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3 CITY OF CUYAHOGA FALLS, OHIO

4  
5 ORDINANCE NO. 86 - 2012

6  
7 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER  
8 INTO A FRANCHISE AGREEMENT INCLUDING POLE  
9 ATTACHMENT RIGHTS WITH ONECOMMUNITY, INC.,  
10 AND DECLARING AN EMERGENCY.

11  
12 BE IT ORDAINED by the Council of the City of Cuyahoga Falls, County of Summit  
13 and State of Ohio, that:

14  
15 Section 1. The Mayor is hereby authorized to enter into a Franchise Agreement with  
16 OneCommunity, Inc., authorizing OneCommunity to use and occupy the City's public  
17 rights-of-way by installation and operation of various infrastructure for the purpose of  
18 providing wireline data transmission, data storage, and Internet access services to  
19 customers within the city, including pole attachment rights, substantially in the form of  
20 agreement now on file with the Clerk in Council File No. 86-2012.

21  
22 Section 2. Any other ordinances and resolutions or portions of ordinances and  
23 resolutions inconsistent herewith are hereby repealed, but any ordinances and  
24 resolutions or portions of ordinances and resolutions not inconsistent herewith and  
25 which have not previously been repealed are hereby ratified and confirmed.

26  
27 Section 3. It is found and determined that all formal actions of this Council  
28 concerning and relating to the adoption of this ordinance were adopted in an open  
29 meeting of this Council and that all deliberations of this Council and of any of its  
30 committees that resulted in such formal action were in meetings open to the public, in  
31 compliance with all legal requirements including Chapter 107 of the Codified  
32 Ordinances.

33  
34 Section 4. This ordinance is hereby declared to be an emergency measure necessary  
35 for the preservation of the public peace, health, safety, convenience and welfare of the  
36 City of Cuyahoga Falls, and provided it receives the affirmative vote of two-thirds of the  
37 members elected or appointed to Council, it shall take effect and be in force  
38 immediately upon its passage and approval by the Mayor; otherwise it shall take effect  
39 and be in force at the earliest period allowed by law.

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41  
42 Passed: 10-8-12

Mark Shary  
President of Council

Catherine J. Meacham  
Clerk of Council

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47  
48  
49  
50 Approved: 10/9/12

G. Robert  
Mayor

51  
52 9/24/12

FRANCHISE AGREEMENT  
BY AND BETWEEN  
CITY OF CUYAHOGA FALLS  
AND  
ONECOMMUNITY, INC.

THIS FRANCHISE AGREEMENT ("Agreement") is entered into as of this 16<sup>TH</sup> day of OCTOBER, 2012 by and between the CITY OF CUYAHOGA FALLS, OHIO ("City"), a political subdivision of the State of Ohio, having its principal offices at 2310 Second Street, Cuyahoga Falls, Ohio 44221, and ONECOMMUNITY, INC. ("Franchisee" or "Company") an Ohio not-for-profit corporation, having its principal offices at 800 West St. Clair Ave., Cleveland, Ohio 44113, pursuant to the authority of Ord. No. 86-2012, passed October 8, 2012

**WITNESSETH, THAT**

**WHEREAS**, the City of Cuyahoga Falls is the owner, in fee, of all real property within the corporate limits of the city that has been dedicated as Public Right-of-Way, including subsurface, surface and air space associated with such real property, and

**WHEREAS**, Article XVIII, Section 3 of the Ohio Constitution authorizes the City to determine how its property, including the Public Right-of-Way, shall be used, and authorizes the City to alienate interests in the Public Right-of-Way consistent with the public interest, and

**WHEREAS**, OneCommunity, Inc. has requested permission of the City to install, operate and maintain a fiber optic communications system that would encroach into various portions of the City's Public Right-of-Way, and

**WHEREAS**, the City is authorized to grant such permission by Article XII, Section 6 of the Cuyahoga Falls City Charter, and

**WHEREAS**, Article XII, Section 6 of the Cuyahoga Falls City Charter requires that such permission be granted by way of an instrument denominated as a Franchise, and

**WHEREAS**, the public interest, convenience and necessity will not be harmed by the grant of such permission, subject to the terms and conditions of this Agreement,

**NOW, THEREFORE,**

In consideration of the foregoing preamble, the mutual covenants and agreements contained herein, and other good and valuable consideration, the City hereby grants a franchise to OneCommunity, Inc. on the following terms and conditions:

**1. DEFINITIONS**

- 1.1 "Affiliate" means a) any corporation, partnership, limited liability company, or other legal entity that, with the Company, is under common control of another individual, corporation, partnership, limited liability company, or other legal entity, b) any corporation, partnership, limited liability company, general partner, joint venture partner, member, director, officer, or other entity holding or exercising

control or a controlling interest in the Company, c) any entity that is wholly owned by the Company either directly or through intermediate entities or in which the Company maintains control or a controlling interest, and d) the ultimate parent entity of the Company and/or any intermediate entities maintaining control over, or a controlling interest in, the Company.

- 1.2 "Agreement" or "Franchise" means this Agreement, together with the exhibits attached hereto or incorporated herein, and all amendments or renewals thereof.
- 1.3 "City" means the City of Cuyahoga Falls, Ohio, acting by and through its Mayor, the Mayor's designee, or other person authorized by the Council.
- 1.4 "Communications Services" means wireline Internet Protocol-based packet-switched optical or electronic data transmission, and does not include Telecommunications Services, Telephone Exchange Service, Exchange Access service, Multichannel Video Services as defined herein, or wireless communications services of any sort.
- 1.5 "Company" means OneCommunity, Inc., fka OneCleveland, Inc., an Ohio not-for-profit corporation.
- 1.6 "Construction" or "Construction Activity" means the physical installing, attaching, repairing, maintaining, replacing and removing new or replacement System Facilities in any portion of the Public Right-of-Way, including any associated excavation, traffic obstruction, or physical accessing of poles, conduits, conductors, cabinets, vaults, manholes, handholes, etc.
- 1.7 "Control" or "Controlling Interest" means the ability to influence or affect any actions, decisions, plans, projects, etc. of the Company in whatever manner exercised.
- 1.8 "Council" means the Council of the City of Cuyahoga Falls, its designee, or any successor thereto.
- 1.9 "Effective Date" means the effective date of this Agreement as entered on the signature page of this Agreement.
- 1.10. "Exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.
- 1.11 "Franchisee" means the Company or any lawful successor to the Company.
- 1.12 "Multichannel Video Services" means the offering of multiple channels of video programming, as defined in 47 USC §522(20), for purchase by subscribers or customers.
- 1.13 "Parties" means the City and the Company, collectively.
- 1.14 "Public Right-of-Way" means all real property owned by the City or which otherwise is under the control of the City and which has been dedicated for use

as public streets or ways, including the space above and below such property. Public Right-of-Way does not include: a) property owned by the City in its corporate capacity, or b) poles, conduits, or other fixtures or appurtenances, wherever located.

- 1.15 "System" means the System Facilities, collectively.
- 1.16 "System Facilities" means the physical plant and equipment installed, operated and maintained by the Company in order to facilitate the provision of Communications Services by the Company and that are used and useful in providing such service, but only to the extent such facilities are sited, or intended to be sited, in the Public Right-of-Way. System Facilities includes such physical plant and equipment installed in the Public Right-of-Way on the effective date of this Agreement.
- 1.17 "Telecommunications Services" means the offering of telecommunications, as defined in 47 USC §153(43), for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, through or by means of the System Facilities, but does not include Multichannel Video Services or wireless services of any description.
- 1.18 "Telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

## **2. GRANT OF AUTHORITY**

### **2.1 Grant of Authority**

The City hereby grants OneCommunity, Inc. ("Franchisee" or "Company"), a limited franchise to install, operate, maintain, remove and replace a communications system ("System") which will encroach into the City's Public Right-of-Way, for the purpose of providing Communications Services to customers within the City, including the authority to attach System Facilities to City-owned utility poles, subject to all of the terms and conditions set forth in this Franchise Agreement (hereinafter sometimes referred to as the "Franchise" or the "Agreement").

### **2.2 Acceptance and Guarantee**

Acceptance of the terms of this Franchise by the Franchisee shall be conclusively established by a writing reflecting the same, appended hereto, or by the continued presence of the System Facilities in the Public Right-of-way. If the Company is owned by or under the control of another entity, the ultimate parent of the Company (or another entity acceptable to the City) shall file with the City a Guarantee of the Company's obligations, in the form attached hereto as Exhibit "B", on or prior to the Effective Date,

which guarantees the performance, throughout the term of this Agreement, of each and every term, covenant, or condition imposed upon the Franchisee under this Agreement.

### 2.3 Territorial Scope

The grant made by this instrument to the Franchisee shall apply to all of the territory of the City of Cuyahoga Falls as it exists on the Effective Date. In the event the territory of the City is expanded by annexation or merger, this agreement and the terms contained herein shall apply to all such annexed territory, subject to any contrary provisions in the applicable merger or annexation agreement.

### 2.4 Limitations

This Franchise shall be construed to authorize the Company to use the Public Right-of-Way to install, operate, maintain, repair and remove the System Facilities for the purpose of providing Communications Services to customers within the City. Except as expressly provided for herein, use of the System to provide any product or service other than Communications Services as defined herein is subject to the approval of the City as may be required by the City Charter or Ordinances. No authority is provided by this Franchise for the installation or placement of any facilities not owned and operated by the Franchisee. Before any facilities not owned by the Franchisee are installed, the Franchisee shall cause the owner of the proposed facilities to separately obtain a franchise, permit or license therefor under the City's Charter and Ordinances. Use of the System for purposes other than the types authorized above is expressly outside the scope of the authority granted by this Franchise. Use of the System for purposes outside the scope of the authority granted by this Franchise may be deemed a material breach of the Franchise.

### 2.5 Effective Date and Term

This Franchise shall become effective on the date subscribed to by the parties below, and shall expire on the same date fifteen (15) years following the Effective Date.

## 3. GENERAL CONDITIONS

### 3.1 Nonexclusivity

Nothing in this Franchise shall affect the right of the City to grant to any person a Franchise, consent or right to occupy and use the streets or public rights-of-way, or any part thereof, for the construction, operation or maintenance of a communications system within all or a portion of the City.

### 3.2 Priority of Public Works

Nothing in this Franchise shall abrogate the right of the City to perform any public work or public improvement of any description, including, without limitation, all work authorized by applicable law. In the event that the System interferes with the construction, operation, maintenance or repair of any such public work or public improvement, the Franchisee, after reasonable notice from the City, shall, at its own cost and expense, promptly protect, alter or relocate the affected portion of the System, or any part thereof.

### 3.3 No Waiver of Regulatory Authority

Except as expressly stated herein, nothing in this Franchise shall be construed as a waiver of any code or ordinance of the City or the City's right to require the Franchisee or any person using the System to secure all appropriate Franchises or authorizations for such use.

### 3.4 Compliance with Laws

The Franchisee shall comply with: (i) all applicable laws and all requirements of the State of Ohio, and any other federal or State agency or authority of competent jurisdiction; (ii) all local laws, rules, regulations, and all orders or other directives of the City issued pursuant to the police powers of the City; and (iii) all rules, regulations, and all other directives of the City issued pursuant to this Franchise, provided that any such rules, regulations, orders or directives issued pursuant to this Franchise shall be consistent with the provisions hereof.

### 3.5 Franchise Revocable

This Franchise may be revoked by the City Council in accordance with the provisions hereof.

### 3.6 Rights Upon Termination

The termination, expiration, or revocation of this Franchise shall not operate as a waiver or release of any obligation of the Franchisee or any other person, as applicable, arising pursuant to this Franchise prior to such termination. All such obligations shall survive the termination, expiration, or revocation of this Franchise.

### 3.7 Renewal

The Franchisee may apply for a replacement Franchise, but such application shall be submitted at least two (2) months, and not more than six (6) months prior to the expiration date of this Franchise.

## 4. TRANSFERS AND HYPOTHECATIONS

### 4.1 Restrictions Against Transfers

This Franchise is a privilege to be held in personal trust by the Franchisee. Except as provided in this Section 4, neither the Franchise nor any rights or obligations of the Franchisee in or pursuant to the Franchise, nor the System Facilities, shall be transferred in part or as a whole, by assignment, trust, mortgage, lease, sublease, pledge or other hypothecation, and neither shall be sold, transferred, leased, assigned, or disposed of in part or as a whole, by sale, merger, consolidation, divestiture, public offering, or otherwise, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any person, nor shall a change in control of the System occur, either by act of the Franchisee, by operation of law or otherwise, without the written consent of the City, which consent shall not be unreasonably withheld or delayed, but which may be conditioned as described in Section 4.4. The grant or waiver

of any one or more of such consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any such consent constitute a waiver of any other rights of the City to performance of the Agreement.

#### 4.2 Effect of Unauthorized Action

The taking of any action without the City's consent, if required hereunder, shall be deemed a material event of default under this Franchise, and shall render the Franchise subject to revocation by Council.

#### 4.3 Exceptions

Nothing contained in this Section 4 shall be deemed to prohibit or require City approval of any assignment, pledge, mortgage, other security interest, or other transfer or hypothecation of all or any part of the stock of (or other evidence of ownership) or assets (not including the Franchise) of the Franchisee, for securing an indebtedness, provided that each such assignment, pledge, mortgage, other security interest, or other transfer or hypothecation shall be subject to this Franchise, or applicable law.

#### 4.4 Scope of Review and Procedure

The Company shall promptly notify the Mayor and the Clerk of Council in writing of any action or proposed action requiring consent of the City pursuant to this Section 4. Within thirty (30) days after receipt of such notice, the City may request and the Company shall provide any supporting documentation as requested. It is agreed that any inquiry of the City under this section shall be limited to investigation of the factors necessary to establish the compliance, corporate identity and transfer conditions listed below. Any confidentiality concerns regarding the City's request for supporting documentation shall be handled in accordance with Section 5.3. The Mayor or his designee shall conduct a review of the request for consent and supporting documentation and, within thirty (30) days after receipt of all documentation requested, shall either grant or deny the City's consent. Consent shall be granted if all of the following conditions are complied with:

- a) The transferor 1) is in compliance with all of the terms and conditions of the Franchise as of the date of the request for consent, 2) brings itself into compliance during the pendency of the request for consent, or, 3) if corrective action cannot reasonably accomplished in that time frame, agrees in writing, along with the transferee, to cure any breach or noncompliance in a reasonable, specified period of time.
- b) The transferee and the ultimate corporate parent of the transferee, if any, agree to abide by and fulfill, and to guarantee the performance of (as applicable), the terms and conditions of the Franchise.
- c) The transferee has submitted evidence of insurance and, if required, a performance bond in conformance with the requirements of the Franchise, and the same has been approved as to form by the City's Director of Law.

If any of the foregoing conditions are not complied with in the manner specified, the request for consent may be denied.

An instrument reflecting the grant of the City's consent shall be drafted and such instrument shall incorporate the status of the conditions mentioned above as well as detail any compliance arrangements which have been agreed to. The consent document with conditions shall be attached to and incorporated as if fully rewritten into this Agreement, and all representations and commitments contained therein shall be deemed material to this Agreement.

## **5. SYSTEM REQUIREMENTS**

### **5.1 Construction**

Upon request of the City, Franchisee shall supply the City with actual "as-built" maps reflecting the final construction features of the Communications System throughout the City's Public Rights-of-Way. The "as-built" maps shall be produced and supplied on paper or Mylar to a scale no smaller than 1"=100', and shall identify and detail the locations of all distribution poles, guy poles, pole identification numbers, underground conduits, conductors, pole attachments, manholes, handholes, cables, pedestals, termination boxes, or other discreet elements used in or attached to the System, whether owned by the Company or another party.

### **5.2 Investigations and Inspections**

Upon written request of the City, the Franchisee shall promptly submit to the City any information regarding the Communications System, in such form and containing such detail as may be specified by the City, which may reasonably be required to establish the Franchisee's compliance with this Agreement, assist the City with its planning functions, or regulate in interest of the public health, safety and welfare. The Franchisee and each of its Affiliates shall comply fully and faithfully with any lawful investigation, audit or inquiry conducted by the City or its agents. The City or its agents shall be entitled to inspect any portion of the Communications System sited in the Public Right-of-Way for any of the purposes mentioned herein. The Franchisee will cooperate in providing access to all Communications System facilities and to any location on private property necessary to access such facilities or otherwise effect the inspection. Upon seven (7) days advance notice by the City to the Franchisee of any inspection, the Franchisee shall provide employees to accompany any City inspection forces and to provide access to locations requested.

### **5.3 Confidentiality**

No claim of confidentiality or proprietary nature of information or documentation shall excuse the Franchisee from its duty to provide maps, information or documentation requested by the City. If the Franchisee believes that information or documentation required by the City is proprietary or otherwise confidential, the Franchisee may request that the City hold such material in a confidential manner. Any material submitted under a confidentiality request shall be clearly marked as confidential. The City shall keep such material confidential and shall refrain from disclosing the contents of such material to any third parties or to any employee of the City without a reasonable need to have access to such material. In the event of a request from a third party for access to confidential material, the City will provide the Franchisee with ten (10) days notice before acting on such request. During such time period, the Franchisee may seek legal process



to prevent disclosure of confidential information by the City. If the Franchisee fails to act within the ten (10) day period, the City may take any action it deems appropriate or necessary with regard to the confidential materials, without further obligation or liability to the Franchisee. Provided the City complies with the above procedures, the Franchisee shall indemnify and hold the City harmless, in any litigation concerning the disclosure of records held by the City under this Agreement, against any claims for damages, costs, attorneys' fees or money liability of any sort whatsoever.

#### 5.4 Notice of Construction

Except in cases of emergency (and unless otherwise regulated by the City's ordinances), the Company shall provide the City with 48 hours advance written notice of any Construction Activity, and shall provide the City with the names, addresses, and telephone numbers of all contractors and subcontractors that engage in any Construction Activity on the Company's behalf in the Public Right-of-Way. All such communications shall reasonably describe the nature of the Construction Activity, with particular attention to the extent (number and location of poles, lane miles of streets, etc) and duration (number of hours, day, weeks, etc.) of the work to be done.

#### 5.5 Joint Planning

Upon request of the City, the Franchisee shall meet with representatives of the City, no more often than twice in any calendar year, to discuss, in a non-binding manner, the plans of each organization to conduct significant new construction in the following year. The Company shall use its best efforts to coordinate its construction plans with those of the City in order to minimize disturbance to streets, optimize opportunities to build joint-use facilities, and minimize the cost of relocating overhead facilities to underground installation. At a minimum, if new construction is planned by the Franchisee which has not been disclosed to the City in a meeting held pursuant to this Section, then the Franchisee shall provide thirty (30) days advance written notice to the City of any new construction. As used in this Section, "new construction" means the non-emergency installation of any new utility poles, new conduits, new termination boxes or other at-grade facilities, or new or replacement cabling.

#### 5.6 Quality of Work

Throughout the term of this Franchise, the Franchisee shall Construct, install, operate, and maintain the Communications System in a manner consistent with all laws, ordinances, and construction standards of the City. All work involved in the Construction, operation and maintenance, repair and removal of the System shall be performed with due diligence and using materials of good and durable quality.

#### 5.7 Safety

The Franchisee shall, at its own cost and expense, take all necessary efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, and security personnel and, at night, suitable and sufficient lighting, all consistent with the Ohio Manual of Uniform Traffic Control Devices. The Franchisee, and the Franchisee's installations, shall at all times comply with the provisions of the National Electrical Safety Code and/or such other standards as are incorporated or promulgated by the City. The Franchisee shall participate in the Ohio Utilities Protection

Service or other "one-call" service designed to alert other utilities of its activities in the Public Right-of-Way.

#### 5.8 Street Work and Restoration Standards

In connection with the Construction, operation, maintenance, repair, or removal of the Electric Distribution System, the Franchisee shall, at its own cost and expense, protect any and all existing structures belonging to the City. The Franchisee shall obtain the prior approval of the City before altering any City-owned electric, water, sewer, or gas facility, or any other municipal structure in any portion of the Public Right-of-Way. Any such alteration shall be made by the Franchisee, at its sole cost and expense, and in a manner reasonably prescribed by the City. The Franchisee shall also be liable, at its own cost and expense, to replace or repair and restore any street or any municipal structure involved in any Construction Activity that may become disturbed or damaged as a result of any work thereon by or on behalf of the Franchisee. All streets, sidewalks, curbs or other pavements shall be restored in accordance with any pavement engineering standards promulgated by the City. Upon failure of the Franchisee to commence, pursue or complete any repair or restoration work required of it by law or by the provisions of this Agreement in any portion of the Public Right-of-Way, the City, at its option, may cause such work to be done and the Franchisee shall pay to the City the cost thereof in the itemized amounts reported by the City to the Franchisee, within thirty (30) days after receipt of such itemized report.

#### 5.9 No Vested Rights

This Agreement shall be construed to authorize the Franchisee to use the Public Right-of-Way in order to site and operate the Communications System, but shall not be construed to grant the Franchisee any vested rights with respect to any particular location or facility. The Franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate in the same street, relocate underground, or remove from any street any facility or structure of the System when required by the City, by reason of traffic conditions, traffic safety, pedestrian hazards, public safety, street vacation, street construction or realignment, undergrounding of overhead utilities, or any public improvement or activity, provided that the Franchisee shall in all such cases have the privileges and obligations as to abandonment of System facilities in place which are provided in Section 5.10 herein.

#### 5.10 Removal or Abandonment

In the event the use of the Communications System or any discreet portion thereof (including, but not limited to, idle poles, cables, conduits, pedestals, electronics, termination boxes, service drops, at-grade facilities, etc.) is permanently discontinued or abandoned, or upon the expiration, revocation or other termination of this Franchise, the Franchisee shall remove, at the Franchisee's own expense, all affected portions of the System from the Public Right-of-Way, other than any such portions which the City may affirmatively permit to be abandoned in place. No idle or abandoned facilities shall be sold, leased, or otherwise transferred in place or used by third parties for any purpose without the written consent of the City. System facilities to be abandoned in place shall be abandoned in such manner (e.g., after environmental remediation) as the City shall prescribe. Upon abandonment of any System facilities in-place, the Franchisee shall

submit to the City an instrument, satisfactory to the City's Director of Law, transferring to the City the ownership of such facilities.

## **6. POLE ATTACHMENTS**

### **6.1 Authority**

The Franchisee shall be permitted to attach System Facilities to City-owned utility poles in accordance with the following terms and conditions.

### **6.2 Application and Make-Ready Work**

The Franchisee may make attachments only after application therefor is made and approved by the Electric Department, and the Electric Department certifies that the pole or poles are ready for attachment. To the extent the pole or poles need to be prepared for the attachment, the Electric Department shall perform such work and the Franchisee shall pay, upon invoice, the Electric Department's regular charges for such work. The Franchisee shall not attempt to perform its own make-ready work. If make-ready work appears inadequate when attachments are installed, the Franchisee shall immediately report the same to the Electric Department and allow the Electric Department to make corrections if necessary. Invoices for make-ready work shall be due thirty (30) days after issuance, and shall be subject to late-payment charges and other conditions set forth in Sections 8.3 through 8.5.

### **6.3 Attachment Criteria**

- (a) The attachment of more than two (2) cables to a single attachment or the overlashing of more than one (1) cable to another cable is prohibited unless an exemption is granted pursuant to Subsection (k).
- (b) Optical fiber cable shall not be mixed and bundled together with metallic wire cables and coaxial cables and shall not be overlashed one over the other on any cable. If an optical fiber and metallic wire or coaxial cable mix is required to create a single distribution and backbone system functionality, Franchisee shall clearly separate the fiber cables from the metallic wire and/or coaxial cables.
- (c) Each cable with a diameter greater than two (2) inches shall be treated as a double attachment.
- (d) Franchisee's use of City-owned poles shall be confined to supporting the System Facilities. There shall be no attachments for the purpose of grounding Franchisee's System Facilities to the City's power distribution system ground wires.
- (e) Franchisee shall complete the installation of System Facilities on City-owned poles covered by each approved individual application within ninety (90) days from the date of application approval unless Franchisee has obtained the Electric Department's prior written authorization for an extension. In the event Franchisee fails to complete the installation of the attachment within the prescribed time limit, unless Franchisee has

received authorization for an extension, the permission granted by approved application shall be revoked, and re-application will be necessary before further attachments may be made.

- (f) Franchisee may at any time remove Equipment from any City-owned poles and, in each case, Franchisee shall immediately give the Electric Department written notice of such removal in the number of copies and in the form prescribed by the Electric Department. All poles shall be returned to pre-attachment status. Removal of System Facilities from any City-owned pole shall constitute a termination of Franchisee's right to use such pole.
- (g) Franchisee shall, within sixty (60) days after written notice from the Electric Department, relocate, replace, or renew an attachment or transfer it to replacement poles, or perform any other work in connection with the System Facilities that may be required by the Electric Department, provided, however, that in cases of emergency, or if Franchisee fails to comply with the sixty (60)-day notice provision set forth above, the Electric Department may relocate, replace, or renew the Equipment, transfer it to replacement poles, or perform any other work in connection with Franchisee's System Facilities that may be required in the maintenance, replacement, removal, or relocation of said poles or the facilities thereon or which may be placed thereon, or for the service needs of the Electric Department. All work shall be done at Franchisee's sole risk and expense.
- (h) Franchisee shall provide a toll free number and be available to Electric Department employees twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the System Facilities.
- (i) In order to keep the number of poles on public thoroughfares and elsewhere to a practicable minimum, Franchisee agrees not to erect any pole of its own in or near any location where the Electric Department is willing to accommodate Franchisee's System Facilities or to provide a City-owned pole adequate to accommodate Franchisee's needs. Franchisee further agrees not to erect any pole of its own near an existing Electric Department pole until the Department has notified Franchisee within ninety (90) days following Franchisee's request that it is unwilling to accommodate Franchisee's attachment. Franchisee also agrees not to erect any poles of its own where no poles exist until the Electric Department has notified Licensee within ninety (90) days of Licensee's request that the Department does not desire to erect City-owned poles in that location.
- (j) In the event the Electric Department determines that Franchisee has installed unauthorized equipment, the Electric Department shall notify Franchisee of the unauthorized attachments. Franchisee shall make an application to correct the unauthorized attachments pursuant to Section 6.2 within ninety (90) days after notification from the Electric Department.

If Franchisee does not make an application within said period, Franchisee shall be in default of this Franchise Agreement.

- (k) To receive an exemption to any item listed in this Section 6.2, Franchisee must apply in writing and satisfactorily demonstrate to the City that the exemption is an essential system operational complement creating a single distribution and backbone system.

### 6.3 Responsibilities of Franchisee

All attachments made or maintained by Franchisee on City-owned poles shall be in accordance with written applications and plans submitted to and approved by the City's Electric Department. All attachments shall be identified in Exhibit A, Pole Attachment Schedule, attached hereto and incorporated herein by this reference. Exhibit A may be updated from time to time. All attachments shall be made in strict conformity with the standards and regulations prescribed by the Electric Department. All accommodations made for Franchisee shall be at the sole risk and expense of Franchisee. The City shall not be liable to Licensee for any interruption to Franchisee's service or for any interference with the operation of Franchisee's Equipment arising in any manner from the use of City-owned Poles or the facilities thereon.

### 6.4 Compensation and Payment Conditions

Franchisee shall pay the following amounts for the privilege of placing and continuing of use of Franchisee's Licensee's Equipment on Department Poles: \$23.00 per attachment per year, payable quarterly in accordance with Section 8.1 and prorated by month. The payment conditions contained in Sections 8.3 through 8.5 shall apply to payments for pole attachments. Pole attachment fees (but not fees for make-ready work) for poles listed in Exhibit "A" and made during the Company's initial build-out shall be waived in accordance with and subject to Section 8.2. Pole attachment fees for attachments not identified in Exhibit "A" and not made during the Company's initial build-out shall not be waived. The City shall endeavor to invoice the Franchisee on a quarterly basis for the actual number of attachments in use, but in the event such invoice is not issued, the Franchisee shall pay the quarterly charge as an estimate based upon the prior quarter's number of attachments in use. The actual number of attachments in use may be trued-up by the City pursuant to audit, and the Franchisee shall pay the actual amount, trued-up, in arrearage. No penalties or interest otherwise provided for in this Agreement shall apply to trued-up pole attachment charges where the City has not provided a timely invoice.

## **7. PERFORMANCE BOND OR SUBSTITUTE INSTRUMENT**

7.1 The Franchisee shall obtain, maintain and file with the City, on or before the Effective Date of this Franchise, a performance bond or substitute instrument, either of which must be issued by a corporate surety authorized to do business in the State of Ohio, have the approval of the Director of Law, and be acceptable to the City. (The terms "surety" and "corporate surety" shall be deemed to mean a surety issuing such a bond or any other entity issuing a substitute instrument.) Such bond or substitute instrument shall guarantee the compliance with any one or more of the provisions of this Franchise and the safeguarding against damage to public or private property and the

restoration of any damaged property. Such bond or substitute instrument shall be maintained in the amount of (\$\_\_\_\_\_,\_\_\_\_\_.00 ) throughout the term of the Franchise.

If, at any time during the term of this Franchise, the condition of the corporate surety shall change in such manner as to render the bond or substitute instrument unacceptable to the City, the Franchisee shall replace such bond or substitute instrument with a bond or substitute instrument of like amount and similarly conditioned, issued by a corporate surety satisfactory to the City.

The bond or substitute instrument shall contain the following provisions: "It is hereby understood and agreed that this bond [or substitute instrument] may not be canceled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent to cancel or not to renew."

The bond or substitute instrument shall further provide that there shall be recoverable by the City, jointly and severally from the franchisee and surety any and all damages, losses or costs--up to the full amount of the bond or substitute instrument--suffered by the City resulting from: (i) any loss or damage to any municipal structure or property during the course of Construction of the System; (ii) the removal of all or any part of the System from the public ways and streets; and (iii) any other act for which this Franchise allows the City to mandate a withdrawal of funds from the bond or substitute instrument. This paragraph, however, shall not limit the Franchisee's liability to the maximum amount of the bond or substitute instrument and shall not preclude the City from recovering additional amounts from the Franchisee, to the extent the City's damages, losses, or costs exceed the amount of the bond or substitute instrument.

If the Franchisee fails: (i) to make any payment required by this Franchise within the time fixed herein; (ii) to pay to the City, within ten (10) working days after receipt of written notice, any taxes or liens relating to the System that are due and unpaid; (iii) to pay to the City within ten (10) working days after receipt of written notice from the Director of Law, any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any material act or violation by the Franchisee; or (iv) to comply, within ten (10) working days after receipt of written notice from the Mayor or his designee, with any material provision of this Franchise which the Mayor or his designee reasonably determines can be remedied by an expenditure of an amount from the bond or substitute instrument; then the Mayor or his designee may order the withdrawal of the amount thereof from the bond or substitute instrument for payment to the City, provided that, prior to each such withdrawal: (i) the Franchisee shall be afforded an opportunity to cure any of said failures within thirty (30) days after written notice from the Mayor or his designee that the withdrawal is to be made, or (ii) if such cure cannot be reasonably accomplished within such thirty (30) days, then the Franchisee shall have a reasonable time to cure, provided that the Franchisee commences such cure within such thirty (30) days and diligently pursues such cure to completion.

Throughout the term of this Franchise, the Franchisee shall maintain the bond or substitute instrument in the amount specified in this Section 7.1. Within ten (10) business days after receipt of notice from the Mayor or his designee that any amount has been withdrawn from the bond or substitute instrument, as provided in this Section, the Franchisee shall replace the bond with an equivalent bond or restore the substitute instrument to the then applicable amount specified in this Section, provided, however,

that said replacement or restoration obligation shall be suspended during the period of any judicial challenge by the Franchisee to the propriety of said withdrawal from the bond or substitute instrument. If it is determined that said withdrawal by the City is improper, the City shall restore to the bond or substitute instrument by an amount equal to the improperly withdrawn amount.

No action, proceeding, or exercise of a right with respect to such performance bond or substitute instrument shall affect any other right which may be held by the City; and the faithful performance by and the liability of the Franchisee pursuant to this Franchise shall not be limited by the acceptance of the bond or substitute instrument required by this Section 7.1.

## **8. PAYMENT OBLIGATIONS**

### **8.1 Compensation**

In order to compensate the City for the burden of private occupation of its Public Right-of-Way, the increased maintenance and repair expenses associated with private occupation of the Public Right-of-Way, and the increased costs of supervision thereof, a fee for the use and occupation of the Public Right-of-Way by the Franchisee is hereby imposed ("Franchise Fee"). Franchisee shall pay to the City, on a quarterly installment basis, a Franchise Fee in an amount equal to Two Thousand Five Hundred Dollars (\$2,500.00) per month (\$7,500 per quarter). The Franchise Fee shall be paid quarterly to the City throughout the term of the franchise, not later than thirty (30) days after the end of the calendar quarter to which the payment applies. The Franchisee shall continue to pay the annual Franchise Fee periodically during the term of this Franchise. Failure to comply with any of the payment obligations set forth in this Section shall render the Franchise revocable, in accordance with the procedure set forth herein.

The Franchise Fee is not a tax and shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges, including pole attachment fees, which the Franchisee shall be required to pay to the City, or to any State or federal agency or authority, as required herein or by law. The payment of said taxes, fees or charges shall not constitute a credit or offset against the Franchise Fee, all of which shall be separate and distinct obligations of the Franchisee.

Acceptance of any payment made by the Franchisee pursuant to this Agreement shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable.

It is understood that payment terms for pole attachment fees are subject to the provisions of Sections 8.2 through 8.5 of this Agreement.

### **8.2 Fee Waiver**

The Franchise Fee shall be waived during construction of the System. The Franchise Fee and Pole Attachment Fees associated with attachments identified in Exhibit "A" shall further be waived for any calendar month during which the Franchisee provides Internet Access services to the City at a point or points of presence designated by the City,

provided such Internet Access service meets or exceeds a data transmission rate of 50 megabits per second with a reliability of not less than 99% availability.

### 8.3 Interest on Late Payments and Deficiencies

In the event any payment required under this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, then an interest charge shall accrue thereon from the due date until full payment is received, at an annual rate of 600 basis points (6%) above the Federal Discount Rate; provided, however, that if the delinquent payment is made in full within 45 days after the due date, the interest due on such delinquent payment shall be two percent (2%) of the amount of the payment. Interest payments shall be deemed due on the same date the late payment is received. The City and the Company agree that this interest charge represents a fair and reasonable estimate of the damages which the City would suffer from such failure and further agree that the actual damages which the City would suffer in such event are incapable of ascertainment. For the purposes of this Section, a deficiency discovered by the City in an audit shall be deemed a late payment and shall bear interest from the date the payment or payments were originally due until the audit finding is paid.

### 8.4 Payment Terms

All payments by the Franchisee to the City pursuant to this Franchise shall be made payable to the City of Cuyahoga Falls and deposited with the City's Director of Finance.

### 8.5 Remedies for Non-Payment

In the event that any payment required by this Franchise, including an interest payment, is not actually received by the City on or before the applicable date fixed in this Franchise, and such non-payment is not cured within ninety (90) days, then: a) the City may call the Performance Bond to obtain such payment, and/or b) the City Council may revoke the Franchise in accordance with the provisions of Section 11.3.

## 9. OVERSIGHT

### 9.1 Inspections

The City may, upon reasonable notice to the Franchisee, conduct any inspection it deems necessary of the portion of the System sited in the Public Right-of-Way, for the purpose of ensuring compliance with the terms of this Franchise. The Franchisee will cooperate in providing access to all such portions of the System, and to any other location on private property necessary to access the System or otherwise effect the inspection.

### 9.2 Notices

The Franchisee shall maintain an address on file with the City. Notices to the Franchisee shall be addressed or delivered to the Franchisee at said address. Failure of the Franchisee to maintain a good address with the City shall result in a waiver by the Franchisee of any claim that the City has failed to provide required notice on any matter whatsoever. Notices to the City required by law or by this Franchise shall be delivered in person or by first class, receipted mail or certified mail as appropriate, to:



City of Cuyahoga Falls  
Mayor  
2310 Second Street  
Cuyahoga Falls, Ohio 44221,

not less than ten (10) business days prior to the day on which the party giving such notice shall commence any activity which requires the giving of notice. In computing business days, Saturdays, Sundays and holidays recognized by the City shall be excluded. All required notices shall be in writing.

## **10. LIABILITY AND INSURANCE**

### **10.1 Indemnification of City**

Excepting claims arising out of the active negligence or willful misconduct of the City or its officers and/or employees acting within the course and scope of their employment, the Franchisee undertakes and agrees to defend, indemnify and hold harmless the City and any and all of the City's Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including the Franchisee's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the installation or operation of the System by or on the part of the Franchisee or sub-contractor of any tier.

### **10.2 Insurance Requirement**

Without limiting the Franchisee's indemnification of the City pursuant to Section 10.1 herein, the Franchisee shall provide and maintain, at its own expense, continuously during the terms specified below, the insurance listed in Sections 10.3-10.4 herein, covering installation or operation of the System, commencing no later than the effective date of this Franchise and subject to the following conditions:

The City shall be named as an additional insured in all insurance policies. The City shall be named Loss Payee as its Interest may appear in all required property fidelity and surety coverage.

Evidence of insurance shall be submitted to the Director of Law for approval prior to commencement of any operations under this Franchise, which approval shall not be unreasonably withheld. With respect to the interests of the City, such insurance shall not be canceled, reduced in coverage or limits, or non-renewed except after thirty (30) days written notice, by hand delivery or certified mail, has been given to the Mayor.

### **10.3 General Liability**

The Franchisee shall provide insurance with combined single limits of \$1,000,000 per occurrence for Bodily Injury and Property Damage. Such insurance must include: premises and operations, completed operations, contractual liability, independent contractors and, during the course of construction, collapse and underground hazards.

#### 10.4 Automobile Liability

The Franchisee shall provide insurance with combined single limits of \$1,000,000 per occurrence, for Bodily Injury and Property Damage, including coverage for owned automobiles, non-owned automobiles, and hired automobiles.

### **11. DEFAULT, REMEDIES, REVOCATION AND RELATED RIGHTS**

#### 11.1 Events of Default

Any failure of the Franchisee to comply with any material provision of this Agreement shall be deemed an event of default under this Agreement. The following events are material events of default under this Agreement and, for the purposes of Section 7.1 above, define material provisions of this Franchise (in addition to the events specifically set forth in Section 7.1) for which resort to the Performance Bond or other instrument is a remedy:

- a) Any failure to pay any Franchise Fee or other amount due and owing to City under this Agreement, including any assessment for interest or deficiency finding,
- b) Any failure to comply with any reasonable order or requirement of the City regarding the manner in which any Construction Activity is undertaken in the Public Right-of-Way, including, but not limited to, failure to obtain proper permits for construction and use of highest quality materials and workmanship,
- c) Any failure, after any Construction Activity, to restore any street, pavement, landmark, water main, power facility, sewerage or drainage system, or other municipal structure that has been damaged by Construction Activity, to engineering standards promulgated by the City, or to pay for same when performed by the City,
- d) Any failure to desist from providing services not authorized by this Agreement, installing or permitting the installation of facilities not owned by the Franchisee or allowing third parties to provide services by means of the System without first complying with the City's ordinances,
- e) Any persistent failure to follow established safety procedures in the construction, operation or maintenance of the System,
- f) Any failure or refusal to relocate the System or portions thereof without cost to the City, when necessary as referenced this Agreement,
- g) Any failure to notify the City and request consent for a transfer or transfer of control of the Franchise,
- h) Any failure to maintain the required performance bond from an acceptable surety and required insurance coverage throughout the term of this Agreement,

- i) Any failure to maintain and provide records required to be maintained and provided under this Agreement,
- j) Any failure to permit the City or its designee(s) to inspect any portion of the System,
- k) Any failure to remove abandoned portions of the System in compliance with this Agreement, and
- m) Any breach or failure of the warranties and representations contained in Section 11.2.

### 11.2 Revocation

In the event that the Franchisee violates or fails to comply with any conditions of this Franchise, which violation or failure is a material event of default under this Agreement, the City may, by ordinance and after a public hearing, declare the Franchisee in breach of the Franchise granted herein, and thereupon revoke and terminate this Agreement, or assess liquidated damages, in accordance with the following procedures. To the extent the provisions of this Agreement provide a different or alternative remedy for any violation or failure to comply with any provision of this Agreement (such as call of the Performance Bond), such remedy may be availed by the City in lieu of or in addition to any remedy provided for herein, including revocation.

### 11.3 Breach and Revocation Procedure

- (a) Whenever the City believes that Franchisee has violated one or more terms, conditions or provisions of this Agreement which may be a material event of default, a written notice shall be given to Franchisee. The written notice shall describe in reasonable detail the alleged violation so as to afford Franchisee an opportunity to remedy the violation. Franchisee shall have thirty (30) days subsequent to receipt of the notice in which to (i) correct the violation, or (ii) provide a written response to the City presenting any facts or arguments which Franchisee believes excuses or refutes the existence of the violation.
- (b) The time for Franchisee to correct any alleged violation may be extended by the City if more than thirty (30) days is required to correct the alleged violation; provided, however, Franchisee must commence the corrective action within fifteen (15) days of receipt of the notice, timely request an extension of time, and thereafter use reasonable diligence, as determined by the City, to correct the violation.
- (c) In the event the Franchisee, after receiving a notice issued under subsection (a): (i) fails to timely respond to the notice, (ii) fails to correct a violation within the timeframes specified in subsection (a) and/or (b), or (iii) provides a written claim for an excuse or refutation of the violation, the City Council shall hold a public hearing to receive testimony from the Franchisee, the public, or any other party with respect to (i) whether the Franchisee has committed a material event of default under the

Franchise, (ii) whether such event of default is excusable, and (iii) whether the event of default has been cured or will be cured by the Franchisee. The City shall provide the Franchisee at least ten (10) days prior written notice of any such hearing, which notice shall specify the time and place of such hearing. The Franchisee shall be provided a full and fair opportunity to be heard at the hearing. If the Franchisee fails to participate in the hearing, any substantive claims regarding existence or materiality of an event of default shall be deemed waived by the Franchisee in all future proceedings, including any civil action under Section 10.4.

- (d) If, after a hearing provided for in subsection (c) above, the City Council determines that an event of default has occurred without adequate excuse, and Franchisee has failed to correct such event of default within the timeframes specified in subsections (a) and/or (b), the City council may, by ordinance, declare the Franchisee in breach of the Franchise and thereupon either: (i) revoke the Franchise granted herein, terminate this Agreement, and require removal of the System from the Public Right-of-Way in accordance with Section 11.6, or (ii) assess liquidated damages in accordance with Section 11.4.

#### 11.4 Alternative Remedy

It is agreed that the Franchisee's material breach of this Agreement shall cause the City to suffer damages which are real but incapable of precise ascertainment, particularly where the normal remedy, removal of the System facilities from the Public Right-of-Way and substitution of a new provider, may cause the City to incur further damages. Therefore, in the event the City's remedies upon termination under Section 11.6 are enjoined or otherwise impaired, or where enforcement of such remedies would cause a cessation of Services that the City seeks to prevent, the City Council may assess liquidated damages for breach of the Franchise. For any event of default, the amount of liquidated damages shall be assessed by City Council in the proceeding required by Section 10.3 or in a separate proceeding conducted thereafter, up to a maximum of \$1,000 per day, per violation, from the date the violation is noticed under Section 10.3(a) until the violation is cured. Liquidated damages, if assessed, shall be paid by the Franchisee forthwith, and in no event later than thirty (30) days after assessment and notice from the City. If the Franchisee fails to pay any liquidated damages assessment, the City may proceed against the Performance Bond to collect the liquidated damages assessments, or may bring a civil action in any court of competent jurisdiction to collect the assessments. Nothing in this Section shall prevent the Franchisee from surrendering the Franchise to the City, whereupon the accrual of ongoing liquidated damages shall cease. Any surrender of the Franchise shall be in writing and shall constitute a waiver of any future rights of the Franchisee under any state or federal law to occupy or use the Public Right-of-Way of the City.

#### 11.5 Termination Defined

The termination of this Franchise and the termination of Franchisee's privileges herein shall become effective upon the earliest to occur of: (i) the revocation of the Franchise by action of the City, as provided in Section 11.3 herein; (ii) the abandonment of the

System, in whole or material part, by the Franchisee, without the express, prior approval of the City; or (iii) the expiration of the term of the Franchise as set forth in Section 2.5.

#### 11.6 Removal Upon Termination

Upon any termination of this Franchise, the Franchisee shall, at its own cost and expense, promptly remove that part of the System located in the Streets and Public Rights-of-Way and shall replace or repair and restore each affected Street or Public Right-of-Way and governmental structure therein, in such manner and to any engineering specifications promulgated by the City.

If the Franchisee fails to remove the System from the Public Right-of-way within ninety (90) days of a City request to do so, or fails to repair or restore any street in conformance with the manner specified by the City, the City shall be permitted to initiate and/or complete such work at the expense of, and without liability to, the Franchisee.

#### 11.7 Holdover

If the Franchisee has applied to City for a renewal of this Franchise in accordance with Section 3.8 and the City has not acted upon the same as of the expiration date, the Franchisee shall, at the discretion of the City, continue to operate the System and to comply in all other material respects with the provisions of this Agreement until such time as the application for renewal is acted upon. During such period, the Franchisee and the City shall be deemed to retain all the rights and obligations that they have under this Agreement until the City acts on the application. The City shall not be deemed to have waived any rights by reason of the Franchisee's continued post-expiration operation of the System.

### 12. MISCELLANEOUS

#### 12.1 Integration

This Agreement, including the Exhibits thereto, which are incorporated as if fully rewritten herein, embodies the entire understanding and agreement between the City and the Company with respect to the subject matter hereof and supercedes all prior representations, agreements, and understandings, whether oral or written, between the City and the Company. All prior franchises or authorizations granted to the Company or to any predecessor or Affiliate are hereby repealed and/or superceded. This Agreement shall not be modified or amended, or be deemed modified or amended in any manner except by an instrument in writing executed by both Parties.

#### 12.2 Warranty

It being material to this Agreement, the Company warrants, represents and acknowledges, that:

- a) The Company is duly organized, validly existing, and in good standing under the laws of the State of Ohio;

- b) The Company is authorized under its articles of incorporation, bylaws, or other governing documents to enter into and be legally bound by this Agreement;
- c) There is no action or proceeding, pending or threatened, against the Company which would enjoin or call into question the propriety of the Company's performance under this Agreement; and
- d) The execution and performance of this Agreement will not result in the Company's breach or violation of any statute, regulation, contract or judgment to which it is subject.

### 12.3 Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

### 12.4 Headings

The section headings contained in this Agreement are designed to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof.

### 12.5 Independent Contractor

The relationship of the City and the Company shall at all times be deemed to be solely that of independent contractors, and neither party shall be construed to be in a partnership, joint venture, agency, or employee/employer relationship with the other.

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IN WITNESS WHEREOF, the parties hereto, fully intending to be legally bound, have executed this Agreement on this 16<sup>TH</sup> day of OCTOBER, 2012.

CITY OF CUYAHOGA FALLS, OHIO:

[Signature]  
Don L. Robart, Mayor  
[Signature]  
Witness

10/19/12  
Date  
[Signature]  
Witness

ONECOMMUNITY, INC.:

By: [Signature]  
Title: COO

BRETT LINDSEY  
Name (printed)

10/16/12  
Date

[Signature]  
Witness

[Signature]  
Witness

APPROVED AS TO FORM:

[Signature]  
Director of Law  
City of Cuyahoga Falls  
Date: 10/18/2012

# Exhibit A-1

One Community has an additional 180 poles that need to be walked out, routes are highlighted in yellow.

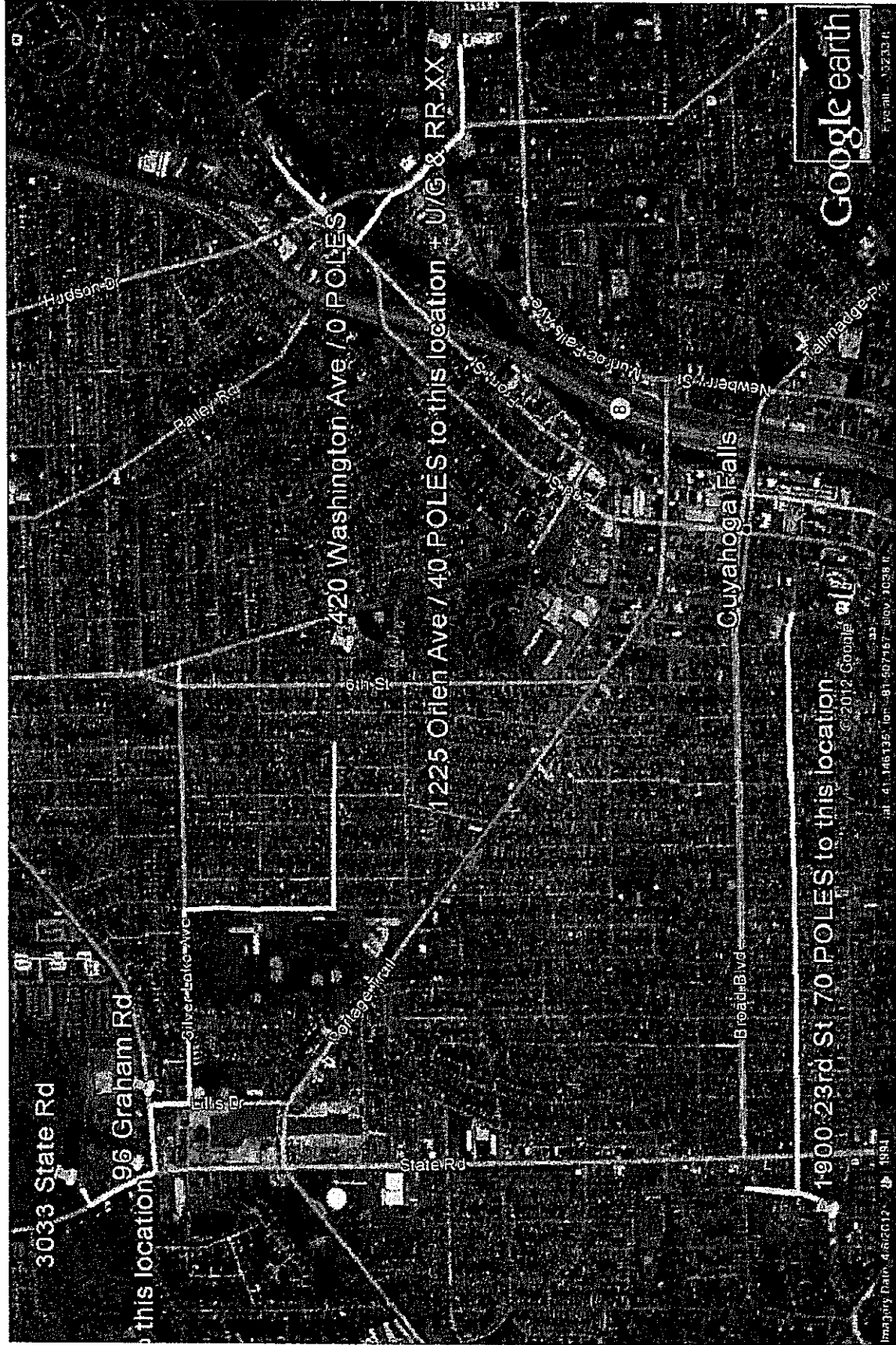




Exhibit A-2

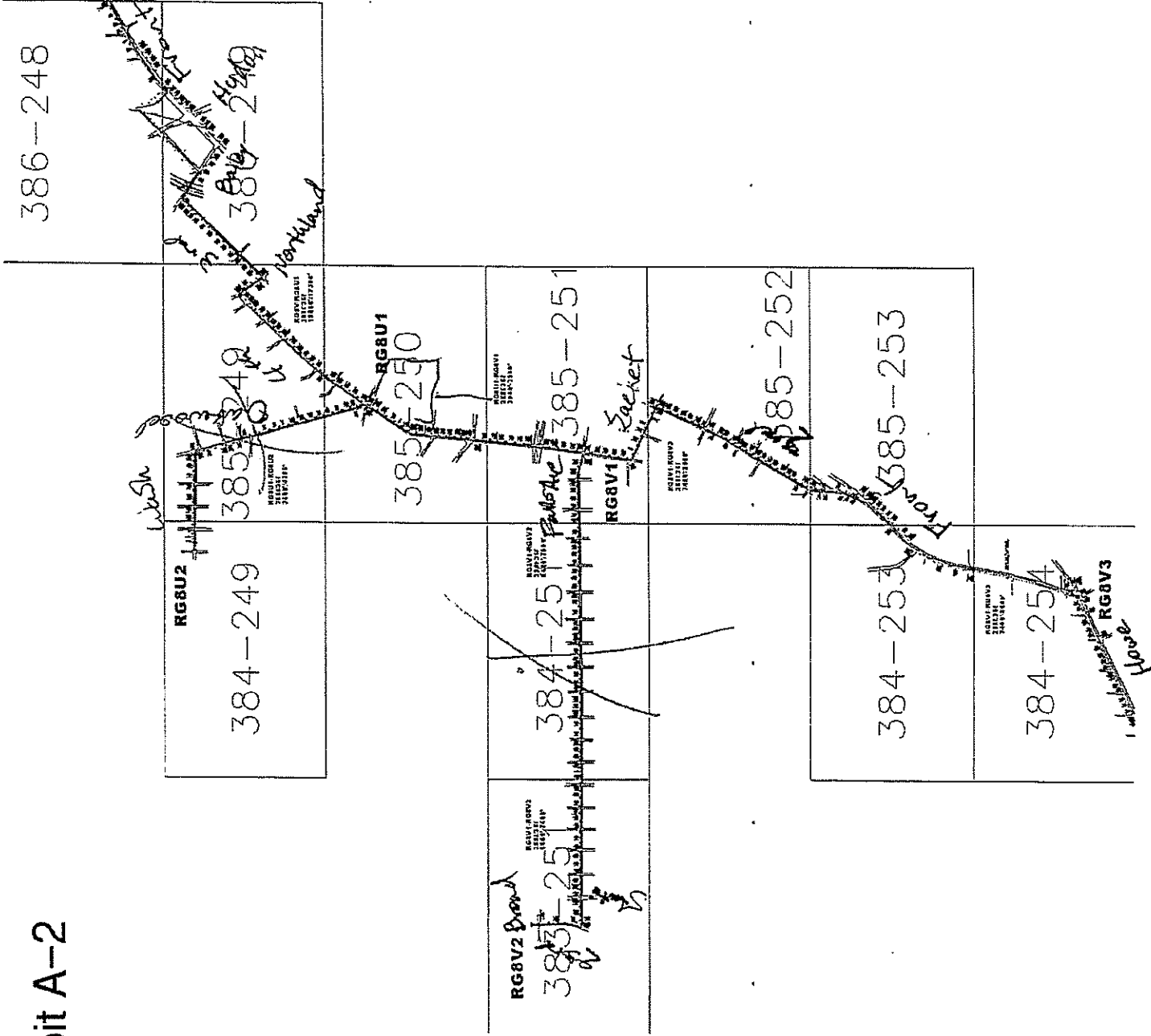
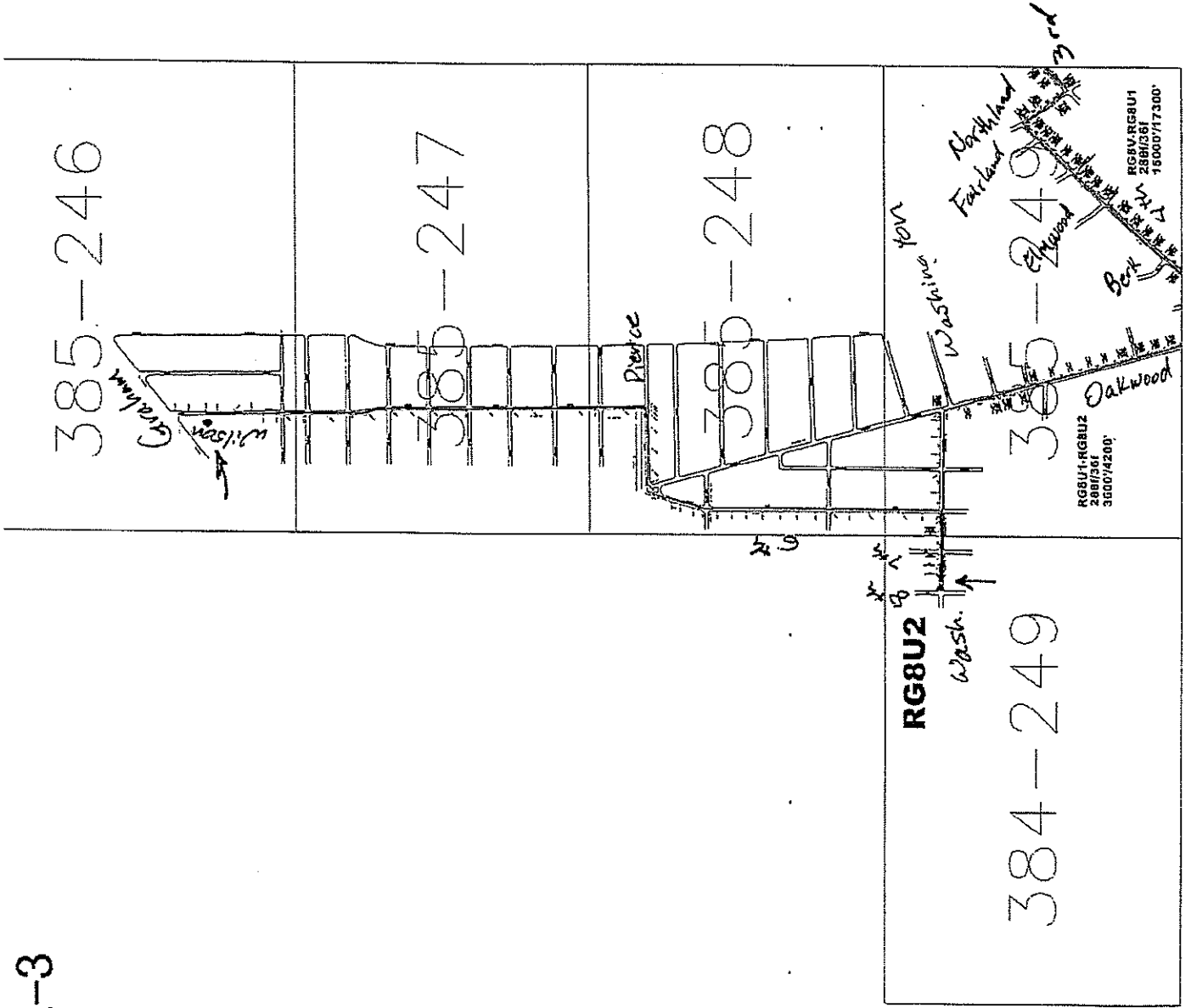


Exhibit A-3



# Exhibit A-4

## WALKOUT SHEET FOR POLE ATTACHMENT APPLICATION

To:	Chris Yeager	NEO NET	Phone:	Work Order #:														
From:	700 Graham Rd Cuyahoga Falls	Company:	Chris Comment:	Applicant Work Order #:														
REF#	POLE#	HOT & YEAR CLASS SET	GRID-SUB GRID	LOCATION	OWNS	Street Light Loop	Street Light Loop	SWHL Loop	HWST POWER	HGST TELCO	Other TELCO	CATV ATAC	HGST DROPS	OTHER DROPS	Other FIBER ATTACH	Other FIBER ATTACH	Proposed Attachment SPACE	COMMENTS
P-M2044	M5044			Washington Ave	CFE				20'5"	21'5"	21'1"	18'9"	18'3"		20'7"	20'2"	22'5"	
P-M2247	M5247			Washington Ave	CFE				23'2"	18'1"	18'1"	18'9"	18'3"		16'10"	19'9"	19'9"	
P-M11141	M11141			6th St	CFE				25'2"	18'6"	18'1"	18'2"	19'1"		18'1"	20'2"	20'2"	
P-M11140	M11140			6th St	CFE				25'3"	18'6"	18'1"	18'2"	19'7"		18'6"	20'10"	20'10"	
P-M11138	M11138			6th St	CFE				23'9"	18'2"	18'1"	18'10"	18'4"		17'3"	19'10"	19'10"	
P-M11137	M11137			6th St	CFE				26'10"	21'7"	21'7"	22'0"	22'2"		20'9"	23'9"	23'9"	
P-M11136	M11136			6th St	CFE				23'10"	19'5"	19'5"	19'9"	18'2"		18'6"	20'9"	20'9"	
P-M11135	M11135			6th St	CFE				26'10"	18'6"	18'6"	18'6"	18'6"		17'11"	20'9"	20'9"	
P-M11134	M11134			6th St	CFE				20'3"	18'2"	18'2"	18'2"	20'3"		17'4"	20'2"	20'2"	
P-M11133	M11133			6th St	CFE				26'6"	19'9"	19'9"	19'11"	19'10"		18'11"	20'11"	20'11"	
P-M11132	M11132			6th St	CFE													
P-M11131	M11131			6th St	CFE				25'3"	17'6"	17'6"	22'2"	18'8"		17'10"	23'2"	23'2"	
P-M6267	M6267			6th St	CFE				20'9"	17'6"	17'6"	18'11"	18'5"		10'3"	15'0"	18'11"	16'10" additional phone drop
P-M6556	M6556			6th St	CFE				23'9"	17'1" drop	17'1" drop	18'6" drop	18'5"		16'5"	20'8"	20'8"	
P-11207	M11207			6th St	CFE								18'4"		21'1"	24"	24"	27'8" per extension arm per anchor - 24'4"
P-9637	M9637			6th St	CFE													
P-CEI 8016	CEI 8016			6th St	CFE				24'4"	18'2"	18'2"	22'2"	18'8"		17'10"	23'2"	23'2"	
P-M10974	M10974			Oakwood Dr.	CFE				25'2"	24'7"	24'7"	22'2"	17'6"		18'5"	17'3"	18'11"	16'10" additional phone drop
P-13619	M13619			Pierco Ave	CFE				30'+	22'7"	22'7"	19'5"	17'3"		10'3"	15'0"	18'11"	16'10" additional phone drop
P-13620	M13620			Pierco Ave	CFE				30'+	21'6"	21'6"	19'5"	17'3"		10'3"	15'0"	18'11"	16'10" additional phone drop
P-13621	M13621			Pierco Ave	CFE				30'+	22'11"	22'11"	19'5"	17'3"		10'3"	15'0"	18'11"	16'10" additional phone drop
P-9285	M9285			Pierco Ave	CFE				26'7"	20'7"	20'7"	19'5"	17'3"		10'3"	15'0"	18'11"	16'10" additional phone drop
P-13622	M13622			Pierco Ave	CFE				24'10"	18'11"	18'11"	19'9"	17'3"		10'3"	15'0"	18'11"	16'10" additional phone drop
P-M8500	M8500			Pierco Ave + Wilson St	CFE				24'9"	21'6"	21'6"	22'3"	21'5"		20'4"	23'3"	23'3"	
P-7001	M7001			Wilson St	CFE				20'3"	21'6"	21'6"	22'10"	21'5"		20'4"	23'3"	23'3"	
P-7002	M7002			Wilson St	CFE				20'3"	21'6"	21'6"	22'10"	21'5"		20'4"	23'3"	23'3"	
P-7004	M7004			Wilson St + Montrose Ave	CFE				26'	21'3"	21'3"	22'3"	20'6"		20'2"	23'6"	23'6"	
P-12953	M12953			Wilson St	CFE				25'2"	21'2"	21'2"	22'3"	20'6"		20'2"	23'6"	23'6"	
P-12145	M12145			Wilson St + Johnson Ave	CFE				21'2"	18'3"	18'3"	21'11"	18'5"		16'11"	20'6"	20'6"	
P-M12654	M12654			Wilson St	CFE				24'5"	20'7"	20'7"	19'5"	17'3"		10'3"	15'0"	18'11"	16'10" additional phone drop
P-M12397	M12397			Wilson St + Hayes Ave	CFE				24'2"	19'5"	19'5"	20'4"	18'2"		15'5"	22'7"	22'7"	
P-M12655	M12655			Wilson St	CFE				25'8"	22'3"	22'3"	20'4"	18'2"		15'5"	22'7"	22'7"	
P-M9244	M9244			Wilson St	CFE				23'7"	19'7"	19'7"	24'2"	19'7"		17'10"	21'2"	21'2"	
P-M9238	M9238			Wilson St + Adams Ave	CFE				23'5"	19'2"	19'2"	20'3"	18'7"		17'10"	21'2"	21'2"	
P-M9503	M9503			Wilson St + Madison Ave	CFE				24'1"	20'1"	20'1"	20'2"	18'4"		16'10"	22'4"	22'4"	
P-M12656	M12656			Wilson St	CFE				24'11"	21'6"	21'6"	21'11"	18'10"		16'10"	22'4"	22'4"	
P-M8256	M8256			Wilson St + Van Buren Ave	CFE													
P-9247	M9247			Wilson St + Tyler Ave	CFE													
P-12957	M12957			Wilson St	CFE				23'2"	20'8"	20'8"	21'3"	21'3"		16'0"	22'3"	22'3"	
P-12958	M12958			Wilson St + Newton Ave	CFE				24'11"	18'7"	18'7"	19'6"	18'6"		17'1"	20'6"	20'6"	
P-12959	M12959			Wilson St	CFE				22'	18'7"	18'7"	18'3"	18'3"		16'6"	20'3"	20'3"	
P-M8018	M8018			Wilson St	CFE				22'9"	18'5"	18'5"	17'4"	18'3"		15'8"	20'5"	20'5"	
P-M12960	M12960			Wilson St	CFE							17'6"	18'11"		16'7"	17'3"	17'3"	additional phone



# Exhibit A-6

Pole Type	REF	PTTG (Actual)	Surveyed PTTG (on DWG)	OWNER	ONE C. Req. Attach HI	TELCO (Cable, Fiber, etc.)/PWR Attachment Heights	COMMENTS
Jntpl	1C DWG 385-250			CFMURY			
Jntpl	1C DWG 385-250-(1)		M11272 (4th St)	CFMURY		See Drawing for Field Survey Heights	Pole Tags for the below poles are solely based on field surveys
Jntpl	1C DWG 385-250-(2)		M11271 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(3)		M11270 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(4)		M11269 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(5)		M9555 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(6)		M3210 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(7)		M9559 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(8)		M12340 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(9)		M6436 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(10)		M11251 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(11)		M3206 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(12)		M12329 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(13)		M6651 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(14)		M6449 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(15)		M6648 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(16)		M6647 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(17)		M11608 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(18)		M7993 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(19)		M5945 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(20)		M8184 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-250-(21)		M5155 (4th St)	CFMURY		See Drawing for Field Survey Heights	ADD POLE 10-10-12
Jntpl	1C DWG 385-251			CFMURY			
Jntpl	1C DWG 385-251-(1)		M7568 (4th St)	CFMURY		See Drawing for Field Survey Heights	Pole Tags for the below poles are solely based on field surveys
Jntpl	1C DWG 385-251-(2)		M7569 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-251-(3)		M7631 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-251-(4)		M13667 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-251-(5)		M5857 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-251-(6)		M14888 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-251-(7)		M9082 (4th St)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-251-(8)		M3747 (Sacket Ave)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-251-(9)		M9182 (Sacket Ave)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-251-(10)		M13740 (Sacket Ave)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-251-(11)		M10474 (Sacket Ave)	CFMURY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-251-(12)						

# Exhibit A-7

Pole Type	REF	PLYG (Actual)	Surveyed PLYG (on DWG)	OWNER	ONE C. Req. Attach HI	TECO (Cable, Fibers, etc.)/PWR Attachment Heights	COMMENTS
Jntpl	1C DWG 385-252						
Jntpl	1C DWG 385-252-1		M12686 (Socket Ave)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-252-1		M15584 (Socket Ave)	CFMUNY		See Drawing for Field Survey Heights	Pole Tags for the below poles are solely based on field surveys
Jntpl	1C DWG 385-252-2		M18164 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-252-3		M7534 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-252-4		M7533 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-252-5		M7532 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-252-6		M12874 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-252-7		M12873 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-252-8		M10848 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-252-9						
Jntpl	1C DWG 385-253						
Jntpl	1C DWG 385-253-1		M10832 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-2		M10827 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	Pole Tags for the below poles are solely based on field surveys
Jntpl	1C DWG 385-253-3		M10826 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-4		M10872 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-5		M10823 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-6		M3799 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-7		M12656 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-8		M12655 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-9		M6084 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-10		M12654 (2nd St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-11		M12613 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-12		M12612 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 385-253-13		M12611 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 384-253						
Jntpl	1C DWG 384-253-1		M12610 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 384-253-2		M12609 (Front St)	CFMUNY		See Drawing for Field Survey Heights	Pole Tags for the below poles are solely based on field surveys
Jntpl	1C DWG 384-253-3		M12607 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 384-253-4		M10813 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 384-253-5		M12712 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 384-253-6		M12714 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 384-253-7		M12716 (Front St)	CFMUNY		See Drawing for Field Survey Heights	
Jntpl	1C DWG 384-253-8		M12718 (Front St)	CFMUNY		See Drawing for Field Survey Heights	

