RIGHT-OF-WAY

AND

FRANCHISE AGREEMENT

THIS RIGHT OF WAY AND FRANCHISE AGREEMENT (the "**Agreement**"), made this ____ day of _____, 20__, by and between **BALTIMORE COUNTY, MARYLAND**, a body corporate and politic (the "**County**"), and_____(the "**Franchisee**").

RECITALS

WHEREAS, the County has the authority to grant the right to use public rights-of-way under a non-exclusive franchise on, above or below the surface of a highway, avenue, street, lane or alley, pursuant to Subtitle 2, Title 9, Article III of the Baltimore County Code, 2003 Edition, as amended (the "**Code**"); and

WHEREAS, the Franchisee applied for a franchise to use certain area in public rights-of-way on, above or below the surface of [identify County property], as more fully described and shown in **Exhibit A**, attached hereto and incorporated hereby, (the "**Franchise Area**"), for the purpose of [(installing) (constructing) ( )] [(fiber optic cable) (sewer line)(irrigation system) ( )](the "**Property/ Improvements**"), as shown in the plans attached hereto as **Exhibit B** and incorporated hereby (the "**Plans**"), which Property/ Improvements Franchisee will thereafter own, operate, maintain, remove, repair and replace (altogether, the "**Project**"); and

WHEREAS, the Franchisee having complied with the requirements of the Code and provided the information necessary for the County to evaluate the proposed use, and publication having occurred in accordance with the Code, the County has made diligent inquiry regarding the value of the proposed franchise, and the adequacy of the compensation proposed to be paid therefor.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: no valid objections having been made and it having been determined that granting right to use the public rights-of-way as described herein under the franchise is expedient and proper, and for and in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. The County hereby grants, subject to the reservations, terms, covenants, and conditions hereinafter set forth, unto the Franchisee, and its successors and assigns, the right to use the portions of public rights-of-way in the Franchise Area under a non-exclusive franchise for the purpose of the Project.

2. This Agreement and the non-exclusive franchise described herein shall be effective as of the date above written and continue for a period of thirty-five (35) years therefrom (the "**Initial Term**"). At the option of the County, this Agreement and the non-exclusive franchise may be renewed for up to two (2) successive terms of twenty-five (25) years each, if automatic, or less upon mutual agreement in writing by the parties (each a "**Renewal Term**"), on the same terms and

conditions, except for any changes that are required by law. Unless the County provides written notice of nonrenewal to the Franchisee prior to the end of the Initial Term or the first Renewal Term, as the case may be, this Agreement will renew automatically upon expiration of the Initial Term and the first Renewal Term respectively.

3. Franchisee has paid the County compensation in the amount of _____ Dollars and No Cents ($_____), as "**Base Compensation**" to the County for the Initial Term. Base Compensation is calculated as more fully described in **Exhibit C**, attached hereto and incorporated herein. During the term of this Agreement, such term to include any Renewal Terms, but in no event more frequently than every five years after the date of execution of this Agreement, the County may revalue this franchise. Upon notice by the County to the Franchisee, the County may revalue the Franchise Area in accordance with the terms of the Code, notwithstanding any additions, changes or amendments to the federal, state or local laws or regulations to the contrary. The County shall deliver written notice to the Franchisee of any such revaluation, and, within sixty (60) days following receipt of such notice, the Franchisee shall remit as "**Additional Compensation**" the difference between the revaluation and the Base Compensation (or, in the event of a revaluation following a prior revaluation, the difference between that revaluation and the prior revaluation). The Franchisee shall pay the sum of the difference to the County within sixty (60) days of receiving notice of each revaluation.

4. The Franchisee may commence its use of the Franchise Area hereunder upon satisfaction of the following conditions precedent in a manner acceptable to the County:

(a) The County, or any agency, bureau or unit thereof, or of federal, state or local government, as applicable, has approved the Project;

(b) The Franchisee shall provide to the Bureau of Highways, Baltimore County Department of Public Works, in an acceptable form and format, any and all plans, drawings or other requested information; and

(c) The Franchisee shall comply with applicable requirements of Title 12, Subtitle I of the Public Utility Companies Article of the Annotated Code of Maryland, pertaining to the on-call system known and identified as "**MISS UTILITY**."

5. Depending on the size of the Franchise Area and Property/ Improvements, and the purpose and scope of the Project, the County may require Franchisee to purchase and maintain insurance, including comprehensive general liability insurance, providing coverages and limits of liability stated in **Exhibit D,** attached hereto and incorporated hereby, which coverages shall not lapse or be allowed to lapse during the period of the franchise granted hereunder. If required, Franchisee shall provide a certificate of insurance naming the County as an additional insured at no cost to the County and providing for notice to County no less than thirty (30) days prior to cancellation of coverage, and shall update the certificate upon the expiration/ anniversary of the policy annually. Failure to provide and continue in force any insurance required by the County shall be deemed a material breach of this Agreement. In no event shall the limits of liability of the policy or policies as set out hereinabove, be considered to limit the liability of the Franchisee under this Agreement. The provision of any insurance required herein does not relieve the Franchisee of any of the responsibilities or obligations the Franchisee has assumed under this Agreement or for which

the Franchisee may be liable by law, regulation or otherwise. The obligations of Franchisee under this Paragraph shall extend to Franchisee's successors and assigns. In the event that Franchisee ceases to exist as a registered business entity in good standing, without an identifiable successor or assign, and the County must perform any repairs, maintenance or removal of the Property/ Improvements due on Franchisee's behalf, the County may seek reimbursement for such repairs, maintenance, or removal from the owner of the property benefitting from the use of the Franchise Area, to the extent permitted by law.

6. The laying, construction, installation, operation, repair, and maintenance and/or removal of the Property/ Improvements shall be performed at the full cost to and expense of the Franchisee, including the performance and cost of restoring the Franchise Area and any other area disturbed by the Franchisee to the same or better condition that existed prior to Franchisee's work. All operating, repair, resurfacing, removing, and maintenance of the Property/ Improvements and the Franchise Area shall be performed in accordance with all state, federal and County laws, regulations and requirements, including, but not limited to the Baltimore County Standards Details for Construction, as supplemented from time to time.

7. The County shall not be liable at any time or under any circumstances for injury or damage occurring to any person or property from any cause whatsoever arising from or related to the Franchisee's use of the Franchise Area hereunder or the laying, construction, maintenance, repair, use, ownership, operation, condition, removal or dismantling of the Property/ Improvements or the Franchise Area or use under this Agreement, except to the extent caused by the gross negligence or willful misconduct of the County, its agents, employees, officers, officials, contractors, representatives, successors, or assigns. The Franchisee is responsible for any and all claims, losses, costs and/or expenses arising from or related any and all damage, injury or loss to any persons or property, including, but not limited to any and all existing utilities located in the vicinity of the work performed by Franchisee related to this franchise. Prior to construction of each and every portion of the Property/ Improvements, the Franchisee shall research and search for any and all existing utilities located on, about or upon the Franchise Area and/or in area and test pit at any crossings.

(a) The Franchisee agrees to indemnify, defend, and save harmless the County, and all its agents, employees, officers, representatives, and assigns, (hereinafter collectively, "**Indemnitees**") from all suits, actions, or claims of any character, including but not limited to, any and all expenses of any kind without limit, such as compensatory damages, court costs, defense costs, expenses and fees, including but not limited to expert witnesses and consultants, penalties, liens, charges, losses, and attorneys' fees, brought on account of any injuries or damages sustained by any person, including any business entity, or property arising from or related to any and all acts or omissions of the Franchisee, its agents, contractors, employees, officers, officials, representatives, successors, or assigns related to or in connection with any use of the Franchise Area, the Project or the Property/ Improvements as set forth herein, except to the extent caused by the gross negligence or willful misconduct of the County, its agents, employees, officers, officials, contractors, representatives, successors or assigns. The Franchisee shall provide the County prompt notice of any claim or the commencement of any action, suit or other proceeding involving claims of negligence and/or intentional wrongdoing by the County regarding the Franchisee. Nothing herein shall be deemed to prevent the County from cooperating with the Franchisee and participating in the defense of any litigation by the County's own counsel.

(b) The Franchisee undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees (collectively "**Franchisee**" solely for the purpose of this Article), all risk of dangerous conditions, if any, on or about the Franchise Area, and the Franchisee hereby agrees to indemnify and hold harmless Indemnitees against and from any claims asserted or liability imposed upon Indemnitees for personal injury or property damage arising out of the Franchisee's laying, installation, operation, maintenance, condition repair, or use of the Franchise Area, the Project or the Property/ Improvements, or the Franchisee's failure to comply with any federal, state or local statute, ordinance or regulation.

(c) The Franchisee represents and warrants that its use of the Franchise Area herein shall not generate any hazardous substance, and that it shall not store or dispose of, nor transport to or over, any hazardous substance in the Franchise Area, other than as provided by law. The Franchisee further agrees to indemnify, defend, and save harmless the Indemnitees from all suits, actions, or claims of any character, including but not limited to, compensatory damages, court costs, defense costs, expenses and fees, including but not limited to, expert witnesses and consultants, penalties, liens, charges, losses, other expenses of any kind, and reasonable attorneys' fees, brought on account of any release or discharge into the environment of, any generation of, or any failure to transport except in accordance with applicable law, by the Franchisee, its agents, contractors, employees, officers, officials, representatives, successors, or assigns, any such hazardous substance, and that may arise out of, be due to, be owing to, or be a consequence of, such release, discharge, generation, or transportation; except to the extent that any such release is found to have arisen from, be due to, be owing to, or be a consequence of, the negligent acts or failures to act on the part of the County, its agents, employees, officials, or representatives. The indemnification of the Indemnitees by the Franchisee which are set for in this Section 7(c), shall not extend to Hazardous Substances wholly confined within the boundaries of the Franchise Area prior to the commencement of this Agreement.

"**Hazardous substance**" shall be interpreted broadly to mean any substance or material defined or designated as being or containing any hazardous, radioactive, or toxic waste, material, or substance, or other similar term, by any federal, state, or local environmental law, regulation, or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and such terms shall be interpreted to include, but not be limited to, any waste, material, or substance, which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

8. The Franchisee shall be responsible for all costs related to adjustments to the Project or Property/ Improvements which the County, in its sole discretion, determines are necessary to accommodate any subsequent County work on or in the vicinity of the Franchise Area. In no event, however, will the Franchisee be held financially responsible by the County for adjustments to the Project necessary to accommodate work performed by or on behalf of a third party on or in the vicinity of the Franchise Area.

9. The term "**Default**" as used in this Agreement shall mean the occurrence or happening, from time to time, of any one or more of the following:

(a) If any representation or warranty, expressed or implied, contained in this Agreement shall prove at any time to be incorrect or misleading in any material respect either on the date when made or on the date when reaffirmed.

(b) If the Franchisee shall fail to comply with the terms of any covenant, condition, agreement or any express or implied warranty contained in this Agreement, and such failure shall continue more than thirty (30) days following written notice of such failure.

(c) If the Franchisee shall not perform any services required hereunder in good faith and in accordance with the provisions of this Agreement, and such failure shall continue more than thirty (30) days following written notice of such failure, or in the reasonable determination of the County shall perform same in such manner as to endanger the public health, safety, or welfare, and such objectionable performance shall continue more than thirty (30) days following written notice to desist.

(d) If the Franchisee shall be unable to satisfy any condition precedent as set forth herein and such condition shall remain unsatisfied more than thirty (30) days following written notice of objection.

10. Upon an occurrence of Default, with written notice and after any applicable cure period has expired, the County shall have the right to exercise any and all of the following remedies:

(a) In addition to other available rights and remedies, to terminate this Agreement immediately, in whole or in part;

(b) To suspend the Franchisee's authority to install, maintain, and/or operate the Project and the Property/ Improvements under this Agreement until such breach, as provided herein, is cured; provided, that such cure shall be accomplished within ninety (90) days of notification to the Franchisee (or, if not capable of being cured with in such ninety (90) day period, that such cure has commenced and is being diligently pursued by the Franchisee); or

(c) To proceed at any time or from time to time to protect and enforce all rights and remedies available to the County, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under applicable law or regulations.

11. No remedy herein conferred upon or reserved to the County is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the County shall be concurrent and may be pursued separately, successively, or jointly against the Franchisee, and every right, power and remedy given to the County may be exercised from time to time as often as may be deemed expedient by the County.

12. THE GRANT OF THIS FRANCHISE IS "AS-IS", WITH NO REPRESENTATION OR WARRANTY OF ANY KIND BY THE COUNTY, EXPRESS OR

IMPLIED, OF ANY KIND OR NATURE, AS TO ANY OWNERSHIP, PRESCRIPTIVE RIGHTS, TITLE, RIGHTS, OR INTEREST, OR SUITABILITY FOR ANY PURPOSE WITH REGARD TO THE FRANCHISE AREA. THE COUNTY RESERVES THE RIGHT AT ALL TIMES TO EXERCISE FULL GOVERNMENTAL CONTROL AND REGULATION IN RESPECT TO ALL MATTERS CONNECTED WITH THIS GRANT, NOT INCONSISTENT WITH THE TERMS HEREOF. THE COUNTY FURTHER RESERVES THE RIGHT TO AWARD FRANCHISES TO OTHER ENTITIES OR INDIVIDUALS AS THE COUNTY DEEMS APPROPRIATE, IN ITS SOLE DISCRETION, SO LONG AS SUCH OTHER FRANCHISES SHALL NOT INTERFERE WITH FRANCHISEE'S RIGHTS HEREUNDER.

13. The Franchisee hereby makes the following express representations and warranties:

(a) The Franchisee is a _____duly organized and existing under the laws of the State of and is qualified to do business and is in good standing in the State of Maryland.

(b) This Agreement has been duly executed and delivered by the Franchisee and constitutes the valid and legally binding obligations of the Franchisee and is enforceable against the Franchisee in accordance with its terms.

(c) The execution and delivery and performance of the obligations under this Agreement shall not conflict with the Franchisee's organizational documents and shall not violate or result in a material breach of the provisions of, or constitute a material default under, any contracts or agreements to which the Franchisee is a party or by which it is bound, and the breach or default of which would result in a materially adverse effect on the business or financial condition of the Franchise or the ability of the Franchisee to perform its obligations hereunder.

(d) The execution, delivery and performance of the obligations under this Agreement shall not conflict with or result in the breach of any court decree or order of any governmental body binding upon the Franchisee.

(e) The Franchisee expressly represents and warrants that there exists no actual or potential conflict of interest between its performance under this Agreement and its engagement or involvement in any other corporate activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any extension thereof, the Franchisee shall immediately provide the County written notice thereof.

14. In the event that this Agreement shall expire with no automatic renewals or be terminated for any reason other than Default under Section 10 hereof, and reserving to the County at all times all police powers and authority to exercise full charge and control, and the rights, powers, privileges, and duties in connection with public highways, sidewalks, and bridges as provided under the Baltimore County Charter and County Code, the County agrees that Franchisee shall have an additional sixty (60) days after such expiration or termination unrelated to Default to renegotiate a new franchise agreement or to relocate the Property/Improvements, or such additional time as may be mutually agreed in writing by the parties.

15. This Agreement represents the entire agreement of the parties with respect to the subject hereof. No representation, promise, or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. No waiver, modification, or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative of the party sought to be bound thereby.

16. Neither the County nor the Franchisee shall assign, sublet, or transfer its interest or obligations under this Agreement to any third party, without the prior written notice to both that third party and the other party to this Agreement. Nothing herein shall be construed to create any personal or individual liability upon any employee, representative, officer, or elected official of the County, or upon any employee, agent, representative, officer, partner, or member of Franchisee. This Agreement shall not be construed to create any rights in any person or entity other than the parties to this Agreement. Notwithstanding the foregoing, the rights of the Franchisee hereunder are created for the use of the Franchisee, and shall be assignable by the Franchisee, to any successor or assign of the Franchisee (the "Assignee"). The Franchisee shall be bound to send to the County written notice of any such assignment of the Franchisee's rights hereunder. Any such instrument of assignment shall be duly executed by the transferee named in such instrument, and, by its acceptance of any such assignment, the transferee of the Franchisee's rights hereunder shall be bound to the County for the prospective performance of the Franchisee's obligations hereunder, for the remaining term of this Agreement, including any Renewal Term. Prior to acceptance of the assignment, the Assignee must provide to the County and the County must accept certificates of insurance as required hereunder, when applicable, showing evidence of a substitute insurance coverages in amounts equal to or greater than those provided by the original Franchisee and that provide continuous coverage, such that there will be no lapse in coverage. The assignment will become effective upon written notice of acceptance of the substitute insurance certifications by the County, and the original Franchisee shall not accrue new obligations or liabilities after the effective date of the assignment.

17. Nothing contained in this Agreement shall be construed in any manner to create any relationship between the County and the Franchisee other than expressly specified herein, and the Franchisee and the County shall not be considered partners or co-venturers for any purpose of this Agreement.

18. This Agreement shall be governed and construed in accordance with the laws and regulations of the State of Maryland and Baltimore County, Maryland. Those articles, sections and subsections of this Agreement which by their nature are intended to survive shall survive the expiration or earlier termination of this Agreement.

19. The Franchisee irrevocably submits to the jurisdiction of the Circuit Court for Baltimore County and/or the District Court for the Northern District of Maryland over any suit, action, or proceeding arising out of or related to this Agreement. The Franchisee irrevocably waives, to the fullest extent permitted by law, any objection that the Franchisee may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in the above described district court and/or circuit court of Maryland on the grounds that it has been brought in an inconvenient forum.

20. If any provision of this Agreement is declared by any court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the fullest extent permitted by law.

21. Time is of the essence with respect to performance of the terms and conditions of this Agreement.

22. Any notice required by this Agreement shall be satisfactory if in writing and delivered by certified mail or overnight delivery to the following individuals:

(a) The Franchisee hereby irrevocably designates and appoints _____ _____, as its authorized agent, as provided below, to accept and acknowledge on its behalf service of any and all process that may be served in any suit, action, or proceeding instituted in connection with this Agreement in any state or federal court sitting in the State of Maryland. The Franchisee shall be served at _____ _____. If such agent ceases to so act, the Franchisee shall irrevocably designate a new agent and shall promptly deliver to the County evidence in writing of such agent's acceptance and the Franchisee's agreement that such appointment shall be irrevocable.

(b) The County designates the County Attorney as its authorized agent to accept and acknowledge on its behalf service of any and all process that may be served in any suit, action, or proceeding instituted in connection with this Agreement in any state or federal court sitting in the State of Maryland. The County shall be served at: 400 Washington Avenue, Room 219, Towson, Maryland 21204.

(c) Emergency information for twenty-four hour per day/seven days each week contact for the Franchisee:

Name:
Title:
Company:
Address:
City, State, Zip
Business Phone:
Email: Fax:

With a copy to:

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF the parties have signed and sealed this Agreement the day and year first written above, with authority to bind.

WITNESS: **FRANCHISEE:**_____

_____ By: _____(SEAL)
Name:
Title:

BALTIMORE COUNTY, MARYLAND, a body corporate and politic

_____ By: _____(SEAL)
Fred J. Homan
Administrative Officer

APPROVED FOR LEGAL FORM AND SUFFICIENCY*
(Subject to Execution by A Duly Authorized County Administrative Official and County Council, if Indicated)

_____
OFFICE OF THE COUNTY ATTORNEY
*Approval of Legal Form and Sufficiency Does Not Convey Approval or Disapproval of Substantive Nature of Transaction. Approval is Based Upon Typeset Document. All Modifications Require Re-Approval.

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this ____ day of _____, 2011, before me, the subscriber a Notary Public, personally appeared _____, to me personally known, who being by me duly sworn did say he is the _____ of _____, a _____, and that the foregoing Agreement was signed on behalf of the said_____by authority of the _____of the_____ and that said _____ acknowledges said Agreement to be the free act and deed of the said entity.

AS WITNESS my hand and Notarial seal.

_____
Notary Public

My Commission Expires: _____

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this _____ day of _____, 2011, before me, the subscriber, a Notary Public in and for said County and State, personally appeared Fred J. Homan, to me personally known, who being by me duly sworn did say he is the County Administrative Officer of BALTIMORE COUNTY, MARYLAND, that the foregoing Agreement was signed on behalf of said County by authority of its County Administrative Officer, and that said County Administrative Officer acknowledged said Agreement to be the free act and deed of said County.

AS WITNESS my hand and Notarial Seal.

_____
Notary Public

My Commission Expires: _____

This is to certify that the within instrument was prepared by an attorney or under the supervision of an attorney admitted to practice before the Court of Appeals of Maryland.

_____

FRANCHISE AREA DESCRIPTION
Exhibit A

Description of Franchise Area Subject to Franchise Agreement with, as the Franchisee, to include the following area:

[insert formal Franchise Area description from survey here]

And as further delineated as "Franchise Area" on the drawing attached hereto as **Exhibit B** of this Agreement.

<u>Exhibit B</u>
(Drawings)

Exhibit C

Base Compensation is determined by location of the Franchise Area within the below four major zoning categories at the stated rates:

RC and Density Residential	$ 2.25 per linear ft.
Office and RAE	$ 5.00 per linear ft.
Business	$12.00 per linear ft.
Manufacturing	$ 3.00 per linear ft.

Total per line foot calculations are _____ feet and are summarized as follows:

_____ linear feet X $_____ (_____zone)

Total Fee: $_____

Exhibit D

A. Minimum Limits of Coverage: Personal Injury Liability and Property Damage Injury Liability Combined Single Limit - $500,000 each occurrence.

B. Such insurance shall protect the Franchisee from claims which may arise out of, or result from, the Franchisee's operations under this Agreement, whether such operations be by the Franchisee, any Subcontractor, anyone directly or indirectly employed by the Franchisee or Subcontractor, or anyone for whose acts any of the above may be liable.

C. Minimum Coverages shall include:

1. Independent Contractor's coverage;

2. Completed Operations and Products Liability coverage; and

3. Contractual Liability coverage.

D. Damages not to be Excluded: Such insurance shall contain no exclusions applying to operations by and acts or omissions of the Franchisee or any subcontractor in the performance of the Project and this Agreement including but not limited to:

1. Collapse of, or structural injury to, any building or structure;

2. Damage to underground property; or

3. Damage arising out of blasting or explosion.

ATTACH INSURANCE CERTIFICATIONS