

**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://campbellcountky.gov/egov/documents/9bed0876\\_17b3\\_80e0\\_329d\\_ba2cc6303988.pdf](https://campbellcountky.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>
<del>Extension of time of site plan construction work</del>	<del>\$50.00 (flat fee) plus</del>
<del>Revision fee of approved site plans</del>	<del>50% of original fee</del>
<del>Any project started before obtaining a permit shall be charged double the regular permit rate, but still must comply</del>	

~~(B) Subdivision Review:~~

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

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:~~

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<i><b>Building type</b></i>	<i><b>Rate</b></i>
Single Family	\$50.0
Two Family, Multi-Family	\$100.
Manufactured Home	\$50.0
Accessory Structures	\$50.0

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

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

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

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

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<i>Item</i>
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<del>Change in Use/Occupancy, when zoning classification and building dimensions are not changed (a building inspector</del>
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~~—(4) Certificate of Occupancy.~~

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<i>Item</i>
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<del>Conforming uses and structures</del>
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<del>Non-conforming uses and structures</del>
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~~—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.~~

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<i>Item</i>
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<del>0-5,000 square feet</del>
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<del>Each 1,000 square feet over 5,000 square feet</del>
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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  
ORDINANCE NO. 2024#21**

**AN ORDINANCE GRANTING A FRANCHISE TO CINCINNATI BELL EXTENDED TERRITORIES LLC, DBA ALTA FIBER CONNECTED SERVICES, TO OPERATE A CABLE COMMUNICATION SYSTEM WITHIN THE TERRITORIAL LIMITS OF THE CITY OF DAYTON, KENTUCKY, AND AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY TO EXECUTE A FRANCHISE AGREEMENT BETWEEN THE CITY AND CINCINNATI BELL EXTENDED TERRITORIES LLC TO PROVIDE AND OPERATE A CABLE COMMUNICATION SYSTEM WITHIN THE CITY.**

**WHEREAS**, Cincinnati Bell Extended Territories LLC, dba Altafiber Connected Services (“Grantee”) currently operates a cable communication system (“CATV System”) within the territorial limits of the City of Dayton, Kentucky (the “City”); and

**WHEREAS**, Grantee has responded to a Notice of Bids for Franchise issued by the City pursuant to the provisions of the Kentucky Constitution and the Kentucky Multichannel Video Programming and Communications Services Tax Act, KRS 136.00 *et seq.*, of its intent and desire to renew its CATV System franchise within the City and to negotiate a new franchise agreement with the City; and

**WHEREAS**, Grantee’s performance under its existing franchise have been satisfactory, and the franchisee has substantially complied with all material terms of the existing franchises and with applicable law; and

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

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE BOARD OF COUNCIL OF THE CITY OF DAYTON, KENTUCKY, AS FOLLOWS:**

SECTION I

The City hereby grants to Grantee a nonexclusive 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 Franchise Agreement with the Grantee, which attached hereo as Exhibit “A” and incorporated by reference herein and made part hereof.

The Mayor is hereby authorized and directed to execute the above-referenced Franchise Agreement with Cincinnati Bell Extended Territories LLC, dba Altafiber Connected Services, on behalf of the City.

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

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BY: MAYOR BEN BAKER

ATTEST:

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TRISTIAN KLEIN  
CITY CLERK/TREASURER

**CERTIFICATION**

I, the undersigned, 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 Ordinance, including the attached Exhibit "A," which is incorporated into the Ordinance, is a true, correct, and complete copy of the Ordinance duly adopted by the City Council of the City after two readings on the dates referenced above, and has been 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.

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Tristan Klein  
City Clerk/Treasurer



EXHIBIT "A"

**CITY OF DAYTON, KENTUCKY  
ORDINANCE NO. 2024#22**

**AN ORDINANCE GRANTING A FRANCHISE TO DUKE ENERGY KENTUCKY, INC. TO OPERATE AN ELECTRIC AND NATURAL GAS DISTRIBUTION SYSTEM WITHIN THE TERRITORIAL LIMITS OF THE CITY OF DAYTON, KENTUCKY, AND AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY TO EXECUTE A FRANCHISE AGREEMENT BETWEEN THE CITY AND DUKE ENERGY KENTUCKY, INC. FOR THE OPERATION OF AN ELECTRIC AND NATURAL GAS DISTRIBUTION SYSTEM WITHIN THE CITY.**

**WHEREAS**, Duke Energy Kentucky Inc. (“Grantee”) currently operates an electric and natural gas distribution system (“Gas & Electric System”) within the territorial limits of the City of Dayton, Kentucky (the “City”); and

**WHEREAS**, Grantee has responded to a Notice of Bids for Franchise issued by the City pursuant to the provisions of the Kentucky Constitution of its intent and desire to renew its Gas & Electric System franchise within the City and to negotiate a new franchise agreement between the Grantee and the City; and

**WHEREAS**, Grantee’s performance under its existing franchise has been satisfactory, and the franchisee has substantially complied with all material terms of the existing franchise and with applicable law; and

**WHEREAS**, the City and Grantee have negotiated a franchise agreement authorizing the Grantee the right to operate a Gas & Electric System in the City for a period of time not to exceed 20 years, pursuant to Section 164 of the Kentucky Constitution.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE BOARD OF COUNCIL OF THE CITY OF DAYTON, KENTUCKY, AS FOLLOWS:**

**SECTION I**

The City hereby grants to Grantee a nonexclusive franchise to provide and operate a Gas & Electric System within the territorial limits of the City of Dayton, Kentucky, for a period not to exceed 20 years in accordance with the terms and conditions set forth in the Franchise Agreement with the Grantee, which attached hereto as Exhibit “A” and incorporated by reference herein and made part hereof.

The Mayor is hereby authorized and directed to execute the above-referenced Franchise Agreement with Duke Energy Kentucky Inc. on behalf of the City.

**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: December 10, 2024  
Second Reading:

CITY OF DAYTON, KENTUCKY

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BY: MAYOR BEN BAKER

ATTEST:

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TRISTIAN KLEIN  
CITY CLERK/TREASURER

**CERTIFICATION**

I, the undersigned, 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 Ordinance, including the attached Exhibit "A," which is incorporated into the Ordinance, is a true, correct, and complete copy of the Ordinance duly adopted by the City Council of the City after two readings on the dates referenced above, and has been 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.

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Tristan Klein  
City Clerk/Treasurer

EXHIBIT "A"

## **DISTRIBUTION OF ELECTRICAL AND NATURAL GAS ENERGY FRANCHISE AGREEMENT**

This Distribution of Electrical and Natural Gas Energy Franchise Agreement (“Agreement”) is entered into and made effective as of \_\_\_\_\_, 2024 (“Effective Date”), by and between the City of Dayton, Kentucky, a municipal corporation and city of the home rule class (“City” or “Franchisor”), and Duke Energy Kentucky, Inc. (“Franchisee”).

### **Section 1. Non-Exclusive Franchise Granted Subject to Conditions.**

A. The City hereby grants to Franchisee, subject to the conditions prescribed in this Agreement, the nonexclusive franchise rights and authority (“Franchise”) to construct, install, replace, repair, monitor, maintain, use, operate, and remove its equipment and facilities necessary for distribution of electrical and natural-gas energy (“Facilities”) in, under, on, across, over, and through those areas of the city where Franchisee is already providing said gas and/or electric service and other areas in the future as the parties may agree in writing. Franchisee hereby accepts the Franchise granted pursuant to this Agreement and agrees to provide quality service within the City as required and regulated by the Kentucky Public Service Commission (PSC).

B. The foregoing Franchise rights and authority shall not be deemed to be exclusive to Franchisee and shall in no way prohibit or limit the City’s ability to grant other franchises, permits, or rights along, over, or under the areas to which this Franchise has been granted to Franchisee. This Franchise shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent the City from using its rights-of-way or affect the City’s jurisdiction over such rights-of-way in any way consistent with applicable law.

**Section 2. Franchise Limitations.** City does not warrant the suitability of any portion of its rights-of-way for the purposes for which Franchisee may desire to use them under this Agreement, nor does the City warrant the condition of any structure, pole, or other improvement currently located within the City’s rights-of-way. Franchisee hereby accepts the City’s rights-of-way and all publicly owned improvements located therein on an AS-IS, WHERE-IS, and WITH ALL FAULTS basis.

**Section 3. Authority.** The City Administrator or his or her designee is hereby granted the authority to administer and enforce the terms and provisions of this Agreement and may develop such lawful and reasonable rules, policies, and procedures as he or she deems necessary to carry out the provisions contained herein.

**Section 4. Franchise Term.** The franchise rights granted herein shall remain in full force and effect for a term period of five (5) years from the Effective Date of this Agreement (“Term”). The Term of this Agreement shall be automatically renewed for up to three (3) additional periods of five (5) years each (“Renewal Term”), unless either the City or Franchisee provides the other party written notice of their intention not to renew the Term of this Agreement at least 180 days prior to the expiration date of the then current Term or Renewal Term, as the case may be;

provided, however, the total duration of the Term of this Agreement shall not exceed twenty (20) years as provided under Section 164 of the Kentucky Constitution.

**Section 5. Acceptance of Terms and Conditions.** Failure on the part of Franchisee to provide an executed original of this Agreement to the City Clerk within sixty (60) calendar days (or longer or shorter as the parties may agree) of the City Council approving this Agreement shall be deemed a rejection thereof by Franchisee and shall result in this Agreement being null and void and having no further force or effect, and in such case, all rights granted under this Agreement shall terminate.

**Section 6. Construction Provisions and Standards.** The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as noncompliance with the terms of this Agreement. To the extent that any of the rules, regulations, or restrictions set forth herein conflict with the rules, regulations, or restrictions of the Public Service Commission (PSC), the rules, regulations, or restrictions of the PSC shall be controlling.

**A. Permit Required.** No installation, construction, expansion, or material modification of the Facilities shall be undertaken in the Franchise Area without first obtaining all required right-of-way use and/or construction permits as required under all applicable ordinances of the City and under all regulations and other requirements of the Kentucky Public Services Commission (PSC) and all other governing bodies, where applicable. All construction, removal, alteration(s), and maintenance of Facilities shall abide by the City's permitting process, including 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 all zoning and building codes, and any amendments to these ordinances or any regulations adopted in connection with these ordinances, whether currently in force or adopted in the future.

**B. Construction Standards.** Any construction, installation, maintenance, operation, and/or restoration activities performed by or for Franchisee within the Franchise Area shall be constructed and located in a manner so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic. All work and improvements made by Franchisee and its contractors shall be so performed in a safe and workmanlike manner and comply with all applicable federal, state, and local laws. This Franchise Agreement shall not be construed in a manner that would create an obligation, requirement, or duty on the part of the Franchisee that is in any way inconsistent with Kentucky law or its tariff on file with and approved by the Commission. Franchisee shall not locate any new overhead wires or cables across any roadway without the express prior approval of the City. Express approval shall not be required for repairs and replacements to existing overhead Facilities. In the performance of any work by Franchisee relating to its Facilities under this Agreement, Franchisee, at its sole cost and expense, shall restore and repair any damage to the City's rights-of-way or any public improvements located therein to their original condition as existed prior to the commencement of such work. Any construction, installation, maintenance, operation, and restoration activities undertaken by the Franchisee within the Franchise area shall conform and be subject to all City ordinances and regulations, including the previously referenced Code §§ 96.50 *et seq.* and 156.01

*et seq.*, and any subsequent amendments thereto, and further provided that any such work or project by the Franchisee shall be promptly and diligently prosecuted to completion, and that upon such completion, the streets, alleys, sidewalks, and other public ways of the City shall exist in as good condition and repair, same as before such work was commenced. To the extent City ordinances and regulations conflict with orders, rules, or regulations of the Kentucky Public Service Commission (“Commission”), the Commission’s orders, rules, or regulations shall be controlling over City ordinances and regulations.

**C. Relocation.** Whenever the City causes any public improvement to be constructed within the Franchise Area, and such public improvement requires the relocation of Franchisee’s Facilities, the City shall provide Franchisee with written notice requesting such relocation along with any plans for the public improvement that are sufficiently complete to allow for the initial evaluation, coordination, and the development of a relocation plan. The City, including its engineer or other designee, and Franchisee shall meet at a time and location determined by the City to discuss the project requirements, including critical timelines, schedules, construction standards, utility conflicts, as-built requirements, and other pertinent relocation plan details. The City shall not be liable to Franchisee for any lost revenues or any other costs incurred by Franchisee in relocating its Facilities due to or as a result of any City public improvement project. Franchisee shall endeavor to relocate any Facilities within thirty (30) days after the City’s request to the Franchisee, but if Franchisee notifies the City of circumstances that prevent the Franchisee from taking such action within 30 days, the parties will agree to a reasonable time frame beyond this time period to complete this work and the thirty-day requirement will be waived in such case.

**D. Removal or Abandonment.** Upon the removal from service of any electrical Facilities within the Franchise Area, Franchisee shall comply with all applicable standards and requirements prescribed by the City and/or PSC for the removal or abandonment of said electrical Facilities. No electrical Facilities constructed or owned by Franchisee may be abandoned in place without the express prior written consent of the City. This provision does not apply to natural gas Facilities.

**E. “One-Call” Location & Liability.** Franchisee shall subscribe to and maintain membership in the regional “call before you dig” utility location service and shall promptly locate all of its lines upon request. The City shall not be liable for any damages to Franchisee’s Facilities or for interruptions in service to Franchisee’s customers that are a direct result of work performed for any City project for which Franchisee has failed to properly locate its Facilities within the prescribed time limits and guidelines established.

**F. As-Built Plans Required.** Franchisee shall maintain accurate engineering plans and details of all installed system Facilities within the City jurisdictional limits, and upon request by the City, Franchisee shall provide such information in electronic form prior to the close-out of any permit issued by the City and any work undertaken by Franchisee pursuant to this Agreement.

**G. Compliance with PSC Rules and Regulations and Notice of Rate Increases.**

Franchisee shall at all times comply with all rules, regulations, and policies promulgated by the Kentucky Public Service Commission and shall at all times maintain in good standing any licenses, certificates of need, and other governmental approvals authorizing Franchisee to engage in the activities permitted under this Agreement. Franchisee agrees to provide City with notice of any application it files before the Commission for an increase in rates and charges for a certificate of public convenience and necessity for capital investment. This notice shall be in the medium required by the Commission and pursuant to Kentucky Administrative Regulations for any future rate filings during the term of this Franchise Agreement and the Franchisee will inform the City how to access these records filed in any such docket before the Commission.

**H. Tree Trimming.**

Franchisee shall have the right, at its own expense, to trim trees located in or overhanging the City rights-of-way that are interfering with the operation of its Facilities and/or related equipment only to the extent necessary to keep the branches of the trees from interfering with such Facilities. All trimming and pruning shall comply with all applicable ordinances of the City, and when trees are pruned, the Franchisee shall follow all industry standards regarding safety and quality as they pertain to pruning trees near electric utility lines (ANSI A300). Notwithstanding the foregoing and prior to engaging in such activity, Franchisee shall submit to the City a tree trimming or pruning plan for approval by the City Administrator or his or her designee. Franchisee shall provide notice to adjacent private property owners prior to trimming or pruning of these trees. Any person engaged by Franchisee to provide tree trimming or pruning services shall be deemed, for purposes of this Agreement, to be an employee or agent of Franchisee, and in no event shall such person be deemed an employee or agent of the City.

**Section 7. Insurance.** Franchisee already operates within the City by providing natural gas and electric service and is a self-insured entity with limits of \$1,000,000 in general liability, worker's compensation, and automobile coverage. For this reason, the Franchisee is not required to maintain separate liability insurance and is not required to post a surety bond, so these requirements are hereby waived.

**Section 8. Other Permits & Approvals.** Nothing in this Agreement shall relieve Franchisee from any obligation to obtain approvals or necessary permits from applicable federal, state, and local authorities for all activities in the Franchise Area.

**Section 9. Transfer of Ownership.** The rights, privileges, benefits, title, or interest provided by this Agreement shall not be sold, transferred, assigned, or otherwise encumbered without the prior written consent of the City, which consent may be conditioned upon such transferee agreeing in writing to be bound by all of the terms and conditions of this Agreement. Approval shall not be required for any transfer from Franchisee to another person or entity controlling, controlled by, or under common control with Franchisee or if Franchisee adopts a new company name without a change in control.



**Section 10. Fees.** It is the intention of the City that Franchisee compensate City for the use of the City's rights-of-way because they are valuable assets of the City that: (a) the City has acquired and maintains at the expense of its taxpayers and citizens; (b) the City holds in trust for the benefit of its citizens; and (c) the grant to Franchisee of the use of the City's rights-of-way is a valuable right without which Franchisee would be required to invest substantial capital in right-of-way acquisition costs. Accordingly, it is the intention of the City and Franchisee to obtain and to pay a fair and reasonable compensation for grant of this Franchise.

- A. Permit Fees. Franchisee shall pay to City all fees the City requires to obtain permits and for processing permit applications for the Facilities pursuant to any ordinance of City, as now codified or as shall be codified in the future, or pursuant to its permit application fee structure generally applicable to all other users of the City rights-of-way.
  
- B. Franchise Fees. The initial Franchise Fee to the City will be 3.5% of the gross receipts of the Franchisee from the sale of natural gas and electricity for consumption within City. The Franchise Fee is due to be paid the City within thirty (30) days after the end of each Calendar Quarter and will be based on the gross receipts of the Franchisee from the sale of electricity or natural gas within the City during the previous Calendar Quarter. This payment will be accompanied by a certification signed by an officer of the Franchisee or a Certified Public Accountant employed by or on behalf of the Franchisee indicating the quarter's gross receipts, payment calculation, and any necessary gross-ups for collections by the Franchisee. The Franchise Fee required hereby is not in substitution or in lieu of any other tax, fee, imposition, or charge for which the Franchisee would otherwise be responsible and liable. The Franchise Fee required hereby is in consideration of the use of the public streets, alleys, and other public grounds within the City by the Franchisee pursuant to the provisions of the Franchise hereby established, since such use is a valuable right in property, the acquisition and maintenance of which is very expensive to the City; and, without such use, the Franchisee would be required to acquire easements on private property for the transmission and distribution of natural gas and electricity, at considerable expense to the Franchisee.
  
- C. Customer Billings/Complaints: City acknowledges and agrees that Franchisee's customer billing payment methods are presently adequate and include U.S. Mail, automatic bank draft, one-time electronic bank draft, paperless billing, card payments via mobile app, web, automated phone system via Speedpay, and its pay agent network consisting of seventy-five (75) locations in the Commonwealth of Kentucky, including 16 fee-free Kroger locations. City further acknowledges and agrees that Franchisee's procedures for receiving customer complaints about billings, service issues, and other issues are presently adequate.

**Section 11. Notices.** Any notice to be served upon the City or Franchisee shall be delivered to the following addresses respectively by either personal delivery or by nationally recognized overnight delivery service:

CITY/FRANCHISOR:

City of Dayton, Kentucky  
Attn: Mayor  
514 Sixth Avenue  
Dayton, KY 41074

FRANCHISEE:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:

City Administrator  
Attn: Jay Fossett  
514 Sixth Avenue  
Dayton, KY 41074

With copy to:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 12. Indemnification.** To the extent permitted by applicable law and except with respect to Claims based on the City’s gross negligence or willful misconduct, Franchisee shall at all times fully defend, indemnify, protect, and save harmless the City and its elected officials, nonelected officers, employees, agents, and representatives (individually, an “Indemnitee,” and collectively, the “Indemnitees”) from and against any and all occurrences, claims, demands, actions, suits, proceedings, liabilities, losses, fines, penalties, damages, expenses, costs, including reasonable attorneys’ fees and legal costs (collectively, “Claims”), which might be claimed now or in the future and arise out of, or are caused by, whether directly or indirectly: (a) the installation, construction, operation, modification, maintenance, repair, and removal of the Facilities; (b) the acts or omissions of Franchisee, or its contractors, subcontractors, employees, and agents in the operation and maintenance of the Facilities; (c) Franchisee’s failure to comply with the provisions of any applicable law to which it or the Facilities are subject; and (d) Franchisee’s failure to comply with the terms and conditions contained in this Agreement.

Franchisee shall, at its sole risk and expense, upon demand of the City made by and through its City Administrator or City Attorney or their successors, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted by third persons or duly constituted authorities against or affecting the City, its officers, boards, commissions, agents, or employees, and arising out of or pertaining to action of the Franchisee in the exercise or the enjoyment of such Franchise or the granting thereof by the City.

**Section 13. Environmental Laws.** Franchisee shall comply with and shall cause its contractors, subcontractors and vendors to comply with all rules, regulations, statutes, or orders of the U.S. Environmental Protection Agency, the Kentucky Department for Environmental Protection, and any other governmental agency with the authority to promulgate and enforce environmental rules and regulations applicable to Franchisee’s use of any portion of the City rights-of-way under this Agreement (“Environmental Laws”). Franchisee shall promptly reimburse the City for any costs, expenses, fines, or penalties levied against the City because of Franchisee’s failure, and/or the failure of its contractors, subcontractors and/or vendors to comply with Environmental Laws.

Neither Franchisee -- nor its contractors, subcontractors, or vendors -- shall possess, use, generate, release, discharge, store, dispose of, or transport any hazardous or toxic materials on, under, in, above, to, or from its work sites except in compliance with the Environmental Laws. "Hazardous Materials" mean any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Franchisee shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances into the City's storm sewer system or sanitary sewer system or elsewhere on or in the City rights-of-way or on other property within the City in violation of the Environmental Laws.

**Section 14. Severability.** If any section, sentence, clause, or phrase of this Agreement is held to be invalid or unenforceable, the remaining sections, sentences, clauses, and phrases shall not be affected thereby and shall remain in full force and effect and be legally binding upon the parties hereto.

**Section 15. Reservation of Rights.** The parties agree that this Agreement is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders, and ordinances. Accordingly, any provision of this Agreement or any local ordinance that may conflict with or violate the law shall be invalid and unenforceable, whether occurring before or after the execution of this Agreement. It is the intention of the parties to the Agreement to preserve their respective rights and remedies under the law, and the execution of this Agreement does not constitute a waiver of any rights or obligations by either party under the law.

**Section 16. Police Powers.** Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. Franchisee shall not by this Agreement obtain any vested rights to use any portion of the City rights-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Agreement. This Agreement and the permits issued thereunder shall be governed by applicable City ordinances in effect at the time of application for such permits or later codified by the City.

**Section 17. Governing Law.** This Agreement shall be governed by the domestic laws of the Commonwealth of Kentucky, County of Campbell, and any applicable federal laws of the United States of America that may preempt state laws.

**Section 18. Counterparts.** This Agreement may be executed in counterpart signature pages by the parties hereto.

**Section 19. Authorization.** The entering into of this Agreement has been authorized by the Dayton Board of City Council by passage of Ordinance 2024-22.

**Section 20. Organization and Standing.** Franchisee is duly organized, validly existing, and in good standing under the laws of the state of its organization and is duly authorized to conduct business in the Commonwealth of Kentucky. Franchisee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted, to offer services within the Commonwealth of Kentucky, and to execute, deliver, and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.

**Section 21. Relationship of Parties.** Franchisee shall be responsible and liable for its contractors, subcontractors, sublicensees, and vendors. The City has no control or supervisory powers over the manner or method of Franchisee's, or its contractors', subcontractors' and sublicensees' performance under this Agreement. All personnel Franchisee uses or provides are its employees, contractors, subcontractors, or sublicensees and not City employees, agents, or subcontractors for any purpose whatsoever. The relationship between City and Franchisee is at all times solely that of Franchisor and Franchisee, not that of partners or joint venturers.

**Section 22. Entire Agreement.** This Agreement merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties.

**Section 23. Amendment.** This Agreement may only be amended or modified by a written instrument executed by all of the parties hereto.

**Section 24. Non-Waiver.** If either party fails to require the other to perform a term or condition of this Agreement, that failure does not prevent the party from later enforcing that term or condition. If either party waives a breach of this Agreement by the other party, that waiver does not waive a later subsequent breach of this Agreement.

**Section 25. Mechanics Liens.** Franchisee shall keep all portions of the City's rights-of-way wherein its Facilities and related equipment are located or placed free from any mechanics liens or encumbrances arising from any work performed, materials furnished, or obligations incurred by or at the request of Franchisee. If any lien is filed against the City's rights-of-way or any portion thereof or other property belonging to the City as a result of the acts or omissions of Franchisee or its employees, agents, or contractors, Franchisee shall discharge the lien or bond off the lien in a manner satisfactory to the City within thirty (30) days after Franchisee receives written notice from any party that the lien has been filed.

IN WITNESS WHEREOF, the parties have hereunto set their signatures as of the Effective Date described above.

CITY:

FRANCHISEE:

\_\_\_\_\_  
City of Dayton, Kentucky  
By: Ben Baker  
Title: Mayor

\_\_\_\_\_  
Duke Energy Kentucky, Inc.  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **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)



**CITY OF DAYTON, KENTUCKY  
ORDER/RESOLUTION NO. 2024#28R**

**AN ORDER/RESOLUTION TERMINATING THE  
PROFESSIONAL SERVICES AGREEMENT WITH PRIME  
AE GROUP, INC. FOR ENGINEERING SERVICES AND  
AUTHORIZING THE ISSUANCE OF A NEW REQUEST  
FOR QUALIFICATIONS FOR THESE SERVICES.**

WHEREAS, the City of Dayton (“City”) previously entered into Professional Services Agreement (“Agreement”) with Prime AE Group, Inc. (“Prime”).

WHEREAS, the City desires to terminate the Agreement with Prime and issue a Request for Qualifications for a new personal services contract to provide engineering services to the City.

WHEREAS, the City also desires to retain a new civil engineering firm or individual to act as the City Engineer and to provide planning and design of roadway and sidewalk projects to the City, including preparing and submitting Local Public Agency (LPA) grant applications to the Commonwealth of Kentucky, designing LPA projects that are awarded, and ensuring all LPA guidelines are followed as well as undertaking other engineering-related duties, such as landslide mitigation, pavement management inventory and roadway maintenance services, traffic signal and signage recommendations, capital improvement planning and design, bidding, utility infrastructure review, attending and presenting at public meetings, and coordinating with the Kentucky Transportation Cabinet regarding any issues involving state routes located within the City.

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

Section I

The Dayton City Council hereby authorizes the City Administrator to send notice terminating the existing Professional Services Agreement with Prime AE Group, Inc. and to take the steps needed to prepare and issue a Request for Qualifications for a new personal services contract for engineering services in the City.

Section II

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

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MAYOR BEN BAKER

ATTEST:

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TRISTAN KLEIN  
CITY CLERK/TREASURER  
December 10, 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 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 December 10, 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.

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Tristan Klein  
City Clerk/Treasurer

**CITY OF DAYTON, KENTUCKY  
ORDER-RESOLUTION NO. 2024-29R**

AN ORDER-RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A COST-SHARE AGREEMENT WITH SANITATION DISTRICT NO. 1 FOR STORM-WATER SYSTEM IMPROVEMENTS ON GRANT PARK DRIVE TO ADDRESS STORM-WATER RUNOFF ISSUES ON THAT STREET, PAYABLE FROM BELMONT LAKE, LLC (GRANT PARK) TIF FUNDS.

**WHEREAS**, Sanitation District No. 1 (“SD1”) maintains the municipal separate storm-sewer system in the City of Dayton, Kentucky (“City”) pursuant to a Transfer and Assignment of the SD1 Storm-Water Drainage System Agreement between the City and SD1;

**WHEREAS**, SD1 provides a Stormwater Public Cost-Share Program to help co-permittee Local Governments, such as the City of Dayton, construct storm-water projects that increase a level of service and address public drainage issues associated with a dedicated and accepted right-of-ways, impacting right-of-ways, or caused by or related to public infrastructure drainage issues (“Cost-Share Program”);

**WHEREAS**, the City has applied to SD1 for financial assistance through its Cost-Share Program;

**WHEREAS**, SD1’s Board of Directors has approved the City’s request for assistance from the Cost-Share Program and has authorized reimbursement to the City of up to one-half of the total project cost, which would make SD1’s share of the project a total of \$33,550;

**WHEREAS**, three residents of Grant Drive have each agreed to pay \$2,500 toward the project costs to tie discharge pipes from their private sump pumps into the public stormwater system on their street (“Stormwater Remediation Project”);

**WHEREAS**, the City’s consulting engineer has designed the project specifications and solicited bids to undertake the Stormwater Remediation Project and he has recommended moving forward with the Stormwater Remediation Project; and

**WHEREAS**, the City’s portion of the costs of project improvements will be paid from the Belmont Park, LLC (Grant Park) TIF Fund.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY OF DAYTON, KENTUCKY, AS FOLLOWS:**

The Board of the City Council of the City of Dayton, Kentucky, hereby authorizes the Mayor to enter into a contract with Sanitation District No. 1 to participate in the Stormwater Public Cost-Share Program on the public right-of-way and on properties located at 145, 149, 153, and 156 Grant Park Drive (“Project Properties”) and to enter into any and all contracts and/or easement agreements

with the owners of the Project Properties needed to undertake the Stormwater Remediation Project, with the City's portion of the project costs being payable from the Belmont Park, LLC (Grant Park) TIF Fund. A copy of the SD1 Stormwater Public Cost-Share Program Agreement referenced above is attached hereto as Exhibit "A" and incorporated by reference herein and made part hereof.

SO ORDERED and approved by the City Council of the City of Dayton, Kentucky, on this 10th day of December 2024.

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MAYOR BEN BAKER

ATTEST:

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TRISTAN KLEIN  
CITY CLERK/TREASURER

EXHIBIT "A"

**SANITATION DISTRICT NO. 1  
STORM WATER  
PUBLIC COST-SHARE PROGRAM AGREEMENT**

**THIS STORM WATER PUBLIC COST-SHARE PROGRAM AGREEMENT** (“Agreement”) is entered into on the date set forth on the signature page of this Agreement by and between Sanitation District No. 1 of Northern Kentucky (“SD1”), a sanitation district organized pursuant to KRS Chapter 220 and principally located at 1045 Eaton Drive, Ft. Wright, Kentucky 41017 and the undersigned Local Government set forth on the Signature Page to the Agreement below.

**RECITALS**

**WHEREAS**, SD1 maintains the municipal separate storm sewer system (“MS4”) of our co-permittee Local Government pursuant to the Transfer and Assignment of the SD1 Storm Water Drainage System Agreements (“Transfer Agreements”);

**WHEREAS**, by resolution of the Board of Directors on March 20, 2018, SD1 approved a Storm Water Public Cost-Share Program to help co-permittee Local Governments with new storm water projects that will increase a level of service and address public drainage issues associated with a dedicated and accepted right-of-way, impacting a right-of-way or caused by or related to public infrastructure drainage;

**WHEREAS**, the Local Government has applied for assistance through the Storm Water Public Infrastructure Program; and

**WHEREAS**, SD1’s Board of Directors approved the Request for Assistance at its regular monthly meeting as specifically set forth in the approved Request for Assistance attached hereto as Appendix 1, pursuant to the terms set forth below.

**NOW THEREFORE**, in consideration of the mutual promises, terms set forth herein, the Local Government and SD1 hereby agrees as follows:

- 1. Recitals.** The recitals set forth above are incorporated by reference herein and made a part hereof as if fully re-written.
- 2. Interlocal Cooperation Act.** The Local Government and SD1 have previously entered into a Master Interlocal Agreement for Infrastructure Projects, Programs or Policies ("Interlocal Agreement") pursuant to the Interlocal Cooperation Act KRS 65.210 to KRS 65.300 (the "Act").
- 3. Project.** The Local Government, with the assistance of SD1, is constructing improvements to address public drainage issues associated with a dedicated and accepted right-of-way, impacting a right-of-way or caused by or related to public infrastructure drainage pursuant to the terms of the Storm Water Public Cost-Share Program and as specifically set forth in the approved Request for Assistance attached hereto as Appendix 1 (the “Improvements”) which shall hereinafter be referred to as the “Project.”

**4. Funding.** Pursuant to the terms set forth herein, SD1 shall provide funding as a reimbursement for up to one-half (50%) of the total cost of the Project as set forth in the Request for Assistance and approved by SD1 for an amount equal to **thirty-three thousand, five hundred fifty, and 00/100 dollars (\$33,550.00)**, (the Financial Assistance Amount”).

**5. Agreement Execution Requirements.** The Local Government must sign the cost share agreement within **seventy-five (75)** calendar days from the approval date of the project by SD1’s Board of Directors. If this requirement is not met, the project approval is rescinded, and the Local Government must then re-apply.

**6. Duration/Termination.** The Storm Water Public Cost-Share Program is subject to available funding as set forth therein, and this Agreement shall remain in full force and effect until terminated by SD1 upon thirty (30) days written notice to the Local Government. The Project must commence construction within **three hundred sixty-five (365) calendar days** from the execution date of this Agreement and report the achievement of continuous and reasonable progress until completion. If this requirement is not met, the project approval is rescinded, and the Local Government must then re-apply.

**7. Ownership and Responsibility.** Upon satisfactory completion of the Project, SD1 shall assume ownership of the new infrastructure pursuant to the terms of the Transfer Agreements.

**8. Commencement and Completion Dates.** The Local Government will commence construction of the Project on or before \_\_\_\_\_ (the "Commencement Date") and complete the Project on or before \_\_\_\_\_ (the "Completion Date").

**9. Payment to Local Government.** SD1 shall pay to the Local Government the Financial Assistance Amount in draws, as follows:

- a. Local Government shall submit draw requests to SD1 in form and with supporting information as determined by SD1. Local Government shall make draw requests no more frequently than monthly.
- b. Draw requests shall not exceed the value of the work completed to the date of the draw request times the percentage of the Project to be funded by District.
- c. SD1 shall retain ten percent (10%) of each draw request as retention to assure restoration of the site upon completion of the Project.
- d. Retention shall be paid to the Local Government within thirty (30) days following the written approval of SD1 of the site restoration following the completion of the Project.
- e. If SD1 determines that the Local Government failed to properly restore the site to a condition that is equal to or better than which existed prior to construction within thirty (30) days following the

Completion Date, SD1 may, in its sole discretion, but is not obligated to do so, restore the site in such manner as SD1 determines and using the retention to do so.

**10. Submittals by the Local Government prior to the Commencement Date.** Prior to the Commencement Date, the Local Government shall submit to SD1 the following:

- a. Notification of start of design and kick-off meeting date. District will attend design review meetings with Local Government and Design Engineer, as necessary.
- b. Sixty percent (60%) complete design contract documents and sizing calculations.
- c. Ninety percent (90%) complete design contract documents.
- d. The one hundred percent (100%) design drawings, plans and specifications for the Project, scheduled bid date, and construction start date.
- e. All contracts to be entered into by the Local Government for the Project.
- f. Bid tabulations or Proposal, selected Contractor and accepted Bid or Proposal, along with the budget for the Project.
- g. Notification of pre-construction meeting at least seventy-two (72) hours in advance.
- h. Such other documents and information as SD1 may reasonably request.
- i. SD1 reserves the right to waive any of the above submittal requirements upon written request by the Local Government.

**11. Submittals by the Local Government after the Commencement Date.** After the Commencement Date, the Local Government shall submit to SD1:

- a. Contractor's or Local Government's schedule for start and completion of construction, and changes thereto.
- b. All change orders or contract modifications as relate to the Project.
- c. Any changes to the Project budget.
- d. "As-built" drawings showing the Project as completed, per SD1's Storm Water Rules and Regulations.
- e. Such other documents and information as SD1 may reasonably request.

**12. Submittals by the Local Government prior to the Commencement Date:** Prior to the Commencement Date, the Local Government shall submit to SD1 the following:

**13. Rights of SD1.** SD1 shall have the right, but not the duty, to:

- a. Review and approve the design, plans, and specifications for the Project, prior to bidding or negotiation of construction cost.



- b. Review and approve all contracts, change orders, or contract modifications to be entered into by the Local Government for the Project.
- c. Review and approve the budget for the Project and any modifications thereof.
- d. Make inspections, from time to time, of the Project.
- e. Perform such site testing as may, in the sole discretion of SD1, be required from time to time.
- f. Audit the books and records of the Project.
- g. Receive any information concerning the Project that SD1 may reasonably request of the Local Government.

**14. Cost Increases.** SD1 shall not be responsible for any increase in the cost of the Project regardless of the reason for the increase unless SD1 agrees, in writing, to change the Financial Assistance Amount.

**15. Remaining Funds.** Any part of the Financial Assistance Amount not required to be disbursed shall be retained by SD1 following the completion of the Project.

**16. Default.** Local Government shall be in default of the Agreement ("Event of Default ") if:

- a. Any information submitted to SD1 by or on behalf of the Local Government for the Project is determined by SD1 to be materially incorrect.
- b. The Project is not prosecuted and completed in a timely manner.
- c. The Project is not constructed in accordance with the plans and specifications.
- d. The Local Government fails to perform any other term or condition required of it under the Agreement.

**17. Right to Cure.** If SD1 determines that an Event of Default has occurred, then SD1 shall give the Local Government written notice of the default and a period not to exceed ten (10) days in which to cure such default, except that if the period needed to cure the default exceeds ten (10) days, then such longer period as needed to cure such default so long as Local Government begins the cure of the default in a timely manner and continuously prosecutes such work to completion.

**18. Remedies.** If an Event of Default exists which has not been cured within any applicable cure period then, in addition to any and all remedies available to SD1 in equity or at law, SD1 may terminate, by written notice to the Local Government, payment of the Financial Assistance Amount.

**19. Obligation of District.** SD1 has no obligation to review, inspect or audit the Project and any review, inspection or audit by SD1 is for its own benefit and not for the benefit of the Local Government. Local Government releases District from any claims,

causes of action or liability for any review, inspection or audit performed by SD1 with respect to the Project.

**20. Notices.** Any notice, communication, or request under this Agreement to either of the parties shall be in writing and shall be effectively delivered if delivered personally or sent by overnight courier service with all fees prepaid to the parties at the addresses set forth in the Request for Application attached hereto as Appendix 1.

**21. Relationship of the Parties.** The payment of all or a part of the Financial Assistance Amount by SD1 is in the form of a grant and does not constitute a joint venture, partnership or other relationship with the Local Government.

**22. Entire Agreement.** This Agreement constitutes the entire Agreement between the parties relating to the project and shall be deemed to be a full, final, and complete integration of all prior or contemporaneous understandings or agreement between the parties relating thereto. The parties have not relied upon any promises, representations, warranties, agreements, covenants or undertakings other than those expressly set forth in this Agreement. This Agreement supersedes all prior Agreements relating to the project. This Agreement may be amended or supplemented only by a written instrument signed by both parties hereto.

**23. Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Kentucky.

*Signature Page Follows*

*Signature Page to Agreement*

**LOCAL GOVERNMENT:**

**City of Dayton:**    Date: \_\_\_\_\_

Entity Name

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

By: Printed Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Phone No. \_\_\_\_\_

**SANITATION DISTRICT NO. 1**

\_\_\_\_\_  
By Adam Chaney, its Executive Director

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

**APPENDIX 1**

**REQUEST FOR ASSISTANCE**

Please attach.