

## MUNICIPAL RIGHT OF WAY & POLE USE AGREEMENT

THIS MUNICIPAL RIGHT OF WAY & POLE USE AGREEMENT (this "Use Agreement") is dated as of \_\_\_\_\_, 2015 (the "Effective Date"), and entered into by and between the CITY OF AVON, a City under the State of Ohio (the "City"), and CROWN CASTLE NG EAST LLC, a Delaware limited liability company ("Crown Castle" or "Crown").

### RECITALS

- A. Crown owns, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission and the Public Utilities Commission of Ohio, a fiber-based telecommunications Network or Networks (as defined below) serving Crown's wireless carrier customers and utilizing microcellular optical conversion Equipment (as defined below) certified by the Federal Communications Commission.
- B. The City owns, operates and maintains Municipal Facilities (as defined below) in the Public Way (as defined below).
- C. For purpose of operating the Network, Crown wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Way (as defined below) on the Municipal Facilities.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

**1 DEFINITIONS.** The following definitions shall apply generally to the provisions of this Use Agreement:

**1.1 City.** "City" shall mean the City, including all of its operating departments and divisions.

**1.2 Crown Castle or Crown.** "Crown Castle" or "Crown" shall mean Crown and its lawful successors, assigns, and transferees.

**1.3 Decorative Streetlight Pole.** "Decorative Streetlight Pole" shall mean any streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles.

**1.4 Equipment.** "Equipment" means the optical converters, multiplexers, antennae, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by Crown hereunder. Examples of typical Equipment types and installation configurations are shown in the drawings and photographs attached hereto as **Exhibit A** and incorporated herein by reference.

**Fee.** "Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the City lawfully imposed by any governmental body (but excluding any utility users' tax, franchise fees, communications tax, or similar tax or fee).

**1.5 Gross Revenue.** "Gross Revenue" shall mean and include recurring revenues received by Crown for the provision of RF telecommunications transport services, either directly by Crown or indirectly through a reseller, if any, to customers of such services wholly consumed within the City. Gross Revenue shall not include: (a) sales, ad valorem, or other types of "add on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid or collected for federal, state, or local government (exclusive of the Right-of-Way Use Fee paid to the City as provided herein); (b) retail discounts or other promotions; (c) non-collectable amounts due Crown or its customers; (d) refunds or rebates; (e) non-operating revenues such as interest income or gain from the sale of an asset; or (f) payments received by Crown for the construction of network facilities.

**1.6 ILEC.** "ILEC" means the Incumbent Local Exchange Carrier that provides basic telephone services, among other telecommunications services, to the residents of the City.

**1.7 Installation Date.** "Installation Date" shall mean the date that the first Equipment is installed by Crown pursuant to this Use Agreement.

**1.8 Laws.** "Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

**1.9 Municipal Facilities.** "Municipal Facilities" means City-owned electric utility poles, Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, electroliers, Traffic Signal Poles, catenary poles, sign posts, or other City-owned structures located within the Public Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

**1.10 Network.** "Network" or collectively "Networks" means one or more of the neutral-host, protocol-agnostic, fiber-based optical networks operated by Crown to serve its wireless carrier customers in the City.

**1.11 Public Way.** "Public Way" means the space in, upon, above, along, across, and over the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include county, state, or federal rights of way or any property owned by any person or entity other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or entity.

**1.12 PUCO.** "PUCO" means the Public Utilities Commission of Ohio.

**1.13 Services.** "Services" means the RF transport and other telecommunications services provided through the Network by Crown to its wireless carrier customers pursuant to one or more tariffs filed with and regulated by the PUCO.

**1.14 Streetlight Pole.** "Streetlight Pole" shall mean any standard-design concrete, fiberglass, metal, or wooden pole used for streetlighting purposes.

**1.15 Traffic Signal Pole.** "Traffic Signal Pole" shall mean any standard-design concrete, fiberglass, metal, or wooden pole used to support vehicular or pedestrian traffic signals.

**2 TERM.** This Use Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years commencing on the Installation Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Use Agreement shall be renewed automatically for three (3) successive terms of five (5) years each on the same terms and conditions as set forth herein, unless either party notifies the other of its intention not to renew not less than one hundred eighty (180) calendar days prior to commencement of the relevant renewal term. The City shall timely grant such renewal provided that (i) Crown is not then in default under any provision of this Agreement, and (ii) has otherwise satisfactorily performed all of its obligations under this Agreement during the expiring term. In the event the City elects not to renew the Agreement it shall provide a written basis for such non-renewal.

**3 SCOPE OF USE AGREEMENT.** Any and all rights expressly granted to Crown under this Use Agreement, which shall be exercised at Crown's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in Crown a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement shall be subject to the reasonable prior review and approval of the City). The City shall treat occupants of the Public Way in a reasonable, fair, and competitively non-discriminatory manner, which may take into account the use of or attachment to Municipal Facilities.

**3.1 Attachment to Municipal Facilities.** The City hereby authorizes and permits Crown to enter upon the Public Way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on Municipal Facilities for the purposes of operating the Network and providing Services. On a case-by-case basis subject to City approval in its sole discretion, subject to the provisions of § 4.3 below, Crown shall have the right to draw electricity for the operation of the Equipment from the power source associated with each such attachment to Municipal Facilities. A denial of an application for the attachment of Equipment to Municipal Facilities shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of Crown's Equipment if the Equipment proposed for such application substantially conforms to one of the approved configurations and the Equipment specifications set forth in Exhibit A. In the event any make-ready (including pole replacements) is identified by Crown and the City as required for occupancy of utility poles, such make-ready shall be performed at Crown's expense by contractors approved by City, to be completed in a timely manner but in no event no later than forty five (45) days following agreement by Crown and the City on make-ready

scope. The title for any utility poles placed or replaced to support Crown's Equipment shall vest in the City upon installation.

**3.2 Preference for Municipal Facilities.** In any situation where Crown has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the Public Way, Crown agrees to attach to the Municipal Facilities, provided that (i) such Municipal Facilities are at least equally suitable functionally for the operation of the Network and (ii) the rental fee and installation costs associated with such attachment over the length of the term are equal to or less than the fee or cost to Crown of attaching to the alternative third-party-owned property.

**3.3 No Interference.** Crown in the performance and exercise of its rights and obligations under this Use Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement. The City agrees to require the inclusion of the same or a similar prohibition on interference as that stated above in all agreements and franchises the City may enter into after the Effective Date with other information or communications providers and carriers.

**3.4 Compliance with Laws.** Crown shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

**4 COMPENSATION; UTILITY CHARGES.** Crown shall be solely responsible for the payment of all lawful Fees in connection with Crown's performance under this Use Agreement, including those set forth below.

**4.1 Annual Fee.** In order to compensate the City for Crown's entry upon and deployment within the Public Way and as compensation for the use of Municipal Facilities, Crown shall pay to the City an annual fee (the "Annual Fee") in the amount equal to (i) three percent (3%) of Crown's Gross Revenues, plus (ii) Five Hundred Dollars (\$500.00) for the use of each Municipal Facility, if any, upon which Equipment has been installed pursuant to this Use Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Equipment installed on Municipal Facilities during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than forty-five (45) days after each anniversary of the Installation Date. The City represents and covenants that the City owns all Municipal Facilities for the use of which it is collecting from Crown the Annual Fee pursuant to this § 4.1.

**4.1.1 CPI Adjustment.** Effective commencing on the fifth (5<sup>th</sup>) anniversary of the Installation Date and continuing on each fifth (5<sup>th</sup>) anniversary thereafter during the term, the Annual Fee with respect to the ensuing five-year period shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Urban Consumers, 1982-1984=100) which occurred during the previous five-year period for the New York-Northern New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area (MSA).

**4.1.2 Non-Recurring Expenses; One-Time Payment.** Crown shall reimburse the City for the Total Cost of all non-recurring expenses incurred by the City, which are cause by or attributable

to Crown's request to utilize Municipal Facilities, including all actual costs and expenses of the City to prepare and negotiate this Agreement (such as professional legal and engineering expenses); provided, however, that the maximum aggregate liability of Crown to the City for such Non-Recurring Expenses shall not exceed Twelve Thousand Dollars (\$12,000.00). Further, Crown agrees that at all times during the term of this Agreement, including any extension or renewals thereof, it shall reserve two (2) strands of unlit (dark) fiber owned or operated by Crown within the City for the City's exclusive use in operating any non-commercial or communications functions, so long as the fiber is located within Crown's planned deployment routes, which fiber shall be considered as additional reimbursement for City costs in reviewing and approving this Agreement.

**4.1.3** At the City's election, in lieu of Annual Fee payments discussed in the Agreement, the City may request that Crown extend or augment its network to accommodate City's specific use. In such case, Crown Castle agrees to provide cost-based pricing for any extensions requested by the City, and to offset the cost by any Annual Payments that would otherwise be due to the City under the Agreement, although in no event other than pursuant to Section 4.1.2 shall Crown pay for any additional fiber for the City's use in excess of the payments provided for in the Agreement. The parties understand and agree that the final design for any in-kind services pursuant to this Section 4.1.3 is likely to occur after the execution of this Agreement.

**4.2 Accounting Matters.** Crown shall keep accurate books of account at its administrative office in Canonsburg, PA, or such other location of its choosing for the purpose of determining the amounts due to the City under §§ 4.1 above. The City may inspect Crown's books of account relative to the City at any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 4.1 above. The City agrees to hold in confidence any non-public information it learns from Crown to the fullest extent permitted by Law; provided, however, that Crown acknowledges that the City is subject to Ohio's Public Records Law.

**4.3 Electricity Charges.** For all electrical power, Crown shall be solely responsible for the payment of all electrical utility charges to the applicable utility provider based upon the Equipment' usage of electricity and applicable tariffs.

**5 CONSTRUCTION.** Crown shall comply with all applicable federal, State, and City codes, specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of Crown's Equipment installed in the Public Way and on Municipal Facilities in the City. Crown shall not attach, install, maintain, or operate any Equipment in or on the Public Way or on Municipal Facilities without the prior approval of the City for each location.

**5.1 Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Way shall require any permits, Crown shall, if required under applicable City ordinances, apply for the appropriate permits and pay any standard and customary permit fees, so long as the permit fees and process that the City requests of Crown are functionally equivalent to the fees and the process that are applied to the ILEC and/or the cable provider(s). The City agrees to use reasonable efforts to review and approve Crown's applications within sixty (60) days of submission, and if no comment is received within sixty (60) days, the application will be presumed to be acceptable. Crown acknowledges that installation of new poles within the Public Way shall require City Planning Commission approval.

**5.2 Location of Equipment.** The proposed locations of Crown's planned initial installation of Equipment are identified in Exhibit B. Upon the completion of installation, Crown promptly shall furnish to the City a pole list showing the exact location of the Equipment in the Public Way. Additional installations during the term of this Use Agreement shall be approved and installed in accordance with this Use Agreement, to include review by the City's Planning Commission.

**5.3 Relocation and Displacement of Equipment.** Crown understands and acknowledges that the City may require Crown to relocate one or more of its Equipment installations. Crown shall at the City's direction relocate such Equipment at Crown's sole cost and expense, whenever the City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Equipment is interfering with or adversely affecting proper operation of any City-owned light poles, traffic signals, or other equipment in the Public Way; or (c) to protect or preserve the public health or safety. In any such case, the City shall use its best efforts to afford Crown a reasonably equivalent alternate location. If Crown shall fail to relocate any Equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, the City shall be entitled to relocate the Equipment at Crown's sole cost and expense, without further notice to Crown. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform Crown of the displacement or removal of any pole on which any Equipment is located. If, at any time during the Term, the City determines that utility facilities will be placed underground in an area including any Municipal Facilities upon which Crown has installed Equipment, Crown and the City will cooperate in good faith on the design and installation, at Crown's costs, of suitable replacement facilities, including Decorative Streetlight Poles; and Crown agrees that if reasonably required by the Planning Commission in order to ensure appropriately even and level lighting within a previously unlighted area, additional facilities, which may include Decorative Streetlight Poles beyond or more numerous than those required for Crown's facilities, shall be installed. Crown agrees that Decorative Streetlight Poles may be required by the City in the future in the place of initially-installed standard-design Streetlight Poles, which replacement shall be solely at Crown's cost. Further, Crown agrees that in such instances and at such time as replacement poles are installed, the City may require that the configuration and/or location of ground furniture and/or pole-mounted equipment or equipment cages be changed (such as changing from pole-mounted equipment cages to ground furniture), in the discretion of the City.

**5.4 Relocations at Crown's Request.** In the event Crown desires to relocate any Equipment from one Municipal Facility to another, Crown shall so advise the City. The City will use its best efforts to accommodate Crown by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Use Agreement.

**5.5 Damage to Public Way.** Whenever the removal or relocation of Equipment is required or permitted under this Use Agreement, and such removal or relocation shall cause the Public Way or Municipal Facilities to be damaged, Crown, at its sole cost and expense, shall promptly repair and return the Public Way and Municipal Facilities in and on which the Equipment are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If Crown does not repair the site as just described, then the City shall have the option, upon fifteen (15) days' prior written notice to Crown, to perform or cause to be performed such reasonable and necessary work on behalf of Crown and to charge Crown for the proposed costs to be incurred or the actual costs incurred by the City at the City's standard rates. Upon the receipt of a demand for

payment by the City, Crown shall promptly reimburse the City for such costs and in no event shall Crown fail to reimburse the City for such costs within 30 days of receipt of the City's demand.

**6 INDEMNIFICATION AND WAIVER.** Crown agrees to indemnify, defend, protect, and hold harmless the City, its elected officials, council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from Crown's activities undertaken pursuant to this Use Agreement, except to the extent arising from or caused by the recklessness or willful misconduct of the City, its council or board members, officers, elected trustees, employees, agents, or contractors.

**6.1 Waiver of Claims.** Crown waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the reasonable control of the City.

**6.2 Limitation of Liability.** The City shall be liable only for the cost of repair to damaged Equipment arising from the negligence or willful misconduct of the City, its employees, agents, or contractors. In no event shall either party be liable for indirect or consequential damages.

**7 INSURANCE.** Crown shall obtain and maintain at all times during the term of this Use Agreement (i) Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Crown in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and the Commercial General Liability policy shall provide an amount not less than Three Million Dollars (\$3,000,000) annual aggregate for each personal injury liability and products-completed operations, which limits may be met by a combination of primary and excess or umbrella policies. The Commercial General Liability insurance policy shall name the City, its elected officials, officers, and employees as additional insureds as respects any covered liability arising out of Crown's performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall provide the City with thirty (30) days' prior advance written notice of cancellation by the insurer for any reason other than non-payment of premium.. Crown shall be responsible for notifying the City of such change.

**7.1 Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to this Use Agreement, Crown shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following:

(a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) that Crown's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be

considered excess insurance only and shall not be required to contribute with this insurance; and

(c) that Crown's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

The certificate(s) of insurance with endorsements and notices shall be mailed to the City at the address specified in § 8 below.

**7.2 Workers' Compensation Insurance.** Crown shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage.

**7.3 Insurer Criteria.** Any insurance provider of Crown shall be admitted and authorized to do business in the State of Ohio and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (*i.e.*, a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**7.4 Severability of Interest.** Any insurance policy deductibles or self-insured retentions shall be the responsibility of Crown. The City shall have no responsibility to pay or reimburse either. Any self-insured retention shall be listed on the certificate of insurance and be subject to approval by the City. The Commercial General Liability and Automobile Liability policies shall each contain a severability of interest or separation of insureds clause such that the insurance applies to each insured as if they were the only insured and separately to each insured against whom a claim is made, except for insurance policy limits.

**7.5 Performance Bond.** As a condition of this Agreement and to ensure Crown's full and complete compliance with and performance under this Agreement, Crown shall furnish a performance bond or irrevocable letter of credit in the amount of \$15,000 from a company licensed to do business in the state of Ohio, which performance bond or letter of credit shall be maintained at the sole expense of Crown during the Term of this Agreement. The full value of the bond or letter of credit shall be maintained regardless of claims against the bond or letter of credit that are made by or paid to the City.

**8 NOTICES.** All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service, addressed as follows:

*if to the City:*

**CITY OF AVON**  
Attn: Mayor  
36080 Chester Road  
Avon, Ohio 44011

*if to Crown:*

**CROWN CASTLE NG EAST LLC**  
c/o Crown Castle  
Attn: Ken Simon, General Counsel  
2000 Corporate Drive  
Canonsburg, PA 15317

*with a copy which shall not constitute legal notice to:*

**CROWN CASTLE NG EAST LLC**  
c/o Crown Castle  
Attn: SCN Contract Administration  
2000 Corporate Drive  
Canonsburg, PA 15317

**8.1 Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

**9 TERMINATION.** This Use Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

**10 ASSIGNMENT.** This Use Agreement shall not be assigned by Crown without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of Crown to a parent, subsidiary, or other affiliate of Crown or to any successor in interest or entity acquiring fifty-one percent (51%) or more of Crown's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the City, provided that Crown reasonably demonstrates to the City's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of Crown immediately prior to the transfer; (ii) any such transferee assumes all of Crown's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with Crown's management team, in the provision of telecommunications or similar services, evidences an ability to operate the Network. Crown shall give at least forty-five (45) days' prior written notice (the "Exempted Transfer Notice") to the City of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why Crown believes the Exempted Transfer Criteria have been satisfied. The City Council shall have a period of forty-five (45) days (the "Exempted Transfer Evaluation Period") from the date that Crown gives the City its Exempted Transfer Notice to object in writing to the adequacy of the

evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the City has received from Crown any and all additional information the City may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the City gives Crown notice in writing of the additional information the City requires within fifteen (15) days after the City's receipt of the original Exempted Transfer Notice. If the City Council fails to act upon Crown's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City Council that Crown has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

**11 MISCELLANEOUS PROVISIONS.** The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

**11.1 *Nonexclusive Use.*** Crown understands that this Use Agreement does not provide Crown with exclusive use of the Public Way or any Municipal Facility and that the City shall have the right to permit other providers of communications services to install equipment or devices in the Public Way and on Municipal Facilities. The City agrees promptly to notify Crown of the receipt of a proposal for the installation of communications equipment or devices in the Public Way or on Municipal Facilities. In addition, the City agrees to advise other providers of communications services of the presence or planned deployment of the Equipment in the Public Way and/or on Municipal Facilities.

**11.2 *Waiver of Breach.*** The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

**11.3 *Severability of Provisions.*** If any one or more of the provisions of this Use Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

**11.4 *Contacting Crown.*** Crown shall be available to the staff employees of any City department having jurisdiction over Crown's activities 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 Equipment. The City may contact by telephone the network operations center operator at telephone number (800) 788-7011 regarding such problems or complaints.

**11.5 *Governing Law; Jurisdiction.*** This Use Agreement shall be governed and construed by and in accordance with the laws of the State of Ohio, without reference to its conflicts of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such action shall be vested exclusively in the state or federal courts with jurisdiction over the City.

**11.6 Attorneys' Fees.** Should any dispute arising out of this Use Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

**11.7 Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

**11.8 Representations and Warranties.** Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 3.2 above.

**11.9 Amendment of Use Agreement.** This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

**11.10 Entire Agreement.** This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

In witness whereof, and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the Effective Date.

*[Signature Page Follows]*

**CROWN CASTLE NG EAST LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**CITY OF AVON**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Exhibits:**

Exhibit A - Equipment

Exhibit B - Initial Equipment Locations

**DRAFT**

***Exhibit A***  
***Standard Equipment Profiles***

**DRAFT**

***Exhibit B***  
***Initial Equipment Locations***

## Initial Locations

<u>Crown Name</u>	<u>Crown BUN</u>	<u>Lat</u>	<u>Long</u>	<u>Ref Address</u>	<u>Type</u>

[Site Plans Attached]