

## VIDEO SERVICE PROVIDER AGREEMENT

AN AGREEMENT BETWEEN COMMUNITY WIRELESS COMMUNICATION, CO. ("VIDEO SERVICE PROVIDER") AND THE CITY OF LAWRENCE, KANSAS, A MUNICIPAL CORPORATION ("CITY"), PURSUANT TO THE VIDEO COMPETITION ACT, K.S.A 2008 SUPP. 12-2021 *ET SEQ.*

In consideration of the mutual promises and obligations contained herein, the parties hereby agree as follows:

Section 1. Definitions. For purposes of this Agreement, the words and phrases defined in K.S.A. 2008 Supp.12-2022 are applicable and the following additional words and phrases shall have the meanings given herein:

- a) "City" shall mean the City of Lawrence, Kansas;
- b) "Facilities" shall mean fiber optic lines, conduits, wires, cables, pipes, poles and all equipment and appurtenances and improvements thereto, used to provide video service.
- c) "Public improvement" shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement and public projects.
- d) "Public project" shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature.
- e) "Public right-of-way" shall mean the only area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues roads, highways, parkways, boulevards or bridges dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- f) "Video Service Provider" shall mean Community Wireless Communications, Co.

Section 2. Video Service Provider was granted authorization by the state of Kansas to provide video service in the City on July 17, 2009, (The Order granting such authority to provide video services is attached hereto as Exhibit 1) and hereby executes this agreement with the City subject to the following:

- a) Video Service Provider will begin providing video service in the City on or after August 15, 2009.
- b) Video Service Provider may be contacted by the City at the following telephone number (785) 371-4214.

- c) Video Service Provider may be contacted by customers at the following telephone number (785) 371-4214.
- d) Video Service Provider agrees to update this contact information with the City within 15 calendar days in the event that such contact information changes.
- e) Video Service Provider acknowledges and agrees to comply with the use of right-of-way terms provided in Section 3 of this agreement to the extent the terms are applicable to Video Service Provider and not contrary to state and federal laws and regulations. Video Service Provider hereby reserves the right to challenge the lawfulness or applicability of such terms to Video Service Provider.
- f) By entering into this agreement, neither the City's nor Video Service Provider's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived.
- g) By entering into the agreement, neither the City nor Video Service Provider waive any rights, but instead expressly reserve any and all rights, remedies and arguments the City or Video Service Provider may have at law or equity, without limitation, to argue, assert and/or take any position as to the legality or appropriateness of any present or future laws, ordinances and/or rulings.
- h) This Agreement does not provide the Video Service Provider the authority or right to provide "Local Exchange Service" to the City and inhabitants thereof. For purposes of this Agreement, "Local Exchange Service" is means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
- i) This Agreement is not a franchise agreement pursuant to K.S.A. 12-2001 *et seq.* The Video Service Provider acknowledges its obligation to enter into a contract franchise ordinance with the City prior to the use of City right of way for the provision of "Local Exchange Service" to the City and inhabitants thereof or as a "Telecommunications local exchange service provider" or "competitive infrastructure provider" as defined by state statute.
- j) The grant of this Agreement by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of way for the purposes and for the period stated in this Agreement. This Agreement does not: (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party; (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or (3) Excuse Video Service Provider from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

- k) Video Service Provider shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Agreement. Video Service Provider shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Agreement does not permit the Video Service Provider to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- l) Nothing herein contained shall be construed as giving Video Service Provider any exclusive privileges.

Section 3. Use of Right-of-Way. In the use of the right-of-way under this Agreement, the Video Service Provider shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and is subject to all applicable laws, statutes, ordinances, orders, rules and regulations adopted by the governmental bodies now or hereafter having jurisdiction. As a condition of this Agreement, Video Service Provider is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC), subject to Video Service Provider's right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. In addition, the Video Service Provider shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to the use of the right-of-way, including but not limited to, permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the right-of-way and shall comply with the following:

- a) The Video Service Provider's use of the right-of-way shall in all matters be subject and subordinate to the City's use of the right-of-way for any public purposes and the public health, safety and welfare requirements and regulations of the City. The Video Service Provider shall coordinate the placement of its facilities in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.
- b) All earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind injured, damaged or removed by the Video Service Provider in its activities under this Agreement shall be fully repaired or replaced within a reasonable time by the Video Service Provider at its sole expense and to the reasonable satisfaction of the City and the Video Service Provider.
- c) The Video Service Provider shall keep and maintain accurate records and as-built drawings depicting the accurate location of all facilities constructed,

reconstructed, or relocated in the right-of-way after the date hereof and provide the above information to the City upon request. Where such information is available electronically, upon request from the City, Video Service Provider agrees to provide such information in an electronic format. Such location and identification shall be at the sole expense of the Video Service Provider, without expense to the City, its employees, agents, or authorized contractors.

City agrees to use information obtained pursuant to this subsection only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Video Service Provider and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of the Investor owned utility and agree that pursuant to the Kansas Open Records Act, K.S.A. 45-215 et seq., as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that the City is required by law to disclose such information, the City shall provide the Video Service Provider advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Video Service Provider to safeguard such information.

The Video Service Provider agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of the Video Service Provider, or of the City at the written request of the Video Service Provider, in seeking to safeguard the confidentiality of information provided by the Video Service Provider to the City under this section.

In the event such information is required by force of law to be publicly disclosed, the Video Service Provider shall have no further obligation under this section to provide the City with such information. Such facilities shall be horizontally and vertically located at least every 100 feet and at any other alignment change.

All points of facilities shall be horizontally located from street centerline or section or quarter section lines or corners. Vertical locations or all points of facilities shall consist of elevations in either City datum or United States Geological Survey datum.

- d) Except in cases of an emergency, a minimum of fourteen (14) days prior to construction, reconstruction or relocation of any facilities in the right-of-way, the Video Service Provider shall submit to the City Engineer, or her or his designee, for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed or conditioned. City review shall only concern matters related to the interest of the City as set forth in City ordinances.
- e) The Video Service Provider shall cooperate promptly and fully with the City and take all measures necessary to provide accurate and complete

information regarding the nature and locations, both horizontal and vertical, of its facilities located within right-of-way when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of the Video Service Provider, without expense to the City, its employees, agents, or authorized contractors. The Video Service Provider shall designate an agent to provide the City with timely information when required by City ordinance.

- f) As reasonably necessary, the Video Service Provider shall relocate or adjust any Facilities located in the Right-of-way for a Public project within a reasonable time. Such relocation or adjustment shall be performed by the Video Service Provider at its sole expense, without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to the rules and regulations of the City not inconsistent with this Agreement pertaining to such. The Video Service Provider shall cooperate with all private citizens and businesses requiring the Video Service Provider to move Facilities. For projects which are not Public improvements, Video Service Provider may charge reasonable fees for the temporary removal of Facilities according to a written schedule established by the Video Service Provider.
- g) It shall be the sole responsibility of the Video Service Provider to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage. If the Video Service Provider fails to accurately or timely locate facilities when requested, the Video Service Provider has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way, except to the extent such harm or damage is caused by such party's negligent or intentional conduct. City and its authorized contractors agree to take reasonable precautionary measures, including, but not limited to, calling for utility locations and observing marker posts, when working near Video Service Provider facilities.
- h) Except in the event of an emergency, the Video Service Provider shall notify the City not less than ten (10) days in advance of any construction, reconstruction, repair or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. Except in the event of an emergency, no such closure shall take place without such notice and prior authorization from the City.

In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work within the right-of-way, the Video Service Provider shall erect and maintain signs and other devices as required by City ordinances, regulations and rules.

- i) All technical standards governing construction, reconstruction, installation, operation, testing use, maintenance, and dismantling of the facilities in the right-of-way shall be in accordance with applicable present and future federal, state and City law and regulations.

- j) Notwithstanding any other provision of this Agreement, excavation of sidewalks and street pavements are prohibited. Video Service Provider shall perform street and sidewalk crossings by boring, in accordance with City policies and specifications. The City shall review and approve street and sidewalk crossing plans in advance. Cement, asphalt and other pavement cuts are prohibited.
- k) The authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.
- l) Nothing in this agreement shall be interpreted as granting a provider the authority to construct, maintain, or operate any facility or related appurtenance on property owned by a city outside of the public right-of-way.
- m) In addition, the agreement between the City and the Video Service Provider are subject to the statutory requirements of K.S.A. 17-1902 (a) through and including (p) and amendments thereto. The Indemnification and Hold Harmless requirements provided in Section 13 of the agreement shall be applicable to this agreement.

Section 4. Street Tree Ordinance. The Video Service Provider shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas) and amendments thereto, in the care, pruning, trimming, and removing of trees located in or on the City right-of-way.

Section 5. Location of Underground Equipment and Facilities. The Video Service Provider equipment shall be placed underground as required by City ordinances, including Chapter 5, Article 19 of the Code of the City of Lawrence, and amendments thereto. Where underground construction is made, the equipment and any necessary trenching shall be installed and maintained or provided by the Video Service Provider in accordance with the ordinances of the City without expense to the City. Nothing in this agreement prevents the Video Service Provider from co-locating on existing above-ground facilities with the owners permission. Wireless Video Service Provider equipment may be allowed above-ground in the City right-of-way with the permission of the City. Such approval shall not be unreasonably withheld.

Section 6. Fees. The Video Service Provider shall pay to the City the following fees:

- a) The fees for the use and occupancy of the public right-of-way pursuant to City ordinance and/or K.S.A. 17-1902(n).
- b) The video service provider fee pursuant to K.S.A. 2008 Supp. 12-2024 and amendments thereto, upon the City's written request.

Section 7. Sharing of Space. The City encourages the conservation of Right-of-way by the sharing of space by all utilities. To the extent required by federal or state law, the Video Service Provider shall permit any franchised entity by appropriate contract or

agreement negotiated by the parties to use any and all Facilities constructed or erected by the Video Service Provider. All agreements and installations shall be subject to all existing and future Ordinances and regulations of the City. Video Service Provider agrees that it will not grant any entity rights to occupy the Right-of-way without providing notice to the City.

Section 8. Technical Requirements for Video Service. The video service provided hereunder shall at all times be operated and updated, as needed, so that at a minimum, it is conformance with all applicable and current federal, state and local technical specifications and standards, including but not limited to, technical specifications contained in FCC rules and regulations, or any other applicable law which may supersede such rules. As a supplement to the technical standards, the Video Service Provider shall operate the system in a manner to provide to all subscribers video and audio signals of consistently good quality.

Section 9. Video Service Standards. The Video Service Provider shall provide service standards which comply, at a minimum, with Video service standards required by the State and the FCC.

Section 10. Technical Requirements for Video Service. The video service provided hereunder shall at all times be operated and updated, as needed, so that at a minimum, it is conformance with all applicable and current federal, state and local technical specifications and standards, including but not limited to, technical specifications contained in FCC rules and regulations, or any other applicable law which may supersede such rules. As a supplement to the technical standards, the Video Service Provider shall operate the system in a manner to provide to all subscribers video and audio signals of consistently good quality.

Section 11. Access to Information and City Audit regarding Video Service Provider Equipment, Facilities and Revenues. At the request of a municipality, no more than once per year, the municipality may perform a reasonable audit of the video service provider's calculation of the video service provider fee.

Section 12. Poles. Nothing in this Agreement shall be construed to require or permit any telephone, electric light or power wire attachments by either the City or the Video Service Provider on the poles of the other. If such attachments are desired by the City or the Video Service Provider, a separate agreement shall be prerequisite to such attachments. Video Service Provider shall not install, construct or erect poles or other above-ground facilities without the City's prior approval. Such approval shall not be unreasonably withheld.

Section 13. Indemnification and Hold-Harmless. The Video Service Provider, its successors and assigns, shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the

negligence of Video Service Provider, any agent, officer, director, representative, employee, affiliate or subcontractor of Video Service Provider, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

Video Service Provider or City shall promptly advise the other in writing of any known claim or demand against Video Service Provider or the City related to or arising out of Video Service Provider's activities in the Public right-of-way.

Section 14. Transferability of Agreement. The certificate of video service authorization issued by the state is fully transferable to any successor in interest to the applicant to which it is initially granted. A notice of transfer shall be filed with the state corporation commission and any relevant municipalities within 30 business days of the completion of such transfer.

Section 15. Conditions of Agreement. This Agreement is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Video Service Provider's control. This Agreement shall not be exclusive.

Section 16. Other Agreements. Video Service Provider agrees that the City may grant to other video service providers one or more agreements to provide Video Service.

Section 17. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Manager, P.O. Box 708, 6 East 6<sup>th</sup> Street, Lawrence, Kansas, 66044. For the purpose of this Agreement, notice to the Video Service Provider will be to: President, Community Wireless Communications Co., P.O. Box 3532, Lawrence, KS 66047. Notice will be effective upon delivery, by hand delivery or by first class mail to the above address until the City or the Video Service Provider notifies the other, in writing, of a change in address.

Section 18. Length of Agreement. This Agreement shall be effective until the Order Approving Application for Video Service Authorization (Exhibit 1) issued by the state expires, or is transferred, amended or revoked. The parties may amend this Agreement upon the mutual consent of both parties as evidenced in writing.

Section 19. Rights and Duties of Video Service Provider upon Expiration of Agreement. Upon expiration of this Agreement, whether by lapse of time, by agreement between the Video Service Provider and the City, or by forfeiture thereof, the Video Service Provider shall have the right to abandon in place, or, at Video Service Provider's option, remove from public property all of its facilities used in its business within a reasonable time after such expiration or forfeiture, but in such event, it shall be the duty of the Video Service Provider immediately upon such removal to restore the right-of-way from which said



facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

Section 20. Insurance Requirement and Performance Bond

- a) During the term of this Agreement, Video Service Provider shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Video Service Provider elect to use the services of an affiliated captive insurance company for this purpose, Video Service Provider shall possess a certificate of authority from the Kansas Insurance Commissioner. Video Service Provider shall provide not less than the following insurance:
  - (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
  - (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Video Service Provider's operations under this Agreement.
- b) As an alternative to the requirements of subsection (a), Video Service Provider may demonstrate to the satisfaction of the City that it is self-insured and as such Video Service Provider has the ability to provide coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Video Service Provider, or alleged to so have been caused or occurred.
- c) Video Service Provider shall, as a material condition of this Agreement, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Video Service Provider shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- d) Video Service Provider shall as a material condition of this Agreement, prior to the commencement of any work, deliver to the City satisfactory evidence of a performance bond in the amount of \$20,000 payable to the City. The bond shall be used to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the public right-of-way and must be issued by a surety company authorized to transact business in the State of Kansas and satisfactory to the City Attorney in form and substance.


Section 21. Authorization. Each of the persons executing this Agreement on behalf of the respective Parties represents and warrants that they have the authority to bind the Party on behalf of whom they sign this Agreement, and that all acts requisite to the authorization to enter into this Agreement have been taken and completed.

Section 22. Governing Law. This Agreement shall be construed and enforced in accordance with, and governed by, the law of the State of Kansas.

Section 23. Severability. If any provision, section or subsection of this Agreement or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections, or subsections or applications of this Agreement which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the undersigned have caused this Video Service Provider Agreement to be executed as of August 7, 2009.

Community Wireless Communications, Co.

  
Joshua Montgomery, Board Chairman

STATE OF KANSAS                    )  
COUNTY OF DOUGLAS            )

BE IT REMEMBERED, that on this 7 day of August, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Joshua Montgomery, who is personally known to me to be the same persons who executed the within and foregoing instrument of writing and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Seal:



  
Notary Public

CITY OF LAWRENCE, KANSAS, a  
Municipal Corporation

\_\_\_\_\_  
David L. Corliss, City Manager

STATE OF KANSAS                    )  
COUNTY OF DOUGLAS            )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_ 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came David L. Corliss, City Manager, who is personally known to me to be the same person who executed the within and foregoing instrument of writing and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Seal: \_\_\_\_\_  
Notary Public