure compliance with telephone answering standards unless an historical record of complaint indicates a clear failure to comply.
3. Under normal operating conditions, the Subscriber will receive a busy signal less than three percent (3%) of the time.
4. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

C. Installations, Outages, and Service Calls

Under normal operating conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.

1. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 150 feet from the existing distribution system.
2. Excluding conditions beyond the control of the operator, Franchisee will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known.
3. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the subscriber.)

4. Franchisee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.
5. If a Franchisee representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, Franchisee or its representative will notify the Subscriber of this fact. The appointment will be rescheduled, as necessary, at a time that is convenient for the Subscriber.

D. Communications Between Cable Franchisee and Cable Subscribers

2. Notifications to Subscribers:

- (a) Franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:
 - (i) Products and services offered;
 - (ii) Prices and options for programming services and the conditions of subscription to programming and other services;
 - (iii) Installation and service maintenance policies;
 - (iv) Instructions on how to use the cable service;
 - (v) Channel positions of programming carried on the system; and
 - (vi) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.
- (b) Subscribers shall be notified of any changes in rates, programming service, or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers at a minimum of thirty (30) days in advance of such changes, if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing:

- (a) Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
- (b) In case of a billing dispute, the cable operator must respond to a written complaint from a Subscriber within thirty (30) days.

3. Refunds:

Refund checks will be issued promptly, but no later than either of the following:

- (a) In the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- (b) Within thirty (30) days after return of equipment supplied by the cable operator.

4. Credits:

Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

SECTION 17. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

- A. Franchisee shall not -- as to rules, regulations, rates, charges, provision of service, or use of facilities and equipment -- make, allow, or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, handicap, religious affiliation, sexual orientation, or location of residence.
- B. Franchisee shall not deny cable service, or the extension of cable service, to any group of potential residential cable Subscribers because of the income of the residents or the local area in which such group resides.
- C. This Section, however, does not prohibit Franchisee from offering a promotional or incentive discount rate or charge.
- D. This Section does not prohibit Franchisee from denying service based on location of residence, if that residence is located outside the parameters for line extension as detailed herein.
- E. This Section does not prohibit Franchisee from denying service to a Subscriber who is more than thirty (30) days delinquent in the payment of any service bill.
- F. This Section does not prohibit Franchisee from implementing a no-frills service tier for "lower income" and/or fixed income individuals.
- G. This Section does not prohibit Franchisee from making agreements or entering into service agreements with multiple dwelling unit owners or commercial establishments (including hotel, motel, apartments, fraternities, sororities, and mobile home park owners) to provide service under a bulk billing or other type of arrangement.

- H. Franchisee will comply with all Federal and State laws regarding special service requirements on handicapped subscribers.

SECTION 18. USE OF EQUIPMENT, RETURN OF EQUIPMENT, SECURITY DEPOSITS, AND THEIR RETURN.

- A. Franchisee may charge an appropriate security deposit provided that it shall comply with any and all applicable State rules concerning the imposition, retention, and return of security deposits and does not exceed the cost of replacement, plus recovery.
- B. Franchisee may charge an appropriate security deposit in those instances where a subscriber is reconnected after an involuntary disconnection for nonpayment or prior history of unsatisfactory payment.
- C. Franchisee shall return a security deposit after the equipment is satisfactorily returned or the subscriber maintains a satisfactory payment history, which is determined as no payment delinquencies within the preceding twelve (12) month period).
- D. A Subscriber shall totally and fully reimburse Franchisee for any damage or loss to any of Franchisee's equipment that is due to the Subscriber's failure to properly maintain and operate such equipment.
- E. A Subscriber shall be relieved from any responsibility for reimbursing Franchisee for the repair of equipment that malfunctions or does not operate due to a hidden or latent defect in the equipment, or for equipment that fails to operate, or improperly operates due to natural occurrences conditioned by the normal wear and tear of such equipment; however, Subscriber shall still be obligated to return said equipment to Franchisee otherwise undamaged.

SECTION 19. SERVICE LOGS.

- A. Franchisee shall be required to keep and maintain service logs, subject to any limitations imposed by State or Federal law, including any Subscriber privacy limitations.
- B. The purpose of the service logs is to assist the City in assessing (in the aggregate) the type, degree, and resolution of Subscriber trouble calls and written complaints.
- C. In addition to any other right of inspection that the City may possess, it shall have the right to review and inspect a compilation of such logs; provided, however, that Franchisee shall have no obligation to retain any log for more than three (3) years. However, the City shall not have the right of access, review, or inspection of any service logs or any information contained within service logs that are otherwise protected from access, review, or inspection by State or Federal law.
- D. This Section does not require Franchisee to maintain service logs on scheduled

installations, upgrades, and changes of service.

SECTION 20. RESTORATION OF A SUBSCRIBER'S PROPERTY

- A. Any time Franchisee disturbs the yard, residence, or other real or personal property of a Subscriber, Franchisee shall ensure that the Subscriber's yard, residence, or other personal property is returned, replaced, and/or restored to a condition that is sufficiently comparable to the condition that existed prior to the commencement of the work.
- B. The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne by Franchisee.
- C. The requirements imposed upon Franchisee shall extend to any subcontractor or independent contractor that Franchisee might employ to perform the tasks outlined in this Section.
- C. Provided, however, Franchisee has the authority to diligently trim trees of a private property owner (including a subscriber), which overhang or intrude into rights-of-way or easements, but only to the extent necessary to prevent the branches of the trees from coming in contact with Franchisee's cable television facilities.

SECTION 21. SERVICE REQUESTS, COMPLAINTS, AND RESPONSE TIMES.

- A. Except in times of a natural or man-made emergency, or an appointment scheduled with the mutual consent of a Subscriber, Franchisee shall respond to the service requests and complaints of subscribers within thirty-six (36) hours after the need for service becomes known. Moreover, except in emergency situations, Franchisee shall inform the Subscriber whether the service call is scheduled for the morning, afternoon, or evening hours. If the service call has to be canceled or rearranged, unless the Subscriber decides otherwise, Franchisee shall make every effort to notify the Subscriber as soon as possible, and to re-schedule the service call.
- B. Franchisee may rank-order service calls in order of severity. Total outages will take precedence over area outages, area outages take precedence over a single home, and a multi-channel problem takes precedence over a single-channel problem.

SECTION 22. FRANCHISEE REQUIRED TO MAINTAIN SUFFICIENT REPAIR PARTS AND SUFFICIENT REPAIR PERSONNEL.

- A. Except in times of a natural or man-made emergency, Franchisee shall at all times have access to and be able to secure sufficient maintenance and repair parts and equipment for the System so that Franchisee can respond to and correct all Subscriber service interruptions within the time periods specified in this Agreement.
- B. Except in times of natural or man-made emergency, including severe weather conditions,

or strike, Franchisee shall have sufficient maintenance and repair personnel so that Franchisee can respond to and correct Subscriber service interruptions within the time periods specified in this Agreement.

- C. Notwithstanding the other requirements and provisions contained in this Section, Franchisee shall maintain at least one (1) service technician on call twenty-four (24) hours per day.

SECTION 23. NEW INSTALLATIONS; CONNECTIONS: REGULAR, PROMOTIONAL, SEASONAL, SHORT-TERM, AND PAY-PER-VIEW; RECONNECTIONS.

- A. During non-rush periods, new standard installations, promotional, short-term, or seasonal connections, reconnections, and upgrades of service by Franchisee shall be performed and completed within seven (7) days of a Subscriber requesting such service. A standard installation is one that is located within one hundred fifty (150) feet from the existing distribution system. During rush periods, new installations, promotional, short-term, or seasonal connections, reconnections, and upgrades of service by Franchisee shall be performed and completed within fourteen (14) days of a Subscriber requesting such service if cable is built to the home.
- B. While Franchisee may charge a Subscriber for installing, connecting, or reconnecting service, such charge must be explained to subscribers.
- C. In the case of a promotional or seasonal connection, any limitations or restrictions should be explained prior to the promotional or seasonal connection.
- D. Franchisee may charge an appropriate reconnection charge or require a security deposit in those instances where a Subscriber is reconnected after an involuntary disconnection for nonpayment or a prior history of unsatisfactory payment.

SECTION 24. DISCONNECTION FOR NON-PAYMENT.

- A. A Subscriber shall be considered delinquent in payment if payment is not made within ten (10) days after receipt of the bill. Franchisee shall not disconnect service prior to 30 days after a Subscriber's receipt of the unpaid bill, however, Franchisee may charge a late fee for any payment which has not been made after the 10th day from receipt.
- B. Receipt of a dishonored check from a Subscriber in response to a written notice of disconnection does not constitute payment, and the Franchisee need not give the Subscriber further notice prior to disconnecting service.
- C. Franchisee may add a reasonable collection charge, subject to applicable state regulations to the Subscriber's bill.

SECTION 25. VOLUNTARY DISCONNECTIONS AND DOWNGRADES.

- A. At any time, a Subscriber who does not have a separate contract with the Franchisee may request that a particular service tier, pay channel, premium channel, informational service, or the entire service be disconnected.
- B. A Subscriber may request a downgrade from a particular level of service to a less comprehensive level of service or a less expensive level of service.
- C. From the date that such a Subscriber makes such a request for either a disconnection or downgrade, the Franchisee shall have ten (10) days to disconnect or downgrade the service tier, pay channel, premium channel, informational service, or entire service. In the event that Franchisee does not disconnect or downgrade service within this period, a Subscriber's obligation to pay for such service shall cease, or in the case of a downgrade, a subscriber's obligation to pay for the more comprehensive and/or higher priced service shall cease ten (10) days from the date of the Subscriber request.
- D. For a service tier, premium channel, or informational service that is voluntarily disconnected, a Subscriber shall pay a pro rata share of the monthly rate for such service tier, premium channel, or informational service.
- E. Once a valid connection to a pay-per-view event occurs, the Franchisee may collect the full advertised or quoted rate if the Subscriber then attempts to disconnect the pay-per-view event.
- F. Provided that Franchisee does not have to make a trip or add additional equipment to the Subscriber's location to perform a change in service, no separate disconnect or downgrade charge may be passed onto a Subscriber if it chooses to take advantage of a lower-priced or less comprehensive service tier. However, to prevent Subscriber abuse of this voluntary disconnection or downgrade policy, a Subscriber shall be charged a minimum one (1) month's full rate for any one (1) service tier that is connected and then subsequently disconnected.
- G. If Franchisee's equipment is, or has been damaged, by a Subscriber prior to disconnection, then Franchisee may charge the Subscriber with the entire cost for such damage, provided that Franchisee notifies the Subscriber within thirty (30) days of the disconnection. A Subscriber shall not be required to pay for equipment failure if the circumstances fall within the normal wear-and-tear guidelines.
- H. Any refund due a Subscriber after disconnection -- both for nonpayment and voluntary disconnection -- shall be made within forty-five (45) days after such disconnection.

SECTION 26. RESOLUTION OF COMPLAINTS.

In the event of a Subscriber billing or repair complaint, the complaint will be handled as follows:

1. Franchisee shall make an initial response to a complaint no later than one (1) service day after receipt of the complaint;
2. Every attempt will be made to resolve the complaint within seventy-two (72) hours or three (3) service days, whichever is longer, after receipt of the complaint.

SECTION 27. CONTINUED USE OF INDIVIDUAL ANTENNAS PROTECTED.

No person shall be required to receive cable service or to physically connect to the cable system.

SECTION 28. CONSTRUCTION OF GOOD QUALITY.

During any phase of construction, installation, maintenance, and repair of the System, Franchisee shall use materials of good and durable quality and all such work shall be performed in a safe, thorough, and reliable manner. Such work shall comply with FCC and industry standards.

SECTION 29. CONDITIONS ON USE OF STREETS AND PUBLIC WAYS.

- A. All wires, conduits, cable (coaxial, fiber, or functional equivalent), and other property and facilities of Franchisee shall be so located, constructed, installed, and maintained so as not to endanger or unnecessarily interfere with usual and customary use, traffic, and travel upon the streets, rights-of-way, easements, and public ways of the City.
- B. In the event Franchisee's System creates a hazardous or unsafe condition or an unreasonable interference with property, then, at its own expense, Franchisee shall voluntarily, or upon the request of the City, remove that part of the system that creates the hazardous condition from the subject property.
- C. Franchisee shall protect rights-of-way, easements, and support or temporarily disconnect or relocate in the same street or other public way any property of Franchisee when necessitated by reason of:
 1. traffic conditions;
 2. public safety;
 3. a street closing;
 4. street construction or resurfacing;
 5. change or establishment of street grade; or
 6. installation of sewers, drains, water pipes, storm drains, lift stations, force mains, power or signal lines.
- D. It shall be the responsibility of Franchisee, within 72 hours of the request (acting alone or in conjunction with another person) to locate and mark or otherwise visibly indicate and

alert others to the location of its underground cable (coaxial, fiber or functional equivalent) before employees, agents, or independent contractors of any entity with a valid permit installs cable or digs in the marked-off area.

Any restoration expense or any damage caused to Franchisee's facilities resulting from the failure of an entity to have Franchisee's facilities located and marked or as a result of an entity constructing or digging in a location where Franchisee's facilities have been marked, will be the sole responsibility and liability of such entity who damaged Franchisee's facilities.

- D. Franchisee shall, on the request of any person holding a building moving permit, temporarily remove, raise, or lower the cable wires to allow the moving of the building. The expense of temporary removal shall be paid by the person requesting it, and Franchisee may require payment in advance. Franchisee shall be given not less than twenty-one (21) days' notice of a contemplated move to arrange for temporary wire changes.
- E. Continuation of Existing Facilities; New Facilities. If the Franchisee has an existing Franchise with the City, it may continue the operation, use, maintenance, repair, construction, and/or reconstruction to the existing condition thereof of all facilities of the Franchisee within or upon any public property in the City. The Franchisee shall provide commercially reasonable notice of any non-emergency extension or expansion of any existing facilities of the Franchisee, or the construction or installation of new facilities within the franchise area and shall provide the plans and specifications for such new facilities to the City. The Franchisee shall abide by the City's permitting process and receive the necessary approval thereof from the City, which approval shall not be withheld unless the extension, expansion, construction, or installation described in those plans and specifications is contrary to the public health, safety, welfare, and convenience. In the event that any request for the extension or expansion of any existing facilities of the Franchisee or the construction or installation of new facilities of the Franchisee is denied by the City, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of the Franchisee's notice. If written denial or approval is not received within thirty (30) days of the Franchisee's notice, the extension, expansion, construction, or installation request shall be deemed approved. The City acknowledges that the Franchisee has a statutory duty to provide adequate efficient and reasonable service and that the Franchisee shall not be prevented from fulfilling that statutory obligation due to any delay by the City in giving or failing to give any approval described herein.
- F. Other Activities. All other activities that are reasonably necessary for the use by the Franchisee of the public property within the franchise area pursuant to the provisions of the Franchise hereby established.

SECTION 30. CONSTRUCTION STANDARDS.

- A. The methods of construction, installation, maintenance, and repair of the system shall comply and be consistent with good engineering practices for cable television systems of similar size and design and consistent with FCC technical standards.

- B. Franchisee shall advise the City when a proof of performance test is scheduled so that the City may have an observer present if so desired.
- C. Pavement Removal, Excavation, and Grading. The Franchisee shall provide commercially reasonable notice of any nonemergency removal or revision of any pavement and any excavation and grading reasonably necessary within any public property in the franchise area and the plans and specifications for such new facilities to the City. Before undertaking such work, the Franchisee shall abide by the City's permitting process and receive necessary approval thereof by the City, which approval shall not be withheld unless the proposed pavement removal, excavation, or grading are contrary to the public health, safety, welfare, and convenience. The Franchisee shall also comply with all ordinances and regulations of City, including, but not limited to, the City's Public Right-of-Way Ordinance, § 96.50 *et seq.* of the City Code of Ordinances ("Code") and its Historic Preservation Ordinance, § 156.01 *et seq.* of the Code, and any regulations adopted in connection with these ordinances. In the event that any request for pavement removal or revision, excavation or grading is denied by the City, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of the Franchisee's notice. If a written denial or approval is not received within thirty (30) days, the removal or revision of any pavement and any excavation and grading shall be deemed approved. The City acknowledges that the Franchisee has a statutory duty to provide adequate efficient and reasonable service and that the Franchisee shall not be prevented from fulfilling that statutory obligation due to any delay by the City in giving or failing to give any approval described herein.
- D. Right-of-Way Maintenance. The Franchisee shall have the right to cut, trim or remove any trees, overhanging branches, or other obstructions on public property which in the reasonable opinion of the Franchisee may endanger or interfere with the efficient installation or maintenance of facilities subject to compliance with § 96.50 *et seq.* and § 156.01 *et seq.* of the Code.

SECTION 31. PERMITS AND LICENSES.

Franchisee shall obtain, at its own expense, all permits and licenses required by law, rule, regulation, or ordinance, and maintain the same in full force and effect for as long as required.

SECTION 32. STANDBY POWER.

Franchisee shall install automatic, activated standby power on its trunk-cable and at its headends, hubs, and receive-sites associated with the distribution of cable service to and throughout the City.

SECTION 33. EMERGENCY ALERT/EMERGENCY OVERRIDE.

Franchisee shall comply with all Federal Emergency Alert requirements.

SECTION 34. PREVENTIVE MAINTENANCE PROGRAM.

The following shall be included as part of Franchisee's preventive maintenance program:

- a) Periodic inspection and repair, if needed, of the headend;
- b) Periodic inspection and repair, if needed, of the antenna tower;
- c) Periodic weatherproofing and protection of the antenna lead connectors and on any other exposed fittings if needed;
- d) Periodic conducting of signal-leakage tests that are in accord with FCC requirements;
- e) Periodic servicing, testing, and calibration of equipment, including service vehicles and field-test equipment;
- f) Periodic testing of the Franchisee's emergency alert system if any;
- g) Periodic testing and recording of said test data for all signals (audio and video) at the headend and System extremity points;
- h) Periodic testing as required by Federal law and or regulations; and
- i) Compliance with all operating parameters required by FCC rules and regulations, including any future changes or amendments to these rules and regulations.

SECTION 35. EXTENT OF GRANT OF FRANCHISE.

- A. Franchisee may construct, erect, install, maintain, operate, repair, replace, remove, or restore a Cable System within the geographical limits of the City.
- B. The System may be located in, upon, along, across, over, and under the streets, rights-of-way, easements, and public ways of the City and County.
- C. The System may be located on City- and County-owned poles at no charge.
- D. Franchisee, through a separate pole or utility easement agreement with an affected utility, may locate the System on, or within, the property of such utility company.

SECTION 36. TERM OF FRANCHISE.

- A. The term of this renewal franchise shall be five (5) years, with an additional three (3) year terms per mutual consent, from the Effective Date of this Franchise Agreement. Under no circumstances shall the total length of total length of the Franchise exceed twenty (20) years. The rights and privileges granted by this Franchise Agreement to Franchisee are not exclusive and nothing herein is intended to or shall be construed so as to prevent the City from granting other and similar rights, privileges, and franchises to any other person, firm, association or corporation.
- B. The City and Franchisee acknowledge and agree that the field of cable television is a rapidly changing one that may see regulatory, technical, financial, marketing, and legal changes during the term of this Franchise. Therefore, to provide for the maximum degree

of flexibility in the Franchise and to achieve a continued, advanced, and modern cable television system, the following evaluation provisions will apply:

(i) The City and Franchisee mutually agree to participate in evaluation sessions at any time and from time to time during the term of this Franchise; provided, however, there shall not be more than one (1) evaluation session every five (5) years;

(ii) Topics that may be discussed at any evaluation session include, but are not limited to, channel capacity, system performance, programming, PEG access, municipal or educational uses of the system, subscriber complaints, judicial rulings, and any other topics the City or Franchisee may deem relevant;

(iii) During an evaluation session, Franchisee and the City shall fully cooperate with one another and shall provide without cost such information and documents as are reasonably necessary to perform the evaluation;

(iv) The City and Franchisee, as the result of an evaluation session, may determine that an amendment of the terms or conditions of the Franchise may be appropriate, that the requirements of the System or of the Franchise should be updated, changed, or revised (collectively, the "Proposed Modification"). If the Proposed Modification is consistent with the terms of this Franchise, the needs of the City, the then existing state-of-the-art technology, and is financially reasonable, Franchisee and the City will, in good faith, review the terms of the Proposed Modification and consider amending the Franchise accordingly.

SECTION 37. PAYMENT OF MULTICHANNEL VIDEO PROGRAMMING SERVICES TAX.

A. Franchisee shall make payments at the times and in conformance with the requirements of KRS 136.600 - 136.660 ("Kentucky Telecom Taxes") and said payments shall be in lieu of any Franchise Fees paid to the City. If the City elects to collect Franchise Fees in lieu of the Kentucky Telecom Taxes, the Franchise Fee shall be in an amount not to exceed five percent (5%) of Franchisee's gross revenue derived from all sources from the operation of Franchisee's Cable System to provide cable service within the territorial limits of the City ("Franchise Fee"). In such case, the Franchise Fee shall be payable as follows:

1. Quarterly payments for each calendar quarter and the Franchisee shall file a complete and accurate report, signed by and certified as accurate by a responsible representative of the Franchisee, of all applicable gross revenues received during the calendar quarter, and said payment shall be made to the City no later than forty-five (45) days after the expiration of the quarter. The gross revenue report from operations of the Franchisee within the Franchise area shall include a statement of gross revenue upon which the Franchise fee is based.
2. In the event that Franchisee pays a Franchise Fee under subsection (1), upon

reasonable notice, the City shall have the right during normal business hours to inspect the Franchisee's records relevant to the payment of Franchise Fees at the Franchisee's local office and the right to audit and to recompute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of Franchisee's fiscal year for which the audit is done (e.g. if the Fiscal Year is January 1, 2024 to December 31, 2024, audit would have to occur prior to December 31, 2025). If, as a result of such audit or review, the City and Franchisee agree that the Franchisee has underpaid its fees to the City in the Fiscal Year being audited or reviewed by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including costs for attorneys, accountants, and other consultants. Any additional amount due to the City as a result of an audit or review shall be paid within the thirty (30) days following written notice to Franchisee by the City, which notice shall include a copy of the audit report and copies of all invoices for which the City seeks reimbursement.

No auditor engaged by the City shall be compensated on a success- based formula, e.g., payment based on a percentage of an underpayment, if any.

3. The City is not prohibited from collecting valid fees or taxes as set forth in KRS 136.660(3).

SECTION 38. RELIEF FROM THIS FRANCHISE AGREEMENT.

- A. Franchisee may file a written petition, at any time, with the City seeking relief from one (1) or more provisions of this Franchise. The relief requested may specifically include the delay in implementation of one (1) or more provisions of this Agreement.
- B. If at any time during the existence of this Franchise, a competing multi-channel service, subject to regulation by the City, is granted more favorable term(s) than those established for the Franchisee under this Franchise Agreement (including, but not limited to lesser channel capacity, lesser requirements to provide public, educational, or government access, less onerous reporting requirements, less onerous subscriber notification requirements, less restrictive billing practices, less onerous subscriber service requirements, less responsibility to provide institutional networks or data transmission facilities or interconnection), then such term(s) shall also be simultaneously extended to the Franchisee so that no provider of multi-channel service, subject to regulation by the City, shall receive an unfair competitive advantage.
- C. City recognizes that potential competitors of the Franchisee, including, but not limited to wireless broadcasters, video dial-tone providers, and direct broadcast satellite services may not be subject to regulation by the City. If at any time during the existence of this

Franchise, a competing multi-channel service, not subject to regulation by the City, operates within the City under terms more favorable than those established for the Franchisee under this Franchise Agreement, including but not limited to lesser channel capacity, lesser requirements to provide public, educational, or government access, less onerous reporting requirements, less onerous subscriber notification requirements, less restrictive billing practices, less onerous subscriber service requirements, less responsibility to provide institutional networks or data transmission facilities or interconnection, or less responsibility to pay a Franchise Fee, then the Franchisee shall be permitted to petition the City for relief from such term(s) so that no provider of multi-channel service shall receive an unfair competitive advantage, provided, however, that the City is not obligated to provide the relief requested.

SECTION 39. ASSIGNMENT OR TRANSFER OF FRANCHISE.

- A. This Franchise may not be assigned or transferred in whole, or in part, without the prior express written approval by the City.
- B. Any attempted assignment or transfer without such prior written consent shall constitute a default of such franchise.
- C. In the event of such a default, the City shall proceed according to the procedure set forth in this agreement, and any applicable State or Federal law.
- D. Franchisee shall petition in writing for the City's written consent for a proposed assignment or transfer.
- E. The City will not unreasonably withhold its consent to such an assignment or transfer and the City shall provide a response to such request within 30 days. In making such a determination, the City may consider the following factors:
 - 1. Experience of proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);
 - 2. Qualifications of proposed assignee or transferee;
 - 3. Financial ability and stability of the proposed assignee or transferee;
 - 4. The character of proposed assignee or transferee; and
 - 5. The corporate connection, if any, between the Franchisee, and proposed assignee or transferee.
- F. Notwithstanding the foregoing, no consent shall be required for the Franchisee to hypothecate or mortgage Franchisee's assets or in the case of a corporate reorganization where control of the corporation does not change.

SECTION 40. DEFAULT OF FRANCHISE, REVOCATION, TERMINATION, OR

CANCELLATION OF FRANCHISE

- A. In the event any act or omission of the Franchisee substantially violates of any material term or provision of this Franchise to such a degree that the interests of either the City or Subscribers are negatively affected thereby and about which the Franchisee has not received any prior notice from the executive authority of the City about any prior violations thereof, the executive authority of the City shall notify the Franchisee in writing of such violation and allow the Franchisee to discontinue, correct, and cure such violation, within a period of no less than thirty (30) calendar days after such notice, which shall hereinafter be identified and referred to as the “Correction Period”.

Within the Correction Period, Franchisee must notify the executive authority of the City of any action it takes in response to the notice of violation. The executive authority of the City will thereafter notify Franchisee if the correction action taken by Franchisee is satisfactory.

- B. In the event that the corrective action of the Franchisee is not satisfactory to the executive authority of the City, the executive authority of the City shall notify the Franchisee of its decision, and of the time and place of a due process administrative hearing by the executive authority of the City in regard thereto, which shall be not less than thirty (30) nor more than sixty (60) days thereafter.
- C. At any administrative hearing, the Franchisee may present information on the current status of the alleged breach of the Franchise Agreement, including any resolution or steps are being taken to resolve the situation. Upon the conclusion of the hearing, the executive authority of the City may determine that the Franchisee has cured any noncompliance and thereby dismiss the matter or may determine from the evidence presented that such violation continues that could have been prevented by the Franchisee. The executive authority of the City shall notify the Franchisee as well as the legislative body of the City of any finding that the Franchisee violated a provision and failed to cure the violation within the Correction Period while having the ability to do so along with evidence in support of the conclusion. Upon such notice:
1. The executive authority of the City may direct the Franchisee to take corrective action within a specified period of time; and
 2. The executive authority of the City may impose on the Franchisee a penalty of up to One Hundred (\$100.00) Dollars per day for each day of a continuation of such violation, which shall be paid by the Franchisee within thirty (30) days after receipt thereby of an itemized bill therefor from the City; and
 3. The legislative body of the City may revoke, terminate, or cancel the Franchise by repealing the ordinance by which it was granted, with an effective date of not less than six (6) months thereafter.
- D. Notwithstanding any other provision of this Franchise, it is the intent of the City not to weigh any violation of this Franchise against the Franchisee in any subsequent review of Franchise performance or to subject the Franchisee to penalties, fines, forfeitures, or

revocation of the Franchise in any of the following instances:

1. The violation was not intended by the Franchisee and the effect thereof on Subscribers was de minimis; or
2. The violation was reasonably beyond the control of the Franchisee; or
3. There is no pattern of violation or the occurrence of repeated violations of the same matter over time after notification of the Franchisee thereof by the City.

SECTION 41. CAPACITY OF SYSTEM.

- A. Franchisee and City recognize that the need for channel capacity is in part related to the community's demand for video and non-video programming. Both the City and Franchisee also recognize that accurate prediction of this demand is very difficult and that micromanagement regarding system capacity of the Franchise operations is not in the best interest of the City. Accordingly, a requirement for excess unused capacity will unnecessarily increase the cost of cable service while insufficient capacity will hinder the long-term growth of the system. Within these parameters, however, Franchisee's system shall have sufficient capacity to meet community needs efficiently. Provided, however, that cost to the Franchisee shall be considered should circumstances at that time cause Franchisee to not be able to justify expanding its system or programming services levels to the levels herein.
- C. Thereafter, Franchisee shall expand the channel capacity of the system within a reasonable period of time so that it can meet all future cable-related needs of the community for which the Subscribers are willing to pay. The desirability of additional channels shall be determined by a joint survey conducted by the Franchisee and the City of a representative sample of the then existing Subscribers. However, in no event shall Franchisee be required to expand the channel capacity of the System in an amount greater than the number of channels for which it can reasonably recover the cost of adding the channel capacity over the remaining life of the Franchise.

SECTION 42. DESCRIPTION OF CABLE TELEVISION DISTRIBUTION SYSTEM

- A. The Franchisee will voluntarily provide service using either a 1GHz analog or digital RF system over a fiber-optic infrastructure. Such service will include over two hundred (200) channels of digital content, as well as high-definition (HD) programming, digital video recorder (DVR), and video-on-demand (VOD) services.
- B. The system will be designed with the ability to pass a combination of standard NTSC analog television signals and digital signals on the forward passband. The system will be capable of bi-directional operation.

SECTION 43. PUBLIC, EDUCATIONAL, GOVERNMENTAL, AND LEASED

ACCESS

- A. Franchisee shall make available sufficient channel capacity and the necessary electronics to provide for at least five (4) non-commercial channels for local programming with one (1) channel for public access, one (1) channel for educational access, one (1) channel for governmental access, and one (1) channel for local origination programming. The number of channels available for local programming can be reduced in accordance with paragraph (B) below or expanded in accordance with paragraphs (C) and (D) below, except that at no time shall there be less than three (3) channels available, distributed as follows: one (1) for public access, one (1) for educational access, and one (1) for governmental access.
- B. Both the City and the Franchisee shall review use after every twelve (12) months, including the percentage of use of the access channels. At the end of each twelve (12) month period, the City shall evaluate the response and actual use of such channels. If, after any twelve (12) month period, the percentage of use for the required access channel drops below twenty-five percent (25%) of the total time allocated, then the required number of hours shall be reduced to a number that most closely approximates the average hours of use per day. If the City determines the average hours of use per day for any required access channel is less than four (4) hours, after two consecutive review periods, then the requirement for that channel's availability shall cease, and Franchisee may use such channel for any lawful purpose.
- C. If, at any time, ninety percent (90%) of the total time allocated for any required access channel is consistently used five (5) days a week for a period of six (6) months, then Franchisee shall make available an additional access channel.
- D. Provided, however, that the Franchisee shall not be required to delete any channel(s) carried on basic cable and the total number of channels reserved for access by the Franchisee shall not exceed five (5) access channels whose use shall be used for:

Public Access
Governmental Access
Educational Access
Local Origination

- E. Public Access
- Franchisee will make the Public Access channel available for use in accordance with the Public Access Operating Rules during the period 11 a.m. to 11 p.m. Monday through Saturday.
- F. Government Access
1. The government access channel will be shared by all municipal and county governments in Northern Kentucky. Franchisee shall schedule programming on this channel in a manner designed to provide all subscribers within the County with equal opportunity to view programs about or affecting the City. This channel shall

be made available to increase the general public's awareness of local government.

2. The governmental access channel shall serve as a means for the Mayor, Judge/Executive, City Officials, and County Officials to communicate with the citizens of the City and County whenever they find it valuable.
3. Franchisee will schedule programming of the City at times which are as good as or better than those available to other governmental entities on Governmental Access channels.

G. Educational Access

Franchisee shall provide channel capacity for the use of public, private, and special schools in the City and the County during the period 9 a.m.- 11 p.m. Monday through Saturday.

- H. The above requirements do not require Franchisee to maintain separate channels for the City.
- I. Franchisee will comply with Federal regulations requiring the provision of leased access channels.
- J. Franchisee shall be permitted to provide nonaccess programming on any of the above channels during any period. Such channel is not used for access programming.
- K. Franchisee will develop rules and procedures for the use of the access channels that will address scheduling, requirements and procedures, technical specifications, use of equipment, and facilities, as well as the rights and responsibilities of program producers and other access users.

SECTION 44. MISCELLANEOUS PROVISIONS—TAMPERING AND
UNAUTHORIZED RECEPTION OF CERTAIN SERVICES

- A. No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a Cable System unless specifically authorized to do so by Franchisee or as may otherwise be specifically authorized by law.
- B. For the purpose of this Section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor, as the case may be, for the unauthorized reception of service.
- C. Without securing permission from Franchisee or making payment to Franchisee, no person shall be authorized to make any connection -- whether physically, electrically, acoustically, inductively, or otherwise -- with any part of the Cable System for the purpose of receiving or intercepting or assisting others to receive or intercept any cable service lawfully provided by Franchisee.

- D. No person shall be authorized to willfully tamper with, remove, or damage any cable, wires, equipment, or facilities used for the distribution of cable services.
- E. Violation of subsection (A) above may be prosecuted under Federal, State, and/or Local Law.

SECTION 45. EQUAL EMPLOYMENT OPPORTUNITY

Franchisee shall comply in all respects with the Federal Communications Commission regulations governing equal employment opportunity. Furthermore, the Franchisee shall comply with all other applicable government regulations whether federal, state, or local.

Equal opportunity in employment shall be afforded to all qualified persons, and no person shall be discriminated against. because of race, color, religion, national origin, handicap, sex, or age.

SECTION 46. NATURE OF FRANCHISE AGREEMENT

This “Franchise Agreement” is a franchise to the Franchisee and may not be unilaterally amended except as otherwise provided herein.

SECTION 47. EFFECTIVE DATE

This Franchise Agreement shall be effective as soon as possible, according to law.

SECTION 48. BID

As the bid required by Section 164 of the Kentucky Constitution and K.R.S. 96.060, the Franchisee shall and hereby agrees to pay the sum of \$200 to the City with the submission of a copy of this Franchise Agreement signed by the Franchisee. Provided, however, that nothing contained herein shall obligate the Franchisee to provide dual cable in any service area where single cable is installed as of the date of issuance of this Franchise Agreement.

IN WITNESS WHEREOF, this Franchise Agreement has been signed on the _____, day of _____, as Mayor of the City of Dayton, pursuant to the authorization of the City Council therefor; and also signed on the _____ day of _____ by _____ (PRINTED NAME OF SIGNATOR) as _____ (PRINTED CAPACITY OF SIGNATOR) of Insight Spectrum Mid-America, LLC pursuant to the authorization therefor of a Resolution of the Board of Directors thereof.

CITY OF DAYTON

INSIGHT SPECTRUM
MID-AMERICA, LLC

By: _____
Ben Baker, Mayor

By: _____
(SIGNATURE)

COMPETITIVE CABLE FRANCHISE AGREEMENT

THIS NONEXCLUSIVE CABLE FRANCHISE AGREEMENT, dated this _____ day of _____, 2024, but made effective when legally adopted by an ordinance approving this Franchise Agreement, by and between the City of Dayton, Kentucky and Cincinnati Bell Extended Territories LLC, dba altafiber connected services (hereinafter referred to as “Franchisee”), a wholly-owned subsidiary of Cincinnati Bell Inc. (dba altafiber) with its principal place of business at 221 East Fourth Street, Cincinnati, Ohio 45202 (“this Agreement”).

WHEREAS, pursuant to Kentucky Constitution Section 164 and Kentucky Revised Statutes Section 67.083, the City is authorized and empowered to award a cable television franchise;

WHEREAS, the City has conducted a full public hearing after giving notice as required by statute, the purpose of said public hearing being to analyze and consider the following:

1. The technical ability, financial condition, and legal qualification of the Franchisee to provide the services, facilities and equipment for that system; and
2. Whether Franchisee’s plans for its Cable System are adequate in light of community needs; and
3. Whether the Franchisee can meet the future cable-related needs and interests in light of the costs;

WHEREAS, the City, after such consideration, analysis, and deliberation has found that the Franchise to the Franchisee should be granted; and

WHEREAS, the City recommends that the Franchise to the Franchisee be granted pursuant to 47 U.S.C. 541 for said Cable Communication System in the City limits.

NOW, THEREFORE, in consideration of the mutual and reciprocal terms and provisions hereof, the City hereby grants a non-exclusive Franchise to the Franchisee from the date of this Agreement (“Effective Date”) for an initial period of five (5) years. This Franchise Agreement shall be automatically renewed for an additional three (3) five-year terms unless either the City or by Franchisee provides at least six months written notice before of the end of the five-year term then in effect that either party does not wish to exercise the automatic renewal of the Franchise. The Franchisee and City further agree as follows:

SECTION 1. CONSTRUCTION

This Agreement shall be construed in light of applicable federal and state laws and regulations governing cable television.

SECTION 2. SCOPE

This Agreement shall be effective within the geographical limits of the City of Dayton, including any areas subsequently annexed by the City.

SECTION 3. SEVERABILITY

If any word, phrase, sentence, part, section, subsection, or other portion of this agreement, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The City declares that no invalid or proscribed provision or application was an inducement to this Agreement, and that it would have enacted this agreement regardless of the invalid or proscribed provision or application.

SECTION 4. DEFINITIONS

- A. "Access channel" means a government, education, or public channel which is carried on the cable system, but which is not part of any institutional network.
- B. "Authority" means the City of Dayton.
- C. "Basic cable television service" means any service tier that includes the retransmission of local television broadcast signals.
- D. "City" means the City of Dayton, Kentucky.
- E. "County" means the Campbell County Fiscal Court, Kentucky, or its lawful successor.
- F. "FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to oversee cable television and other multi-channel video provider regulation on a national level.
- G. "Federal" means the government of the United States, including its legislative, executive, and judicial branches, and the statutes, rules and regulations enacted by those branches of government.
- H. "Franchise" means the initial non-exclusive authorization or subsequent renewal granted by the City that authorizes a person to construct, operate, and maintain a cable system in all or part of the City.
- I. "Franchisee" means the legal entity granted the cable television Franchise by the

City and any entity having any rights, liabilities or interest to the Franchise whether by assignment, transfer or other means.

- J. "Pay-Per-View Event(s) or Pay-Per-View Movie(s)" means the delivery over the cable system of audio and video signals in an unintelligible form for a set fee or charge over and above the charge for standard or basic service and in addition to any premium channel on a per event or per movie basis where said unintelligible or unusable form is made intelligible for viewing only to subscribers paying a separate fee or charge for the viewing of the event or events.
- K. "Premium channel" means the delivery over the cable system of audio and video signals in an unintelligible form to subscribers for a monthly fee or charge (over and above the charge for standard or basic service) on a per channel basis where said unintelligible or unusable form for viewing is made intelligible only to subscribers paying a separate fee or charge for the viewing or use of the signals.
- L. "Public, Educational or Governmental access facilities" means:
 - 1. Channel capacity designated for public, educational or governmental use; and
 - 2. Facilities and equipment for the use of such channel capacity.
- M. "Rate" means the monthly price paid by a subscriber to receive cable service.
- N. "Service day" means every calendar day, except Sundays and Federal holidays.
- O. "Service outage" means the loss of picture or sound on all basic subscriber channels, or one (1) or more auxiliary programming channels (including tiers and pay programming), and which is not caused by the failure or malfunction of a subscriber's television receiver or by the error of the subscriber.
- P. "State" means the Commonwealth of Kentucky.
- Q. "Subscriber" means a person lawfully receiving service delivered over a cable system by Franchisee.
- R. "System" or "Cable System" means the Cable Communication System provided in the City of Dayton, Kentucky under this Franchise Agreement.

SECTION 5. FAILURE OF THE CITY TO ENFORCE THIS FRANCHISE AGREEMENT

- A. Franchisee shall not be excused from complying with any of the requirements of this Agreement, or any subsequently adopted amendments to this Agreement, by any failure of the City on any one (1) or more occasions to seek, or insist upon, compliance with such requirements or provisions.
- B. This Agreement and the rights and responsibilities it imposes on Franchisee may not be

unilaterally amended, except as otherwise expressly provided herein in Section 49, without the prior written consent of Franchisee.

SECTION 6. RESOLUTION OF INCONSISTENCIES WITH FEDERAL OR STATE RULES, REGULATIONS OR LAWS

In any case of an actual inconsistency between any provision or section of this agreement, and any provision or section of a Federal or State rule, regulation, or law, then the Federal or State rule, regulation, or law shall not only supersede the effect of this Agreement, but also control in any local application.

SECTION 7. NOTICES

Both the City and Franchisee shall provide the other party with the name and address of the contact person designated to receive notices, filings, reports, records, documents, and other correspondence. All notices shall be delivered to each party's contact person by certified mail, return receipt requested, personal service with a signed receipt of delivery, or overnight with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to facsimile transmission ("faxing"); electronic mail ("email"); personal service; overnight mail or package delivery; or delivery via cable. The delivery of all notices, reports, records, and other correspondence shall be deemed to have occurred at the time of receipt (unless otherwise designated by State law).

SECTION 8. INDEMNITY

- A. To the extent permitted by law, Franchisee shall at all times defend, indemnify, protect, save harmless, and exempt the City, Mayor, and Members of the Dayton City Council, their officers, and employees, agents, and representatives from any and all claims, suits, demands, causes of action, or award of damages whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might be claimed now or in the future that may arise out of or be caused by (i) the construction, erection, location, products' performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the system within the City or (ii) a wrongful or negligent act or omission of Franchisee, its agents or employees, contractors, subcontractors, independent contractors, or implied or authorized representatives. With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees and costs are included as those costs which may be recovered by the City.
- B. The City, Mayor, and City Council specifically reserve the right to retain counsel of their own choice, at their own expense.
- C. If Franchisee obtains counsel for the City, the Mayor, the City Council, or City employees then any one of them shall have the right to approve counsel; provided, however, that the City shall not unreasonably withhold their approval of counsel.
- D. With respect to Franchisee's own defense of such actions noted in this Section, it is

understood that such Franchisee reserves the right to select and retain, without the City's approval, counsel of the Franchisee's choice, at Franchisee's own expense.

- E. The City acknowledges that Franchisee shall not be required to indemnify the City for demands, claims, suits, actions, proceedings, liability, and judgments for damages arising from the negligence of the City or its employees, agents, or representatives.

SECTION 9. LIABILITY INSURANCE

- A. Franchisee shall obtain, and by its acceptance of the Franchise specifically agrees that it will maintain throughout the term of the Franchise, liability insurance insuring the City as an additional insured, in the minimum amount of \$1,000,000 for bodily injury and/or property damage in any one occurrence. This limit may include a self-insured retention and may be increased by mutual agreement of the parties.
- B. The insurance policy obtained by the Franchisee in compliance with this section shall be issued by a company or companies duly licensed to do business in the State, carrying a rating by Best's, or some other nationally recognized rating service, of not less than A-.
- C. Copies of certificates of insurance for all policies required hereunder shall be filed and maintained with the City or its designated agent during the term of the Franchise and may be changed from time to time to reflect changing liability limits.
- D. Neither the provisions of this section nor any damages recovered by the City, thereunder, shall be construed to limit the liability of the Grantee under any franchise issued hereunder or for damages.
- E. Certificates of insurance must be provided to the City within thirty (30) days of the execution of this franchise.
- F. Certificates of Insurance for renewal or replacement insurance policies shall be delivered to the City at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- G. Neither the provisions of this section nor any damages recovered by the City hereunder shall be construed to limit the liability of the Franchisee under any Franchise issued hereunder or for damages.

SECTION 10. FURNISHING OF REPORTS

- A. Franchisee shall timely submit those reports, statements, and logs required by this Franchise.

- B. Franchisee shall submit a report to the City, within 90 days after the close of its fiscal year, which contains the following for the previous year:
1. A subscriber complaint log that identifies service-related complaints by subscribers and the resolution of those complaints;
 2. The number of additional subscribers to the system;
 3. Changes that have occurred in the programming offered by the system;
 4. Additional line extensions and construction activity;
 5. A compliance report on the system's compliance with the franchise's subscriber service standards; and
 6. A list of all reports and petitions filed by the system with the Federal Communications Commission.

SECTION 11. BOOKS AND RECORDS

- A. Franchisee shall fully cooperate in making available at reasonable times, and the City, or its designated agent, shall have the right to inspect the Franchisee's books, records, maps, plans, and similar materials needed to enforce this Franchise at any time during normal business hours. However, when volume and convenience necessitate, the Franchisee may require inspection to take place on the Franchisee's premises at the local office.
- B. Confidentiality. The City shall maintain as confidential any information provided to it by Franchisee under the terms of this Franchise that Franchisee has designated as confidential. In the event that the City believes at any time that it is required by law or subpoena to disclose such information to a third party, it will so notify Franchisee at a time prior to any such disclosure that affords Franchisee a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.
- C. Copies of all petitions, applications, communications, and reports submitted by the Franchisee to the Federal Communications Commission, Securities and Exchange Commission (specifically 10K and 8K filings), or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the Franchise, shall be provided to the City, or its designated agent, upon its written request.
- D. Upon request, the Franchisee shall provide the City, or its designated agent, no later than one hundred and twenty (120) days after the end of the Franchisee's fiscal year, a copy of Franchisee's or Franchisee's parent company's Form 10-K for the preceding twelve (12) month period. The City may hire an independent Certified Public Accountant to audit the

Franchisee's revenue records related to Franchise Fees that may be collected directly by the City, in which case the Franchisee shall provide all necessary records to the Certified Public Accountant.

SECTION 12. NOTIFICATION OF SUBSCRIBERS' AND FRANCHISEE'S RIGHTS AND RESPONSIBILITIES; GENERAL POLICY

- A. To provide Subscribers with the variety of information needed to make an informed decision and to ensure that subscribers are notified of the rights and responsibilities of the Subscriber and the Franchisee with respect to the Cable System, Franchisee shall provide subscribers with a written or electronic "Notice of a Subscriber's and Franchisee's Rights and Responsibilities."
- B. Unless expressly prohibited by the Federal or State law, Franchisee may comply with any notice requirements by providing said "Notice" by mail to the subscriber, through newspaper publication, or over the Cable System on a channel clearly designated for the dissemination of such information; such a channel need not be solely designated for dissemination of such information, and may, in fact, be used at other times for any lawful purpose.

SECTION 13. NOTIFICATION OF SUBSCRIBERS' AND FRANCHISEE'S RIGHTS AND RESPONSIBILITIES; MINIMUM CONTENTS

- A. When the Franchisee provides a Notice to subscribers concerning their rights, such "Notice" should contain the following:
 - 1. An up-to-date listing of services provided;
 - 2. Notification of a subscriber's ability to purchase or lease from the Franchisee parental-control mechanisms or other devices that will prohibit the viewing of a particular program service during a period selected by the subscriber;
 - 3. A listing and explanation of rates and charges, credit refund policy, and connection and involuntary disconnection policies;
 - 4. The complaint-resolution procedures;
 - 5. A listing and explanation of billing options available (such as monthly or yearly billing options and/or discounts for prepayments);
 - 6. The subscriber service office hours and telephone number(s);
 - 7. The method of securing a voluntary disconnection; and
 - 8. The equipment use-and-return policy, together with any required security deposits.
- B. The "Notice" shall be in plain, simple, understandable English.

- C. The “Notice” may be delivered to a subscriber via an insert in the subscriber’s periodic invoice, through a special mailing, by newspaper, or publication over a channel clearly designated for the dissemination of such information.

SECTION 14. BILLING PRACTICES

- A. Whenever there is a change in Franchisee’s billing practices or payment requirements, Franchisee shall notify subscribers within thirty (30) days of the effective date of such billing practices or payment requirements.
- B. In any case where a subscriber requests a cancellation or reduction of service within thirty (30) days after the notification of a scheduled rate or charge adjustment, then the subscriber’s liability for the newly implemented rate or charge shall cease from the moment that the rate or charge adjustment becomes effective.

SECTION 15. BILLING CREDIT OR REFUNDS FOR SERVICE OUTAGES, INTERRUPTIONS; SUBSTANDARD SIGNAL OR PICTURE QUALITY OR UNSOLICITED SERVICE

Franchisee shall, upon request by a subscriber, provide that subscriber with a pro-rata credit for a service outage or interruption exceeding one service day in duration, provided that the outage is not caused or is not a result of matters beyond the immediate control of Franchisee.

SECTION 16. SUBSCRIBER SERVICE PERFORMANCE

A. Definitions

1. “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve subscribers. This will include some evening hours (at least one night per week) and/or some weekend hours.
2. “Normal Operating Conditions” means conditions that are within the control of the operator. Those conditions that are not within the control of the operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather. Those conditions that are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.
3. “Service Interruption” means a service outage that is not caused by the failure or malfunction of a subscriber’s television receiver or by the error of the subscriber. This term affects the timing of when the Franchisee must respond to a service problem.

B. Subscriber Service Standards

1. The Franchisee will maintain a local, toll-free or collect-call telephone access line that will be available to its subscribers 24 hours a day, seven days a week.
 - (a) Trained Franchisee representatives will be available to respond to subscriber telephone inquiries during normal business hours.
 - (b) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by trained Franchisee representatives on the next business day.
2. Under normal operating conditions, telephone answer time by a Franchisee representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. Franchisee shall not be required to acquire equipment or perform surveys to measure compliance with telephone answering standards unless an historical record of complaint indicates a clear failure to comply.
3. Under normal operating conditions, the Subscriber will receive a busy signal less than three percent (3%) of the time.
4. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

C. Installations, Outages, and Service Calls

Under normal operating conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.

1. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 150 feet from the existing distribution system.
2. Excluding conditions beyond the control of the operator, Franchisee will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known.
3. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the subscriber.)

4. Franchisee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.
5. If a Franchisee representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, Franchisee or its representative will notify the Subscriber of this fact. The appointment will be rescheduled, as necessary, at a time that is convenient for the Subscriber.

D. Communications Between Cable Franchisee and Cable Subscribers

2. Notifications to Subscribers:

- (a) Franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:
 - (i) Products and services offered;
 - (ii) Prices and options for programming services and the conditions of subscription to programming and other services;
 - (iii) Installation and service maintenance policies;
 - (iv) Instructions on how to use the cable service;
 - (v) Channel positions of programming carried on the system; and
 - (vi) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.
- (b) Subscribers shall be notified of any changes in rates, programming service, or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers at a minimum of thirty (30) days in advance of such changes, if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing:

- (a) Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
- (b) In case of a billing dispute, the cable operator must respond to a written complaint from a Subscriber within thirty (30) days.

3. Refunds:

Refund checks will be issued promptly, but no later than either of the following:

- (a) In the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- (b) Within thirty (30) days after return of equipment supplied by the cable operator.

4. Credits:

Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

SECTION 17. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

- A. Franchisee shall not -- as to rules, regulations, rates, charges, provision of service, or use of facilities and equipment -- make, allow, or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, handicap, religious affiliation, sexual orientation, or location of residence.
- B. Franchisee shall not deny cable service, or the extension of cable service, to any group of potential residential cable Subscribers because of the income of the residents or the local area in which such group resides.
- C. This Section, however, does not prohibit Franchisee from offering a promotional or incentive discount rate or charge.
- D. This Section does not prohibit Franchisee from denying service based on location of residence, if that residence is located outside the parameters for line extension as detailed herein.
- E. This Section does not prohibit Franchisee from denying service to a Subscriber who is more than thirty (30) days delinquent in the payment of any service bill.
- F. This Section does not prohibit Franchisee from implementing a no-frills service tier for "lower income" and/or fixed income individuals.
- G. This Section does not prohibit Franchisee from making agreements or entering into service agreements with multiple dwelling unit owners or commercial establishments (including hotel, motel, apartments, fraternities, sororities, and mobile home park owners) to provide service under a bulk billing or other type of arrangement.

- H. Franchisee will comply with all Federal and State laws regarding special service requirements on handicapped subscribers.

SECTION 18. USE OF EQUIPMENT, RETURN OF EQUIPMENT, SECURITY DEPOSITS, AND THEIR RETURN.

- A. Franchisee may charge an appropriate security deposit provided that it shall comply with any and all applicable State rules concerning the imposition, retention, and return of security deposits and does not exceed the cost of replacement, plus recovery.
- B. Franchisee may charge an appropriate security deposit in those instances where a subscriber is reconnected after an involuntary disconnection for nonpayment or prior history of unsatisfactory payment.
- C. Franchisee shall return a security deposit after the equipment is satisfactorily returned or the subscriber maintains a satisfactory payment history, which is determined as no payment delinquencies within the preceding twelve (12) month period).
- D. A Subscriber shall totally and fully reimburse Franchisee for any damage or loss to any of Franchisee's equipment that is due to the Subscriber's failure to properly maintain and operate such equipment.
- E. A Subscriber shall be relieved from any responsibility for reimbursing Franchisee for the repair of equipment that malfunctions or does not operate due to a hidden or latent defect in the equipment, or for equipment that fails to operate, or improperly operates due to natural occurrences conditioned by the normal wear and tear of such equipment; however, Subscriber shall still be obligated to return said equipment to Franchisee otherwise undamaged.

SECTION 19. SERVICE LOGS.

- A. Franchisee shall be required to keep and maintain service logs, subject to any limitations imposed by State or Federal law, including any Subscriber privacy limitations.
- B. The purpose of the service logs is to assist the City in assessing (in the aggregate) the type, degree, and resolution of Subscriber trouble calls and written complaints.
- C. In addition to any other right of inspection that the City may possess, it shall have the right to review and inspect a compilation of such logs; provided, however, that Franchisee shall have no obligation to retain any log for more than three (3) years. However, the City shall not have the right of access, review, or inspection of any service logs or any information contained within service logs that are otherwise protected from access, review, or inspection by State or Federal law.
- D. This Section does not require Franchisee to maintain service logs on scheduled

installations, upgrades, and changes of service.

SECTION 20. RESTORATION OF A SUBSCRIBER'S PROPERTY

- A. Any time Franchisee disturbs the yard, residence, or other real or personal property of a Subscriber, Franchisee shall ensure that the Subscriber's yard, residence, or other personal property is returned, replaced, and/or restored to a condition that is sufficiently comparable to the condition that existed prior to the commencement of the work.
- B. The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne by Franchisee.
- C. The requirements imposed upon Franchisee shall extend to any subcontractor or independent contractor that Franchisee might employ to perform the tasks outlined in this Section.
- C. Provided, however, Franchisee has the authority to diligently trim trees of a private property owner (including a subscriber), which overhang or intrude into rights-of-way or easements, but only to the extent necessary to prevent the branches of the trees from coming in contact with Franchisee's cable television facilities.

SECTION 21. SERVICE REQUESTS, COMPLAINTS, AND RESPONSE TIMES.

- A. Except in times of a natural or man-made emergency, or an appointment scheduled with the mutual consent of a Subscriber, Franchisee shall respond to the service requests and complaints of subscribers within thirty-six (36) hours after the need for service becomes known. Moreover, except in emergency situations, Franchisee shall inform the Subscriber whether the service call is scheduled for the morning, afternoon, or evening hours. If the service call has to be canceled or rearranged, unless the Subscriber decides otherwise, Franchisee shall make every effort to notify the Subscriber as soon as possible, and to re-schedule the service call.
- B. Franchisee may rank-order service calls in order of severity. Total outages will take precedence over area outages, area outages take precedence over a single home, and a multi-channel problem takes precedence over a single-channel problem.

SECTION 22. FRANCHISEE REQUIRED TO MAINTAIN SUFFICIENT REPAIR PARTS AND SUFFICIENT REPAIR PERSONNEL.

- A. Except in times of a natural or man-made emergency, Franchisee shall at all times have access to and be able to secure sufficient maintenance and repair parts and equipment for the System so that Franchisee can respond to and correct all Subscriber service interruptions within the time periods specified in this Agreement.
- B. Except in times of natural or man-made emergency, including severe weather conditions,

or strike, Franchisee shall have sufficient maintenance and repair personnel so that Franchisee can respond to and correct Subscriber service interruptions within the time periods specified in this Agreement.

- C. Notwithstanding the other requirements and provisions contained in this Section, Franchisee shall maintain at least one (1) service technician on call twenty-four (24) hours per day.

SECTION 23. NEW INSTALLATIONS; CONNECTIONS: REGULAR, PROMOTIONAL, SEASONAL, SHORT-TERM, AND PAY-PER-VIEW; RECONNECTIONS.

- A. During non-rush periods, new standard installations, promotional, short-term, or seasonal connections, reconnections, and upgrades of service by Franchisee shall be performed and completed within seven (7) days of a Subscriber requesting such service. A standard installation is one that is located within one hundred fifty (150) feet from the existing distribution system. During rush periods, new installations, promotional, short-term, or seasonal connections, reconnections, and upgrades of service by Franchisee shall be performed and completed within fourteen (14) days of a Subscriber requesting such service if cable is built to the home.
- B. While Franchisee may charge a Subscriber for installing, connecting, or reconnecting service, such charge must be explained to subscribers.
- C. In the case of a promotional or seasonal connection, any limitations or restrictions should be explained prior to the promotional or seasonal connection.
- D. Franchisee may charge an appropriate reconnection charge or require a security deposit in those instances where a Subscriber is reconnected after an involuntary disconnection for nonpayment or a prior history of unsatisfactory payment.

SECTION 24. DISCONNECTION FOR NON-PAYMENT.

- A. A Subscriber shall be considered delinquent in payment if payment is not made within ten (10) days after receipt of the bill. Franchisee shall not disconnect service prior to 30 days after a Subscriber's receipt of the unpaid bill, however, Franchisee may charge a late fee for any payment which has not been made after the 10th day from receipt.
- B. Receipt of a dishonored check from a Subscriber in response to a written notice of disconnection does not constitute payment, and the Franchisee need not give the Subscriber further notice prior to disconnecting service.
- C. Franchisee may add a reasonable collection charge, subject to applicable state regulations to the Subscriber's bill.

SECTION 25. VOLUNTARY DISCONNECTIONS AND DOWNGRADES.

- A. At any time, a Subscriber who does not have a separate contract with the Franchisee may request that a particular service tier, pay channel, premium channel, informational service, or the entire service be disconnected.
- B. A Subscriber may request a downgrade from a particular level of service to a less comprehensive level of service or a less expensive level of service.
- C. From the date that such a Subscriber makes such a request for either a disconnection or downgrade, the Franchisee shall have ten (10) days to disconnect or downgrade the service tier, pay channel, premium channel, informational service, or entire service. In the event that Franchisee does not disconnect or downgrade service within this period, a Subscriber's obligation to pay for such service shall cease, or in the case of a downgrade, a subscriber's obligation to pay for the more comprehensive and/or higher priced service shall cease ten (10) days from the date of the Subscriber request.
- D. For a service tier, premium channel, or informational service that is voluntarily disconnected, a Subscriber shall pay a pro rata share of the monthly rate for such service tier, premium channel, or informational service.
- E. Once a valid connection to a pay-per-view event occurs, the Franchisee may collect the full advertised or quoted rate if the Subscriber then attempts to disconnect the pay-per-view event.
- F. Provided that Franchisee does not have to make a trip or add additional equipment to the Subscriber's location to perform a change in service, no separate disconnect or downgrade charge may be passed onto a Subscriber if it chooses to take advantage of a lower-priced or less comprehensive service tier. However, to prevent Subscriber abuse of this voluntary disconnection or downgrade policy, a Subscriber shall be charged a minimum one (1) month's full rate for any one (1) service tier that is connected and then subsequently disconnected.
- G. If Franchisee's equipment is, or has been damaged, by a Subscriber prior to disconnection, then Franchisee may charge the Subscriber with the entire cost for such damage, provided that Franchisee notifies the Subscriber within thirty (30) days of the disconnection. A Subscriber shall not be required to pay for equipment failure if the circumstances fall within the normal wear-and-tear guidelines.
- H. Any refund due a Subscriber after disconnection -- both for nonpayment and voluntary disconnection -- shall be made within forty-five (45) days after such disconnection.

SECTION 26. RESOLUTION OF COMPLAINTS.

In the event of a Subscriber billing or repair complaint, the complaint will be handled as follows:

1. Franchisee shall make an initial response to a complaint no later than one (1) service day after receipt of the complaint;
2. Every attempt will be made to resolve the complaint within seventy-two (72) hours or three (3) service days, whichever is longer, after receipt of the complaint.

SECTION 27. CONTINUED USE OF INDIVIDUAL ANTENNAS PROTECTED.

No person shall be required to receive cable service or to physically connect to the cable system.

SECTION 28. CONSTRUCTION OF GOOD QUALITY.

During any phase of construction, installation, maintenance, and repair of the System, Franchisee shall use materials of good and durable quality and all such work shall be performed in a safe, thorough, and reliable manner. Such work shall comply with FCC and industry standards.

SECTION 29. CONDITIONS ON USE OF STREETS AND PUBLIC WAYS.

- A. All wires, conduits, cable (coaxial, fiber, or functional equivalent), and other property and facilities of Franchisee shall be so located, constructed, installed, and maintained so as not to endanger or unnecessarily interfere with usual and customary use, traffic, and travel upon the streets, rights-of-way, easements, and public ways of the City.
- B. In the event Franchisee's System creates a hazardous or unsafe condition or an unreasonable interference with property, then, at its own expense, Franchisee shall voluntarily, or upon the request of the City, remove that part of the system that creates the hazardous condition from the subject property.
- C. Franchisee shall protect rights-of-way, easements, and support or temporarily disconnect or relocate in the same street or other public way any property of Franchisee when necessitated by reason of:
 1. traffic conditions;
 2. public safety;
 3. a street closing;
 4. street construction or resurfacing;
 5. change or establishment of street grade; or
 6. installation of sewers, drains, water pipes, storm drains, lift stations, force mains, power or signal lines.
- D. It shall be the responsibility of Franchisee, within 72 hours of the request (acting alone or in conjunction with another person) to locate and mark or otherwise visibly indicate and

alert others to the location of its underground cable (coaxial, fiber or functional equivalent) before employees, agents, or independent contractors of any entity with a valid permit installs cable or digs in the marked-off area.

Any restoration expense or any damage caused to Franchisee's facilities resulting from the failure of an entity to have Franchisee's facilities located and marked or as a result of an entity constructing or digging in a location where Franchisee's facilities have been marked, will be the sole responsibility and liability of such entity who damaged Franchisee's facilities.

- D. Franchisee shall, on the request of any person holding a building moving permit, temporarily remove, raise, or lower the cable wires to allow the moving of the building. The expense of temporary removal shall be paid by the person requesting it, and Franchisee may require payment in advance. Franchisee shall be given not less than twenty-one (21) days' notice of a contemplated move to arrange for temporary wire changes.
- E. Continuation of Existing Facilities; New Facilities. If the Franchisee has an existing Franchise with the City, it may continue the operation, use, maintenance, repair, construction, and/or reconstruction to the existing condition thereof of all facilities of the Franchisee within or upon any public property in the City. The Franchisee shall provide commercially reasonable notice of any non-emergency extension or expansion of any existing facilities of the Franchisee, or the construction or installation of new facilities within the franchise area and shall provide the plans and specifications for such new facilities to the City. The Franchisee shall abide by the City's permitting process and receive the necessary approval thereof from the City, which approval shall not be withheld unless the extension, expansion, construction, or installation described in those plans and specifications is contrary to the public health, safety, welfare, and convenience. In the event that any request for the extension or expansion of any existing facilities of the Franchisee or the construction or installation of new facilities of the Franchisee is denied by the City, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of the Franchisee's notice. If written denial or approval is not received within thirty (30) days of the Franchisee's notice, the extension, expansion, construction, or installation request shall be deemed approved. The City acknowledges that the Franchisee has a statutory duty to provide adequate efficient and reasonable service and that the Franchisee shall not be prevented from fulfilling that statutory obligation due to any delay by the City in giving or failing to give any approval described herein.
- F. Other Activities. All other activities that are reasonably necessary for the use by the Franchisee of the public property within the franchise area pursuant to the provisions of the Franchise hereby established.

SECTION 30. CONSTRUCTION STANDARDS.

- A. The methods of construction, installation, maintenance, and repair of the system shall comply and be consistent with good engineering practices for cable television systems of similar size and design and consistent with FCC technical standards.

- B. Franchisee shall advise the City when a proof of performance test is scheduled so that the City may have an observer present if so desired.
- C. Pavement Removal, Excavation, and Grading. The Franchisee shall provide commercially reasonable notice of any nonemergency removal or revision of any pavement and any excavation and grading reasonably necessary within any public property in the franchise area and the plans and specifications for such new facilities to the City. Before undertaking such work, the Franchisee shall abide by the City's permitting process and receive necessary approval thereof by the City, which approval shall not be withheld unless the proposed pavement removal, excavation, or grading are contrary to the public health, safety, welfare, and convenience. The Franchisee shall also comply with all ordinances and regulations of City, including, but not limited to, the City's Public Right-of-Way Ordinance, § 96.50 *et seq.* of the City Code of Ordinances ("Code") and its Historic Preservation Ordinance, § 156.01 *et seq.* of the Code, and any regulations adopted in connection with these ordinances. In the event that any request for pavement removal or revision, excavation or grading is denied by the City, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of the Franchisee's notice. If a written denial or approval is not received within thirty (30) days, the removal or revision of any pavement and any excavation and grading shall be deemed approved. The City acknowledges that the Franchisee has a statutory duty to provide adequate efficient and reasonable service and that the Franchisee shall not be prevented from fulfilling that statutory obligation due to any delay by the City in giving or failing to give any approval described herein.
- D. Right-of-Way Maintenance. The Franchisee shall have the right to cut, trim or remove any trees, overhanging branches, or other obstructions on public property which in the reasonable opinion of the Franchisee may endanger or interfere with the efficient installation or maintenance of facilities subject to compliance with § 96.50 *et seq.* and § 156.01 *et seq.* of the Code.

SECTION 31. PERMITS AND LICENSES.

Franchisee shall obtain, at its own expense, all permits and licenses required by law, rule, regulation, or ordinance, and maintain the same in full force and effect for as long as required.

SECTION 32. STANDBY POWER.

Franchisee shall install automatic, activated standby power on its trunk-cable and at its headends, hubs, and receive-sites associated with the distribution of cable service to and throughout the City.

SECTION 33. EMERGENCY ALERT/EMERGENCY OVERRIDE.

Franchisee shall comply with all Federal Emergency Alert requirements.

SECTION 34. PREVENTIVE MAINTENANCE PROGRAM.

The following shall be included as part of Franchisee's preventive maintenance program:

- a) Periodic inspection and repair, if needed, of the headend;
- b) Periodic inspection and repair, if needed, of the antenna tower;
- c) Periodic weatherproofing and protection of the antenna lead connectors and on any other exposed fittings if needed;
- d) Periodic conducting of signal-leakage tests that are in accord with FCC requirements;
- e) Periodic servicing, testing, and calibration of equipment, including service vehicles and field-test equipment;
- f) Periodic testing of the Franchisee's emergency alert system if any;
- g) Periodic testing and recording of said test data for all signals (audio and video) at the headend and System extremity points;
- h) Periodic testing as required by Federal law and or regulations; and
- i) Compliance with all operating parameters required by FCC rules and regulations, including any future changes or amendments to these rules and regulations.

SECTION 35. EXTENT OF GRANT OF FRANCHISE.

- A. Franchisee may construct, erect, install, maintain, operate, repair, replace, remove, or restore a Cable System within the geographical limits of the City.
- B. The System may be located in, upon, along, across, over, and under the streets, rights-of-way, easements, and public ways of the City and County.
- C. The System may be located on City- and County-owned poles at no charge.
- D. Franchisee, through a separate pole or utility easement agreement with an affected utility, may locate the System on, or within, the property of such utility company.

SECTION 36. TERM OF FRANCHISE.

- A. The term of this renewal franchise shall be five (5) years, with an additional three (3) year terms per mutual consent, from the Effective Date of this Franchise Agreement. Under no circumstances shall the total length of total length of the Franchise exceed twenty (20) years. The rights and privileges granted by this Franchise Agreement to Franchisee are not exclusive and nothing herein is intended to or shall be construed so as to prevent the City from granting other and similar rights, privileges, and franchises to any other person, firm, association or corporation.
- B. The City and Franchisee acknowledge and agree that the field of cable television is a rapidly changing one that may see regulatory, technical, financial, marketing, and legal changes during the term of this Franchise. Therefore, to provide for the maximum degree

of flexibility in the Franchise and to achieve a continued, advanced, and modern cable television system, the following evaluation provisions will apply:

(i) The City and Franchisee mutually agree to participate in evaluation sessions at any time and from time to time during the term of this Franchise; provided, however, there shall not be more than one (1) evaluation session every five (5) years;

(ii) Topics that may be discussed at any evaluation session include, but are not limited to, channel capacity, system performance, programming, PEG access, municipal or educational uses of the system, subscriber complaints, judicial rulings, and any other topics the City or Franchisee may deem relevant;

(iii) During an evaluation session, Franchisee and the City shall fully cooperate with one another and shall provide without cost such information and documents as are reasonably necessary to perform the evaluation;

(iv) The City and Franchisee, as the result of an evaluation session, may determine that an amendment of the terms or conditions of the Franchise may be appropriate, that the requirements of the System or of the Franchise should be updated, changed, or revised (collectively, the "Proposed Modification"). If the Proposed Modification is consistent with the terms of this Franchise, the needs of the City, the then existing state-of-the-art technology, and is financially reasonable, Franchisee and the City will, in good faith, review the terms of the Proposed Modification and consider amending the Franchise accordingly.

SECTION 37. PAYMENT OF MULTICHANNEL VIDEO PROGRAMMING SERVICES TAX.

A. Franchisee shall make payments at the times and in conformance with the requirements of KRS 136.600 - 136.660 ("Kentucky Telecom Taxes") and said payments shall be in lieu of any Franchise Fees paid to the City. If the City elects to collect Franchise Fees in lieu of the Kentucky Telecom Taxes, the Franchise Fee shall be in an amount not to exceed five percent (5%) of Franchisee's gross revenue derived from all sources from the operation of Franchisee's Cable System to provide cable service within the territorial limits of the City ("Franchise Fee"). In such case, the Franchise Fee shall be payable as follows:

1. Quarterly payments for each calendar quarter and the Franchisee shall file a complete and accurate report, signed by and certified as accurate by a responsible representative of the Franchisee, of all applicable gross revenues received during the calendar quarter, and said payment shall be made to the City no later than forty-five (45) days after the expiration of the quarter. The gross revenue report from operations of the Franchisee within the Franchise area shall include a statement of gross revenue upon which the Franchise fee is based.
2. In the event that Franchisee pays a Franchise Fee under subsection (1), upon

reasonable notice, the City shall have the right during normal business hours to inspect the Franchisee's records relevant to the payment of Franchise Fees at the Franchisee's local office and the right to audit and to recompute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of Franchisee's fiscal year for which the audit is done (e.g. if the Fiscal Year is January 1, 2024 to December 31, 2024, audit would have to occur prior to December 31, 2025). If, as a result of such audit or review, the City and Franchisee agree that the Franchisee has underpaid its fees to the City in the Fiscal Year being audited or reviewed by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including costs for attorneys, accountants, and other consultants. Any additional amount due to the City as a result of an audit or review shall be paid within the thirty (30) days following written notice to Franchisee by the City, which notice shall include a copy of the audit report and copies of all invoices for which the City seeks reimbursement.

No auditor engaged by the City shall be compensated on a success- based formula, e.g., payment based on a percentage of an underpayment, if any.

3. The City is not prohibited from collecting valid fees or taxes as set forth in KRS 136.660(3).

SECTION 38. RELIEF FROM THIS FRANCHISE AGREEMENT.

- A. Franchisee may file a written petition, at any time, with the City seeking relief from one (1) or more provisions of this Franchise. The relief requested may specifically include the delay in implementation of one (1) or more provisions of this Agreement.
- B. If at any time during the existence of this Franchise, a competing multi-channel service, subject to regulation by the City, is granted more favorable term(s) than those established for the Franchisee under this Franchise Agreement (including, but not limited to lesser channel capacity, lesser requirements to provide public, educational, or government access, less onerous reporting requirements, less onerous subscriber notification requirements, less restrictive billing practices, less onerous subscriber service requirements, less responsibility to provide institutional networks or data transmission facilities or interconnection), then such term(s) shall also be simultaneously extended to the Franchisee so that no provider of multi-channel service, subject to regulation by the City, shall receive an unfair competitive advantage.
- C. City recognizes that potential competitors of the Franchisee, including, but not limited to wireless broadcasters, video dial-tone providers, and direct broadcast satellite services may not be subject to regulation by the City. If at any time during the existence of this

Franchise, a competing multi-channel service, not subject to regulation by the City, operates within the City under terms more favorable than those established for the Franchisee under this Franchise Agreement, including but not limited to lesser channel capacity, lesser requirements to provide public, educational, or government access, less onerous reporting requirements, less onerous subscriber notification requirements, less restrictive billing practices, less onerous subscriber service requirements, less responsibility to provide institutional networks or data transmission facilities or interconnection, or less responsibility to pay a Franchise Fee, then the Franchisee shall be permitted to petition the City for relief from such term(s) so that no provider of multi-channel service shall receive an unfair competitive advantage, provided, however, that the City is not obligated to provide the relief requested.

SECTION 39. ASSIGNMENT OR TRANSFER OF FRANCHISE.

- A. This Franchise may not be assigned or transferred in whole, or in part, without the prior express written approval by the City.
- B. Any attempted assignment or transfer without such prior written consent shall constitute a default of such franchise.
- C. In the event of such a default, the City shall proceed according to the procedure set forth in this agreement, and any applicable State or Federal law.
- D. Franchisee shall petition in writing for the City's written consent for a proposed assignment or transfer.
- E. The City will not unreasonably withhold its consent to such an assignment or transfer and the City shall provide a response to such request within 30 days. In making such a determination, the City may consider the following factors:
 - 1. Experience of proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);
 - 2. Qualifications of proposed assignee or transferee;
 - 3. Financial ability and stability of the proposed assignee or transferee;
 - 4. The character of proposed assignee or transferee; and
 - 5. The corporate connection, if any, between the Franchisee, and proposed assignee or transferee.
- F. Notwithstanding the foregoing, no consent shall be required for the Franchisee to hypothecate or mortgage Franchisee's assets or in the case of a corporate reorganization where control of the corporation does not change.

SECTION 40. DEFAULT OF FRANCHISE, REVOCATION, TERMINATION, OR

CANCELLATION OF FRANCHISE

- A. In the event any act or omission of the Franchisee substantially violates of any material term or provision of this Franchise to such a degree that the interests of either the City or Subscribers are negatively affected thereby and about which the Franchisee has not received any prior notice from the executive authority of the City about any prior violations thereof, the executive authority of the City shall notify the Franchisee in writing of such violation and allow the Franchisee to discontinue, correct, and cure such violation, within a period of no less than thirty (30) calendar days after such notice, which shall hereinafter be identified and referred to as the “Correction Period”.

Within the Correction Period, Franchisee must notify the executive authority of the City of any action it takes in response to the notice of violation. The executive authority of the City will thereafter notify Franchisee if the correction action taken by Franchisee is satisfactory.

- B. In the event that the corrective action of the Franchisee is not satisfactory to the executive authority of the City, the executive authority of the City shall notify the Franchisee of its decision, and of the time and place of a due process administrative hearing by the executive authority of the City in regard thereto, which shall be not less than thirty (30) nor more than sixty (60) days thereafter.
- C. At any administrative hearing, the Franchisee may present information on the current status of the alleged breach of the Franchise Agreement, including any resolution or steps are being taken to resolve the situation. Upon the conclusion of the hearing, the executive authority of the City may determine that the Franchisee has cured any noncompliance and thereby dismiss the matter or may determine from the evidence presented that such violation continues that could have been prevented by the Franchisee. The executive authority of the City shall notify the Franchisee as well as the legislative body of the City of any finding that the Franchisee violated a provision and failed to cure the violation within the Correction Period while having the ability to do so along with evidence in support of the conclusion. Upon such notice:
1. The executive authority of the City may direct the Franchisee to take corrective action within a specified period of time; and
 2. The executive authority of the City may impose on the Franchisee a penalty of up to One Hundred (\$100.00) Dollars per day for each day of a continuation of such violation, which shall be paid by the Franchisee within thirty (30) days after receipt thereby of an itemized bill therefor from the City; and
 3. The legislative body of the City may revoke, terminate, or cancel the Franchise by repealing the ordinance by which it was granted, with an effective date of not less than six (6) months thereafter.
- D. Notwithstanding any other provision of this Franchise, it is the intent of the City not to weigh any violation of this Franchise against the Franchisee in any subsequent review of Franchise performance or to subject the Franchisee to penalties, fines, forfeitures, or

revocation of the Franchise in any of the following instances:

1. The violation was not intended by the Franchisee and the effect thereof on Subscribers was de minimis; or
2. The violation was reasonably beyond the control of the Franchisee; or
3. There is no pattern of violation or the occurrence of repeated violations of the same matter over time after notification of the Franchisee thereof by the City.

SECTION 41. CAPACITY OF SYSTEM.

- A. Franchisee and City recognize that the need for channel capacity is in part related to the community's demand for video and non-video programming. Both the City and Franchisee also recognize that accurate prediction of this demand is very difficult and that micromanagement regarding system capacity of the Franchise operations is not in the best interest of the City. Accordingly, a requirement for excess unused capacity will unnecessarily increase the cost of cable service while insufficient capacity will hinder the long-term growth of the system. Within these parameters, however, Franchisee's system shall have sufficient capacity to meet community needs efficiently. Provided, however, that cost to the Franchisee shall be considered should circumstances at that time cause Franchisee to not be able to justify expanding its system or programming services levels to the levels herein.
- C. Thereafter, Franchisee shall expand the channel capacity of the system within a reasonable period of time so that it can meet all future cable-related needs of the community for which the Subscribers are willing to pay. The desirability of additional channels shall be determined by a joint survey conducted by the Franchisee and the City of a representative sample of the then existing Subscribers. However, in no event shall Franchisee be required to expand the channel capacity of the System in an amount greater than the number of channels for which it can reasonably recover the cost of adding the channel capacity over the remaining life of the Franchise.

SECTION 42. DESCRIPTION OF CABLE TELEVISION DISTRIBUTION SYSTEM

- A. The Franchisee will voluntarily provide service using either a 1GHz analog or digital RF system over a fiber-optic infrastructure. Such service will include over two hundred (200) channels of digital content, as well as high-definition (HD) programming, digital video recorder (DVR), and video-on-demand (VOD) services.
- B. The system will be designed with the ability to pass a combination of standard NTSC analog television signals and digital signals on the forward passband. The system will be capable of bi-directional operation.

SECTION 43. PUBLIC, EDUCATIONAL, GOVERNMENTAL, AND LEASED

ACCESS

- A. Franchisee shall make available sufficient channel capacity and the necessary electronics to provide for at least five (4) non-commercial channels for local programming with one (1) channel for public access, one (1) channel for educational access, one (1) channel for governmental access, and one (1) channel for local origination programming. The number of channels available for local programming can be reduced in accordance with paragraph (B) below or expanded in accordance with paragraphs (C) and (D) below, except that at no time shall there be less than three (3) channels available, distributed as follows: one (1) for public access, one (1) for educational access, and one (1) for governmental access.
- B. Both the City and the Franchisee shall review use after every twelve (12) months, including the percentage of use of the access channels. At the end of each twelve (12) month period, the City shall evaluate the response and actual use of such channels. If, after any twelve (12) month period, the percentage of use for the required access channel drops below twenty-five percent (25%) of the total time allocated, then the required number of hours shall be reduced to a number that most closely approximates the average hours of use per day. If the City determines the average hours of use per day for any required access channel is less than four (4) hours, after two consecutive review periods, then the requirement for that channel's availability shall cease, and Franchisee may use such channel for any lawful purpose.
- C. If, at any time, ninety percent (90%) of the total time allocated for any required access channel is consistently used five (5) days a week for a period of six (6) months, then Franchisee shall make available an additional access channel.
- D. Provided, however, that the Franchisee shall not be required to delete any channel(s) carried on basic cable and the total number of channels reserved for access by the Franchisee shall not exceed five (5) access channels whose use shall be used for:

Public Access
Governmental Access
Educational Access
Local Origination

- E. Public Access

Franchisee will make the Public Access channel available for use in accordance with the Public Access Operating Rules during the period 11 a.m. to 11 p.m. Monday through Saturday.

- F. Government Access

1. The government access channel will be shared by all municipal and county governments in Northern Kentucky. Franchisee shall schedule programming on this channel in a manner designed to provide all subscribers within the County with equal opportunity to view programs about or affecting the City. This channel shall

be made available to increase the general public's awareness of local government.

2. The governmental access channel shall serve as a means for the Mayor, Judge/Executive, City Officials, and County Officials to communicate with the citizens of the City and County whenever they find it valuable.
3. Franchisee will schedule programming of the City at times which are as good as or better than those available to other governmental entities on Governmental Access channels.

G. Educational Access

Franchisee shall provide channel capacity for the use of public, private, and special schools in the City and the County during the period 9 a.m.- 11 p.m. Monday through Saturday.

- H. The above requirements do not require Franchisee to maintain separate channels for the City.
- I. Franchisee will comply with Federal regulations requiring the provision of leased access channels.
- J. Franchisee shall be permitted to provide nonaccess programming on any of the above channels during any period. Such channel is not used for access programming.
- K. Franchisee will develop rules and procedures for the use of the access channels that will address scheduling, requirements and procedures, technical specifications, use of equipment, and facilities, as well as the rights and responsibilities of program producers and other access users.

SECTION 44. MISCELLANEOUS PROVISIONS—TAMPERING AND
UNAUTHORIZED RECEPTION OF CERTAIN SERVICES

- A. No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a Cable System unless specifically authorized to do so by Franchisee or as may otherwise be specifically authorized by law.
- B. For the purpose of this Section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor, as the case may be, for the unauthorized reception of service.
- C. Without securing permission from Franchisee or making payment to Franchisee, no person shall be authorized to make any connection -- whether physically, electrically, acoustically, inductively, or otherwise -- with any part of the Cable System for the purpose of receiving or intercepting or assisting others to receive or intercept any cable service lawfully provided by Franchisee.

- D. No person shall be authorized to willfully tamper with, remove, or damage any cable, wires, equipment, or facilities used for the distribution of cable services.
- E. Violation of subsection (A) above may be prosecuted under Federal, State, and/or Local Law.

SECTION 45. EQUAL EMPLOYMENT OPPORTUNITY

Franchisee shall comply in all respects with the Federal Communications Commission regulations governing equal employment opportunity. Furthermore, the Franchisee shall comply with all other applicable government regulations whether federal, state, or local.

Equal opportunity in employment shall be afforded to all qualified persons, and no person shall be discriminated against. because of race, color, religion, national origin, handicap, sex, or age.

SECTION 46. NATURE OF FRANCHISE AGREEMENT

This “Franchise Agreement” is a franchise to the Franchisee and may not be unilaterally amended except as otherwise provided herein.

SECTION 47. EFFECTIVE DATE

This Franchise Agreement shall be effective as soon as possible, according to law.

SECTION 48. BID

As the bid required by Section 164 of the Kentucky Constitution and K.R.S. 96.060, the Franchisee shall and hereby agrees to pay the sum of \$200 to the City with the submission of a copy of this Franchise Agreement signed by the Franchisee. Provided, however, that nothing contained herein shall obligate the Franchisee to provide dual cable in any service area where single cable is installed as of the date of issuance of this Franchise Agreement.

IN WITNESS WHEREOF, this Franchise Agreement has been signed on the _____, day of _____, as Mayor of the City of Dayton, pursuant to the authorization of the City Council therefor; and also signed on the _____ day of _____ by _____ (PRINTED NAME OF SIGNATOR) as _____ (PRINTED CAPACITY OF SIGNATOR) of CINCINNATI BELL EXTENDED TERRITORIES LLC pursuant to the authorization therefor of a Resolution of the Board of Directors thereof.

CITY OF DAYTON

CINCINNATI BELL EXTENDED
TERRITORIES LLC

By: _____

By: _____

Ben Baker, Mayor

(SIGNATURE)