



**Ionia County Road Commission Permit Policy for Safely Allowing Limited Communication  
Service Provider Facilities Access Within the County Road Right-of-way**

**WHEREAS**, the Board of County Road Commissioners for the County of Ionia (the “Board” or “Road Commission”) is a body corporate with the statutory mandate created by MCL 224.9 to formulate policy and to perform those official duties imposed by law or delegated by the Ionia County Board of Commissioners; and

**WHEREAS**, real property interests—including easements, various fees, and the right to regulate related to the use of public right-of-way within the county road system—have been vested in the Road Commission to be held in trust for the benefit of the public; and

**WHEREAS**, the Road Commission intends to discharge its obligations as trustee of those certain real property interests in a manner that benefits and protects the public generally, and any adjacent landowners specifically; and

**WHEREAS**, Article 7, §29 of the Michigan Constitution of 1963 reserves to county road commissions the reasonable control of their highways, streets, alleys and public places, and specifically prohibits any person, partnership, association or corporation, public or private, from operating a public utility within the highways, streets, alleys and public places of any county without first obtaining the consent of the duly constituted authority of the county road commission; and

**WHEREAS**, MCL 247.184 requires the consent of the Road Commission before any public utility may construct wires, cables, poles or like structures upon, over or under a county right-of-way including any improved highway or bridge; and

**WHEREAS**, MCL 224.19b(1) requires any person, partnership, association, corporation or governmental entity to obtain a permit from the Road Commission (and the applicable township, city or village if required by those entities) before constructing, operating, maintaining or removing any facility or performing any work within a county highway right-of-way; and

**WHEREAS**, MCL 224.19b(2) empowers a county road commission to adopt reasonable permit requirements and a schedule of fees sufficient to cover the necessary and actual costs applied in a reasonable manner for the issuance of the permit and for review of the proposed activity, inspection and related expenses; and

**WHEREAS**, MCL 691.1402 charges a county road commission with maintaining highways under its jurisdiction in reasonable repair so that they are reasonably safe and convenient for public travel; and

**WHEREAS**, communications technologies are constantly evolving, resulting in the potential for proliferation of communication service facilities within the public right-of-way which carry the

potential, if not appropriately managed, to jeopardize the safety and convenience of the public;  
and

**WHEREAS**, those seeking to install and operate Communication Service Provider Facilities within county highway right-of-way to meet demand for such service, gain a pecuniary profit therefrom; and

**WHEREAS**, certain entities seeking to install Communication Service Provider Facilities claim right of way access as a benefit of utility status; regarding which the Road Commission specifically reserves its right to challenge these claimed benefits and status as utilities, regulated or otherwise; and

**WHEREAS**, the Road Commission has made significant investments of time and resources in the acquisition, construction, repair and maintenance of the public right-of-way under its jurisdiction, for the principal purpose of making such rights-of-way safe and convenient for public travel, and such investment has enhanced the utility and value of those public ways; and

**WHEREAS**, the public right-of-way under the Road Commission's jurisdiction are used by and useful to private enterprises including the Applicant and others engaged in providing Communication Services to citizens, institutions, and businesses that are served by the county road system; and

**WHEREAS**, the right to access and/or occupy portions of such public right-of-way for limited times, for the business of providing communication services, is a valuable economic privilege; and

**WHEREAS**, beneficial competition between providers of communication services can be furthered by the Road Commission's consent to locate within and for rights to use the public right-of-way on non-discriminatory and competitively neutral terms and conditions; and

**WHEREAS**, the Applicant is a private enterprise engaged in installing facilities related to and/or providing various Communication Services; and

**WHEREAS**, the Road Commission will grant its consent pursuant to its constitutional and statutory authority to manage and control its public right-of-way, and will issue a right-of-way permit in consideration of the terms and conditions set forth herein:

1. Purposes

The purposes of this Policy are to balance the interests of protecting the public from harm with the interests of the public and applicants in the expansion of communication services via the preceding and following statements of interest:

- 1.1. Establish a local policy concerning Communication Service Provider Facilities for use of the public right-of-way that also serves the Road Commission's statutory mandate to make the rights-of-way under its jurisdiction safe for public travel;

- 1.2. The Road Commission specifically reserves its right to alter, amend and adjust these policies where public safety or convenience requires on a per application basis;
- 1.3. Establish a local policy that promotes beneficial competition between providers of communication services on non-discriminatory and competitively neutral terms and conditions; and that ensures that the Road Commission retains the authority and ability to act to protect the public safety and welfare in the face of multiple rapidly-changing industries, including the communications industry, that are placing increasing demand on public property and resources;
- 1.4. Establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of the use of public right-of-way by Communications Providers, and their respective facilities and licenses;
- 1.5. Permit and manage reasonable access to the public right-of-way under the jurisdiction of the Road Commission for communications purposes on a competitively neutral basis, to the extent required by law;
- 1.6. Conserve the limited physical capacity of the public rights of ways held in trust for the benefit of the public by the Road Commission, and over which the Road Commission shares jurisdiction, to a limited extent, with other governmental entities;
- 1.7. Assure that the Road Commission's current and ongoing costs of granting and regulating private access to and use of its public right-of-way are fully paid by the persons seeking such access and causing such costs;
- 1.8. Secure fair and reasonable compensation to the Road Commission and the residents of Ionia County, in a nondiscriminatory manner, for permitting private use of the public right-of-way;
- 1.9. Encourage economic development while preserving aesthetic and other community values and preventing proliferation of above ground facilities;
- 1.10. Assure that all persons or entities providing communication services within public right-of-way in the county highway system comply with all state, federal and local laws;
- 1.11. Enable the Road Commission to manage its obligations to the public generally, and adjacent landowners specifically, consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development; and
- 1.12. Reserve to the Road Commission and provide for the fullest exercise possible of its authority and discretion to require that:
  - 1.12.1. Communication Service Provider Facilities are installed and maintained within public right-of-way under the jurisdiction of the Road Commission in such manner and at such points so as not to inconvenience the public use of the public right-of-way or to adversely affect the public safety and welfare;

1.12.2. All nonpublic users of the right-of-way under the jurisdiction of the Road Commission shall be required to defend, reimburse, indemnify and hold harmless the Road Commission for the actual costs incurred by the Road Commission by reason of the construction or presence in the public rights-of-way of the facilities of such users. Further, that insurance and bonding be secured to assure that such defense, reimbursement and indemnity is available.

## 2. Definitions

- 2.1. For the purposes of this Policy, the following terms, phrases, words, and their derivations shall have the meaning given in this section. Unless otherwise expressly stated, words not defined in this title shall be construed consistent with Title 47 of the United States Code and Chapter 484 of the Michigan Compiled Laws. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereafter enacted or amended. "Applicant" means any person applying for a right-of-way permit who is a "Communication Service Provider."
- 2.2. "Communication Service Provider" and related "Facilities" as used herein, may include broadband, telecommunications and wireless related infrastructure as required by communication service providers and their various contractors, in order to provide voice, video, and/or data, to the public or other end users, and necessary infrastructure including, but not limited to wirelines including copper wire, fiber optic cable, or coaxial cable, and wireless including antennas, radios and, those related support structures, all as deemed necessary and as specifically approved by the Commission in its written right-of-way permit if and when issued.
- 2.3. A person that operates under written agreement with a Communication Service Provider to provide communication services over a communications service facility or to install communications service facilities, shall be treated as a Communication Service Provider for purposes of this Policy. A copy of all such agreement(s) shall be furnished upon application for a permit under this policy.
- 2.4. "Right-of-way" means the area on, below, or above any land acquired or dedicated for public roads, highways, streets, alleys, easements, or waterways, to the extent the Road Commission has jurisdiction and the ability to grant the rights set forth herein. Right-of-way does not include a federal, state, or private right-of-way.
- 2.5. "Person" means an individual, partnership, cooperative, association, private corporation, public corporation, utility, personal representative, receiver, trustee, assignee, governmental entity or other legal entity.
- 2.6. "Right-of-way permit" as used herein means the County Road Commission's legal authorization, terminable as defined in the permit, to use a particular, discrete, and limited

portion of the public right-of-way to construct, operate, or repair a Communication Service Provider Facility. The term “right-of-way permit” shall not mean or include:

- 2.6.1. Any other permit, authorization, agreement or franchise required for the privilege of transacting and carrying on a business within the applicable city, village or township required by state or local law;
- 2.6.2. Any other permit, authorization or agreement required in connection with operations on public streets or property.
- 2.6.3. Any other permits, authorization or agreements required for occupying any public or private property to which access is not specifically granted by the right-of-way permit, including, but not limited to, permits for placing devices on or in poles, conduits, other structures, or on railroad easements owned by any public or private entity.

### 3. Policy Guidelines

The administration of this Policy shall be governed by the following Communication Service Provider Facility policy guidelines:

- 3.1. The Road Commission supports efforts to establish an open, competitive marketplace for communication services that also serves the Road Commission’s statutory mandate to promote safety and convenience in the use of public right-of-way under its jurisdiction. The Road Commission promotes and encourages competition for communication services that make the latest and best technology available and keep service prices affordable for all county residents and businesses. An integral component of this open marketplace is the consistent application of regulations to all communications providers and the preservation of local authority over matters of local impact.
- 3.2. The Road Commission recognizes that to balance the needs and interests of the public in the management of the right-of-way together with the desire of the communications service industry to access such rights of way, facilities supporting communication services may be integrated into the right-of-way in conformity principally with community standards, also taking into account industry standards and best practices. Guidelines identifying community standards together with an understanding of industry standards and best practices may be incorporated into the terms and conditions of the Road Commission’s right-of-way permit and permit process and may change from time to time, in the Road Commission’s sole judgment and discretion.
- 3.3. Use/Installation Priority Preference Considerations
  - 3.3.1. The Road Commission’s primary goal is to make and maintain the right-of-way under its jurisdiction safe and convenient for public travel. To further this goal, the Road Commission recites the following siting priority preferences, which shall be enforced wherever possible in the Road Commission’s discretion:

- 3.3.1.1. Collocation on an existing facility outside the right-of-way shall be preferred to collocation on an existing facility within the right-of-way.
  - 3.3.1.2. Locating a new Communication Service Provider Facility outside the right-of-way shall be preferred to locating a new Communication Service Provider Facility within the right-of-way.
  - 3.3.1.3. Collocation on an existing facility within the right-of-way shall be preferred to locating a new Communication Service Provider Facility within the right-of-way.
  - 3.3.1.4. Locating a new Communication Service Provider Facility in the right-of-way shall only be permitted when the applicant demonstrates, in the Road Commission's judgment, that locating a new Communication Service Provider Facility outside of the right-of-way, or collocating on any existing facility, is not possible or practical.
  - 3.3.1.5. Where possible and practical, facilities will be required to be located below ground where other existing facilities or structures are located below ground.
- 3.3.2. Collocation Guidelines
- 3.3.2.1. All applications shall be subject to collocation with existing structures where possible and practical. Mandatory future collocation of all subsequent Communication Service Provider Facilities shall be required where possible and practical for any newly authorized structure under this Policy.
  - 3.3.2.2. Any application that is not for a collocated facility must contain a statement justifying why collocation is not possible or practical. Such statement shall include:
    - 3.3.2.2.1. Such structure and technical information and other justifications as are necessary to document the reasons why collocation is not possible or practical, including all communication of denials of collocation requests from 3<sup>rd</sup> party entities; and
    - 3.3.2.2.2. A list of all eligible support structures and alternative structures considered as alternatives to the proposed location.
    - 3.3.2.2.3. A written explanation why the alternatives considered were not possible or practical due to technical or physical constraints.
- 3.3.3. Stealth installations or otherwise aesthetically consistent designs shall be required at the discretion of the road commission, and will generally be similar to the existing infrastructure in the area.

- 3.3.4. New structures shall be limited to 45 feet in height, unless otherwise shown to be needed by the Applicant based upon the technical characteristics of the area or other considerations, including collocation. The dimensions of new facilities will generally not be permitted to exceed existing infrastructure in the same vicinity.
- 3.3.5. No new Communication Service Provider Facility support structure may be erected in the public right-of-way within 500' of an existing Communication Service Provider Facility support structure, unless shown, as determined by the Road Commission in its discretion, that it is required for technical feasibility or that all existing infrastructure is already exhausted or not available for use.
- 3.3.6. To the greatest extent possible and practical, placement of such facilities in Industrial Zones shall be preferred, followed by Commercial Zones, followed by Residential Zones.
- 3.3.7. Where possible and practical, location on private property shall be preferred to location on public property.
- 3.3.7.1. An application shall contain a statement explaining all alternative sites considered, including private property, and why such alternatives are not possible or practical.
- 3.3.7.2. If it is not possible or practical to locate the Communication Service Facility on alternative sites, including private property, the Communication Service Facility may be placed in the right of way but shall be on a property line of two adjacent properties.
- 3.3.8. The Road Commission will manage access to the public right-of-way for Communication Service Provider purposes in a nondiscriminatory, competitively neutral and nonexclusive way to the extent required under applicable law and, to the extent allowed under applicable law, to receive fair compensation. The public interest will be protected by collecting associated fees and administrative costs for use of the public right-of-way under the jurisdiction of the Road Commission.
- 3.3.9. Right-of-way permits for location of Communication Service Provider Facilities and all supporting equipment and structures will be managed to preserve the integrity of the county road system's infrastructure, ensure efficient use of the property under the jurisdiction of the Road Commission, and ensure compliance with state, federal and local law.
- 3.3.10. In order to effectively manage and regulate the use of public right-of-way under the Road Commission's jurisdiction in the best interests of the public, it is necessary for the Road Commission to reserve and exercise all proprietary, legislative, administrative and discretionary authority it may have to the full extent allowed or not prohibited by law and nothing in this policy shall be construed to diminish or in any

way to limit the proprietary, discretionary, administrative or legislative authority of the Road Commission and its officials as respects the management and use of the Road Commission's public right-of-way or in respect to the granting, delaying, or denying any right-of-way permit.

#### 4. General Provisions

- 4.1. No Communication Service Provider shall install, construct, or otherwise place within public right-of-way under the jurisdiction of the Ionia County Road Commission any Communication Service Provider Facilities, except pursuant to the provisions of this policy.
- 4.2. A Communication Service Provider must obtain a right-of-way permit from the Road Commission prior to constructing any Communication Service Provider Facilities within a right-of-way under the jurisdiction of the Road Commission. The fact that a particular permitted Communication Service Provider Facility may be used for multiple purposes does not obviate the need to obtain a permit for other purposes unless applicable federal or state law prohibits the Road Commission from requiring such additional permit. No permit shall become effective without the grantee signing an acceptance of the permit.
- 4.3. A Communication Service Provider must provide a complete written right-of-way permit application on a form prescribed by the Road Commission, along with all requested supporting documentation.
- 4.4. If a right-of-way permit is granted, a Communication Service Provider must agree to abide by the terms and conditions imposed by the permit.
- 4.5. A right-of-way permit shall not convey equitable or legal title to the public right-of-way. The right granted is only the right to occupy those portions of the public right-of-way to which the Road Commission has the right to grant access, for the purposes and the time period stated in the permit, and the right may not be subdivided or subleased. A right-of-way permit shall not grant a vested right for any Communication Service Provider Facilities to be located or to remain at any specific location in the public right-of-way and any right, permission or consent to occupy any location in the public right-of-way shall be revocable and terminable at the discretion of the Road Commission and the facility therein removed at the cost of the operator in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public interest as determined by the Road Commission.
  - 4.5.1. A Communication Service Provider shall immediately (subject to seasonal work restrictions) restore, at its sole expense, in a manner approved by the Road Commission, any portion of the public right-of-way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Communication Service Facilities, to a reasonably equivalent or better condition as that which existed prior to the disturbance. In the event that Communication Service Provider, or its contractors or subcontractors, fail to make such repair within a reasonable time, the Road Commission may make the repair and

the Communication Service Provider shall pay the costs the Road Commission incurs for such repair.

- 4.6. No reference herein, or in any right-of-way permit, shall be deemed to be a representation or guarantee by the Road Commission that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a permit shall be deemed to grant no more than those rights which the Road Commission may have the undisputed right and power to give.
  - 4.7. Before any right-of-way permit will be issued, a Communication Service Provider must demonstrate that it has obtained the necessary permits and/or consent of all units of state, local or federal government vested by law with the authority to require and grant permits and/or consent.
5. Taxes and Fees.
- 5.1. To the full extent permitted by law, recovery of all Road Commission costs related to the issuance of a right-of-way permit, or a consent fee, may be charged to a Communication Service Provider related to its installation and maintenance of Communication Service Provider Facilities in the right-of-way. Any such permit fee shall be approved by the Board of County Road Commissioners, and shall be in an amount sufficient to cover the actual administrative expenses incurred by the Road Commission that are directly related to receiving, reviewing and approving a right-of-way permit, consulting with any experts deemed necessary by the Road Commission to evaluate the permit application, to monitoring and inspecting the actual construction of the permitted Facilities, and to implementation of the requirements of this Policy and the terms and conditions of the permit. On request of an operator, the Road Commission will submit proof of any charges or expenses incurred. For any project or time frame, an operator can also request a written estimate from the Road Commission, in advance, of costs planned to be expended by the Road Commission.
  - 5.2. The Communication Service Provider shall provide security, in a manner acceptable to the Road Commission, to ensure compliance with its obligations under Section 4.5 and 4.5.1 of this Policy to remove Communication Service Facilities and restore the adjacent right-of-way at the termination of any Permit.

**IONIA COUNTY ROAD COMMISSION COMMUNICATION SERVICE**  
**PROVIDER RIGHT-OF-WAY PERMIT: SPECIAL TERMS AND CONDITIONS**

1. Definitions

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

to install, maintain, house, manage or operate communications service facilities, shall be treated as a Communication Service Provider for purposes of any Right-of-Way permit and these terms and conditions.

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

## 2. Grant

- 2.1. Consideration. The Road Commission may, if at all, grant a Permit or Permits to Company for the construction and installation of individual Facilities, and for the annual access to and ongoing use of the public Right-of-Way to construct, install and maintain Facilities in those portions of the public Right-of-Way identified on **Exhibit A** only in consideration of and upon the terms and conditions set forth herein.
- 2.1.1. Exhibit A may be modified by written request by Company and only upon approval by the Road Commission.
- 2.2. Overlashing. Company shall not allow the wires or any other facilities of a third party to be overlashed to the Facilities without the Road Commission's prior written consent, which consent shall not be unreasonably withheld or delayed.
- 2.3. Nonexclusive. The rights granted by any Right-of-Way permit and these terms and conditions are nonexclusive. The Road Commission reserves the right to approve, at any time, additional permits for access to and ongoing usage of the public Right-of-Way by Communications Service Providers and to enter into such other agreements for use of the public Right-of-Way with other Communications Service Providers.

3. Contacts, Maps and Plans

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 5. Indemnification

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

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

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

## 6. Insurance

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

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

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

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

## 7. Term

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

7.1.1. The expiration date identified in the Permit.

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

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

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

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

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

## 8. Performance Deposit or Letter of Credit

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

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

9. Fees

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

10. Removal

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

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

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

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

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

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

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

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

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

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

## 12. Notices

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

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

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

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

## 13. Other items

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

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

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

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

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

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

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

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

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

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

Ionia County Road Commission

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

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

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

**Exhibit A**

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

**EXHIBIT B**

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