

ORDINANCE NO. 2016 - 06

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE AMENDING ADOPTING A FRANCHISE AGREEMENT WITH NEWPATH NETWORKS, LLC FOR THE INSTALLATION OPERATION AND MAINTENANCE OF A DAS FACILITY WITHIN THE TOWN OF MOUNTAIN VILLAGE

RECITALS:

- A.** The Town of Mountain Village (the “Town”), in the County of San Miguel and State of Colorado, is a home rule municipality duly organized and existing under the laws of the State of Colorado and the Town Charter.
- B.** The Town Council of the Town has determined that it is essential to the public health, safety and welfare of the Town, its residents, property owners and guests to enhance the cellular network capabilities within the Town.
- C.** NewPath Networks, LLC (“NewPath”) is a subsidiary of Crown Castle International Corp, and is a recognized leading provider of dispersed antenna systems (“DAS”). NewPath is also a licensed utility provider by the Colorado Public Utilities Commission making NewPath eligible to be granted a Franchise by the Town.
- D.** In order to improve and enhance the cellular network capabilities, the Town desires to grant a Franchise to NewPath for installation of a DAS within the Town according to the terms and conditions of the Franchise Agreement attached hereto and incorporated herein as Exhibit A.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO AS FOLLOWS:

Section 1. Legislative Findings.

The recitals to this Ordinance are adopted as findings of the Town Council in support of the enactment of this Ordinance.

Section 2. The Franchise Agreement with NewPath is hereby adopted as set forth on Exhibit A attached hereto.

Section 3. Severability.

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and, to this end, the provisions of this Ordinance are declared to be severable.

Section 4. Ordinance Effect.

Existing ordinances or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and any and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed, provided however, that the repeal of any ordinance or parts of ordinances of the Town shall not revive any other section of any ordinance or ordinances hereto before repealed or superseded and further provided that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 5. Safety Clause.

The Town Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare of the citizens of the Town.

Section 6. Effective Date.

This Ordinance shall take effect on June 18th, 2016.

Section 7. PUBLIC HEARING.

A public hearing on this Ordinance was held on the 19th day of May, 2016, in the Town Council Chambers, 455 Mountain Village Boulevard, Mountain Village, Colorado.

INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 21st day of April, 2016.

**TOWN OF MOUNTAIN VILLAGE,
COLORADO, A HOME-RULE
MUNICIPALITY**

By: _____

Dan Jansen, Mayor

ATTEST:

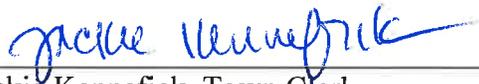

Jackie Kennefick, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado, this 19th day of May, 2016.

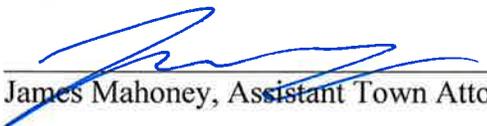
**TOWN OF MOUNTAIN VILLAGE,
COLORADO, A HOME-RULE
MUNICIPALITY**

By: 
Dan Jansen, Mayor

ATTEST:


Jackie Kennefick, Town Clerk

Approved As To Form:


James Mahoney, Assistant Town Attorney

I, Jackie Kennefick, the duly qualified and acting Town Clerk of the Town of Mountain Village, Colorado ("Town"), do hereby certify that:

1. The attached copy of Ordinance No.2016-06 ("Ordinance") is a true, correct and complete copy thereof.
2. The Ordinance was introduced, read by title, approved on first reading with minor amendments and referred to public hearing by the Town Council of the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on April 21, 2016 by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Dan Jansen, Mayor	X			
Marty McKinley	X			
Bruce MacIntire			X	
Dan Caton	X			
Laila Benitez	X			
Cath Jett	X			
Michelle Sherry	X			

3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance, was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on April 27, 2016, in accordance with Section 5.2b of the Town of Mountain Village Home Rule.
4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on

May 19, 2016. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	“Yes”	“No”	Absent	Abstain
Dan Jansen, Mayor	X			
Marty McKinley	X			
Bruce MacIntire	X			
Dan Caton	X			
Laila Benitez	X			
Cath Jett	X			
Michelle Sherry	X			

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me, as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this 19th day of May, 2016.

(SEAL)



Jackie Kennefick

Jackie Kennefick, Town Clerk

EXHIBIT A



Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317

September 6, 2016
VIA FEDEX

Town of Mountain Village
455 Mountain Village Blvd.
Suite A
Mountain Village, CO 81435
Attn. James Mahoney

Re: DAS Facility Franchise Agreement / 47780572 / 863016

James,

Enclosed, please find one (1) fully executed original of the above referenced agreement.

If you have any questions about the agreement, please contact Mark Chmura, Sales Director – SCN, via email at Mark.Chmura@crowncastle.com or phone at (480) 735-6945.

Sincerely,

A handwritten signature in black ink, appearing to read 'DK' or 'DKL'.

David C. Kutschbach
David.Kutschbach@crowncastle.com
SCN Contract Coordinator – Southeast & West Regions
2000 Corporate Drive
Canonsburg, PA 15317
(724) 416-9218

DAS FACILITY FRANCHISE AGREEMENT

by and between

Town of Mountain Village, a home-rule municipality and political subdivision of the state of Colorado

and

NewPath Networks, LLC

Dated SEPTEMBER 2, 2016

TABLE OF CONTENTS

1.	Definitions	1
2.	Grant of Franchise	4
3.	Term	5
4.	Consideration, Franchise Fee and Taxes	5
5.	Construction and Operation of the System	6
6.	Removal and Relocation of Attachments	8
7.	Non-Disclosure	9
8.	Insurance; Casualty	9
9.	Eminent Domain	10
10.	Default	10
11.	Assignment	11
12.	Notice	11
13.	Miscellaneous	11

SCHEDULES:

Schedule 1	Property
Schedule 2	Existing Agreements

EXHIBITS:

Exhibit A	Sample DAS Order
	Exhibit 1 Network Description
	Exhibit 2 Node Equipment and Locations
	Exhibit 3 Hub Site
	Exhibit 4 Fiber Network
	Exhibit 5 Sample Resolution
Exhibit B	Notification of Removal by Franchisee
Exhibit C	Fiber Network Standards

DAS FACILITY FRANCHISE AGREEMENT

THIS DAS FACILITY FRANCHISE AGREEMENT is entered into as of the date fully executed below ("Effective Date"), by and between **Town of Mountain Village, Colorado**, a home-rule municipality and political subdivision of the state of Colorado (the "The Town"), and **NewPath Networks, LLC**, a New Jersey limited liability company ("Franchisee").

RECITALS

- A. WHEREAS, The Town is the owner, manager and operator of the land and premises identified in Schedule 1 hereto, including certain buildings and grounds (the "Property"), which Property includes buildings, utility infrastructure, signage, light standards, Fiber Network (if applicable) and other improvements identified in Schedule 1 hereto (herein "Structures"); and
- B. WHEREAS, The Town desires (i) to enhance the wireless communications services available at the Property and throughout the incorporated boundaries of the Town of Mountain Village through a more comprehensive solution on the conditions agreed to herein; (ii) to rely on the resources and experience of Franchisee to manage access to the Property and the Structures by the use of common facilities for all Wireless Carriers to minimize redundant use of the Structures and minimize the visual impact thereon; and (iii) to avoid unnecessary disruption and administrative burdens for The Town's business and operations; and
- C. WHEREAS, Franchisee proposes to occupy a portion of certain of The Town's Structures and Property for the purposes of creating a wireless communications network available for hire from Franchisee by Wireless Carriers; and
- D. WHEREAS, The Town is authorized to grant one or more Franchises to Franchisee to make Attachments to The Town's Structures and to occupy a certain portion of the Property in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby covenant and agree as follows:

AGREEMENT

- I. **Definitions.** For all purposes of this Agreement, the following terms shall be defined as follows:
 - a. **Additional Services** shall have the meaning set forth in Section 2.e.
 - b. **Affiliate** shall mean any entity which directly or indirectly controls, is controlled by or is under common control with the referenced entity.
 - c. **Agent** shall mean any directors, trustees, officers, employees, affiliates, agents, assigns, successors, representatives, contractors or subcontractors of a Party.
 - d. **Agreement** shall mean this DAS Facility Franchise Agreement and all DAS Orders executed hereunder, each as amended.
 - e. **Alternate Location** shall have the meaning set forth in Section 6.b.
 - f. **Attach** shall mean to install, connect or construct Attachments on, at or in a Structure pursuant to a DAS Order.
 - g. **Attachments** as used herein shall include antenna, wire, fiber optic, telecommunications and/or coaxial cable, Nodes and other wireless communications equipment attached and maintained upon a Structure pursuant to a DAS Order.
 - h. **Carrier Agreement** shall mean a binding contractual commitment between Franchisee and a Wireless Carrier to utilize the System.

- i. **Council** shall have the meaning set forth in Section 5.a.
- j. **Cure Period** shall have the meaning set forth in Section 10.a.
- k. **DAS Order** shall have the meaning set forth in Section 2. "DAS Order" shall also refer to amended DAS Orders.
- l. **Defaulting Party** shall have the meaning set forth in Section 10.a.
- m. **DPDS** shall have the meaning set forth in Section 5.a.
- n. **DRB** shall have the meaning set forth in Section 2.c.
- o. **Effective Date** shall mean the date set forth in the Preamble.
- p. **Environmental Law** shall mean any Law regulating the presence of Hazardous Materials on or relating to the Property, including the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; or state or local Law analogous thereto.
- q. **Existing Agreements** shall mean the agreements identified in Schedule 2 hereto, each between a Wireless Carrier and The Town in full force and effect as of the Effective Date for the operation of Wireless Carrier facilities on the Property.
- r. **Fiber Network Standards** are set forth in Exhibit C hereto.
- s. **Force Majeure** shall mean any event beyond the control of either Party and which is relied upon by either Party as justification for delay in, or as excuse from complying with, any obligation required of the Party under this Agreement, including, but not limited to: (i) an act of God, war, terrorism, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) any act of any federal, state, county or local court, administrative agency or governmental office or body that stays, invalidates or otherwise affects this Agreement, the operation of, or any permits or licenses associated with or related to, the obligations hereunder; (iii) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county or local law, rule, permit, regulation or ordinance after the date of execution of this Agreement, applicable to the obligations hereunder, including, without limitation, such changes that have a substantial or material adverse effect on the cost of performing the obligations herein; (iv) any work stoppages, strikes, picketing, labor dispute, or similar activities at the Property; (v) the institution of a legal or administrative action or similar proceeding by any person or entity that delays or prevents any aspect of the obligations to be performed by either Party hereunder.
- t. **Franchised Structure** shall mean a Structure upon which an Attachment has been made and is maintained thereupon by Franchisee pursuant to this Agreement.
- u. **Franchisee** shall have the meaning set forth in the Preamble.
- v. **Franchisee's Fiber Network** shall mean dark fiber capacity on Franchisee's fiber optic network or related or unrelated conduit installed throughout the Property and identified and dedicated for Franchisee's use through a DAS Order.
- w. **Government Authority** shall mean the United States of America, the state, commonwealth, tribal unit, county, parish, town, or other municipality in which the Property is located and any governmental entity exercising executive, legislative, judicial, regulatory or administrative functions of, over or pertaining to the System or the Property.

- x. **Government Permits** shall mean all certificates, permits or other approvals which may be required from any Government Authority necessary for the construction and operation of the System.
- y. **Hazardous Materials** shall mean (i) any explosive or radioactive substances or waste, petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls; (ii) any 'hazardous substances,' 'extremely hazardous substance,' 'hazardous chemical,' 'toxic chemical,' 'hazardous waste' or 'pollutant,' each as defined under Environmental Law; and (iii) any substance or waste regulated under any Environmental Law.
- z. **Hub Site** shall mean the exterior or interior space used by Franchisee, which may or may not be leased by The Town to Franchisee (if leased from The Town it shall require a separate written lease agreement between the Parties) and identified in a DAS Order: (i) for the installation of Franchisee's equipment for the operation and control of the System; and (ii) to be licensed to Wireless Carriers for the placement and operation of their equipment required for use of the System.
- aa. **Initial Application** shall have the meaning set forth in Section 5.a.
- bb. **Initial Term** shall have the meaning set forth in Section 3.
- cc. **Laws** shall mean any administrative, judicial, legislative or other statute, law, ordinance, Government Permit, regulation, rule, order, decree, written pronouncement, writ, award or decision of any Government Authority.
- dd. **Node** shall mean a radio access node of the System, generally consisting of an antenna, equipment box, cabling connecting the antenna and equipment box and related attachments.
- ee. **Non-Defaulting Party** shall have the meaning set forth in Section 10.a.
- ff. **Parties or Party** shall mean The Town and Franchisee.
- gg. **Person** shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.
- hh. **Primary Purpose** shall have the meaning set forth on Schedule 1 hereto.
- ii. **Property** shall have the meaning set forth in the Recitals.
- jj. **Radio Space** shall be the locations on, in or at a Structure to be occupied by any Attachments for operation of the System, including the Hub Site space.
- kk. **Renewal Term** shall have the meaning set forth in Section 3.
- ll. **RF** shall mean radio frequency energy, whether or not associated with operation of the System.
- mm. **Structure Manager** shall mean The Town's designated manager for managing and administering, on behalf of The Town, the Attachments and the System.
- nn. **Structures** shall have the meaning set forth in the Recitals.
- oo. **Subsequent Applications** shall have the meaning set forth in Section 5.a.ii.
- pp. **System** shall mean collectively the small cell network, including distributed antenna system (DAS), constructed by Franchisee under a DAS Order for the purpose of providing RF coverage in and about the Property, including Franchisee's System equipment at the Radio Space and all Attachments, power lines, four(4) hours of battery backup power generation for the Hub Site, coaxial, fiber optic and telecommunications cables and other associated equipment, including equipment owned and operated by

Wireless Carriers, located throughout the Property and at the Hub Site and operated by Franchisee on a commercial, for-profit basis to provide services to Wireless Carriers.

- qq. **Term** shall have the meaning set forth in Section 3.
 - rr. **Term Commencement Date** shall mean either the earlier of (1) the Threshold Wireless Carrier Agreement is fully executed or (2) the date twelve (12) months following the Parties' execution of this Agreement.
 - ss. **The Town** shall have the meaning set forth in the Preamble.
 - tt. **The Town's Fiber Network** shall mean dark fiber capacity on The Town's fiber optic network or related or unrelated conduit installed throughout the Property and identified and dedicated for Franchisee's use through a DAS Order.
 - uu. **Threshold Wireless Carrier** shall have the meaning set forth in Section 5.
 - vv. **Wireless Carrier** shall mean a wireless cellular provider offering communications services to the public, including commercial mobile radio service (CMRS), cellular, personal communications service (PCS), wireless broadband (wireless broadband shall not include standalone wireless internet provider only providing broadband access, which shall be allowed only with the written consent of The Town), telematics and wireless data carriers. The Town shall not be considered a Wireless Carrier to the extent it provides any such services for its own internal use or wireless broadband service.
2. **Grant of Franchise.** On the terms and conditions set forth in this Agreement from time to time upon the Parties' mutual execution and delivery of a DAS Order substantially in the form attached to this Agreement as Exhibit A (a "DAS Order"), The Town grants a non-exclusive right, privilege and authority to Franchisee, to install, maintain, monitor and operate within (a) the Radio Space described therein and (b) if applicable, the Fiber Network in the quantity and length identified in such DAS Order. The Town agrees, subject to the conditions in this Agreement, that, by way of the DAS Order, it will permit Franchisee (i) to place, operate and maintain Attachments within the Radio Space on Leased Structures in order to operate its System, and (ii) if applicable, to use the Fiber Network as a transmission medium to provide communication services and lit fiber transport capacity as appropriate for the operation of the System. Franchisee agrees that its Attachments will be used only in connection with Franchisee's construction, operation and maintenance of the System. Franchisee expressly recognizes that the Structures are used and are to continue to be used by The Town for the Primary Purpose, and that Attachments are and will continue to be secondary and subordinate to The Town's use of its Structures for its Primary Purpose.
- a. **System Additions.** Franchisee shall have the right, subject to approval of The Town and the provisions of this Agreement, to (i) attach to any additional Structure; or (ii) add additional Attachments to any Structure; and, if applicable, use additional portions of the Fiber Network, upon the Parties' execution of an amended DAS Order. Franchisee shall have exclusive right to the use of the Franchised Structures for purpose of operating a System on the Property.
 - b. **Limitations.** Regardless of its duration, Franchisee's use of a Structure shall not vest in Franchisee any ownership rights in the Structure. In addition to the Existing Agreements, the right to Attach herein granted shall at all times be subject to any pre-existing contracts and arrangements, written notice of which The Town provides to Franchisee in advance of the Parties' executing a DAS Order. Nothing herein contained shall be construed to compel The Town to maintain any of its Structures for a period longer than is necessary for its Primary Purpose.
 - c. **Consents.** The Town represents that it is authorized to grant to Franchisee the right to Attach and that The Town has authorized the Structure Manager, subject to Section 5.a, to grant DAS Orders on its behalf consistent with the terms of this Agreement. No consent or approval of any third party, other than the Design Review Board ("DRB") and Council (as defined below), is necessary for The Town to execute this Agreement or perform the obligations hereunder for the Term of this Agreement. Franchisee will be responsible at its expense for securing all Government Permits necessary for the installation and operation of the System.

- d. **Exclusive Marketing Rights.** The Town hereby designates Franchisee as the point of contact regarding discussions and dealings with Wireless Carriers in connection with their wireless telecommunication needs at the Property, including siting, installation, development, use and management thereof, whether by distributed antenna system, rooftop, tower or otherwise. The Town shall require all Wireless Carriers requesting use of, or expressing an interest in using, the Property to provide wireless telecommunications service thereon to consult with Franchisee and grants to Franchisee the right to negotiate on The Town's behalf with all Wireless Carriers in this regard. During the Term, except as provided in Section 2.e below, The Town shall not grant a lease, license or similar agreement during the Term to any Wireless Carrier or commercial wireless infrastructure provider for the purposes of installing a wireless telecommunications system at the Property. The Town reserves the right to continue, modify or terminate the Existing Agreements as it determines in its sole discretion.
- e. **System Expansion.** The Town and Franchisee acknowledge and agree that increased demand, changes or advances in wireless technology, among other reasons, during the Term may cause The Town or Wireless Carriers to desire expansion of the System or the provision of additional wireless network coverage or capacity on the Property (collectively, "Additional Services"), and Franchisee shall have the exclusive right to provide the Additional Services, as set forth herein. In the event Additional Services are desired by The Town, The Town shall provide a written Proposal to Franchisee setting forth its coverage, technology and other objectives (the "Objectives"). Franchisee shall provide a written Proposal ("Proposal") for the provision of Additional Services within ninety (90) days following receipt of such Objectives from The Town. In the event a Wireless Carrier desires Additional Services, Franchisee shall provide a Proposal to The Town for review. In the event that The Town accepts Franchisee's Proposal (as may be modified by mutual consent), the Parties agree to execute a mutually acceptable amended DAS Order. In the event that (i) Franchisee declines to provide the Additional Services, or (ii) following good faith negotiations, The Town and Franchisee cannot reach agreement on the provision of Additional Services within one hundred eighty (180) days following delivery of Franchisee's Proposal, then The Town shall be free to enter into agreements with any third party for Additional Services but subject to Objectives substantially similar to those set forth in the original request. Notwithstanding the provisions of this section, The Town shall have no obligation whatsoever to allow any Additional Services and Franchisee shall have no obligation to effect or right to require such expansion.
3. **Term.** This Agreement shall commence on the Effective Date and shall continue in effect for a period of ten (10) years following the Term Commencement Date (the "Initial Term") unless previously terminated pursuant to the provisions herein; each DAS Order will commence on the "Order Effective Date" set forth thereon. The Agreement shall automatically renew for three (3) additional five (5) year terms (each a "Renewal Term", collectively with the Initial Term, the "Term"), unless either Party provides written notice to the other Party of its intent not to renew not less than one hundred eighty (180) days prior to the expiration of the then-current Term. The term of any DAS Order shall, unless previously terminated pursuant to the provisions of this Agreement, continue in effect until the end of the Term and the terms of this Agreement shall be incorporated into each such DAS Order.
4. **Consideration, Franchise Fee and Taxes.** In consideration for The Town's entering into this Agreement and granting the DAS Orders to Franchisee throughout the Term, Franchisee shall provide the following consideration to The Town:
- a. **Consideration.** In consideration for (and pursuant to the terms and conditions of this Agreement): (i) its construction at Franchisee's cost of the System; (ii) marketing the System to Wireless Carriers in order to increase the number of Wireless Carriers providing coverage to the Property; (iii) deployment of neutral host technology which reduces the visual impact, consumption of Attachment space and limiting disruption to The Town's Primary Purpose; and (iv) serving as the manager and single point of contact for Wireless Carriers, eliminating the administrative burden on The Town's organization, Franchisee shall be entitled to bill and keep all revenues of the System except as set forth in Section 4.b of this Agreement.
- b. **Franchise Fee.** At any time after the first three (3) years of the Effective Date of this Agreement, The Town may, in its sole and absolute discretion, elect to charge Franchisee, a "Franchise Fee" for the use of the Property and Structures as contemplated by this Agreement which are valuable public assets acquired and maintained by The Town at a great expense to its taxpayers, residents and guests. In the event The Town

elects to impose a Franchise Fee, The Town shall do so by adopting an ordinance setting the Franchise Fee as a percentage of net revenues of the System not to exceed five percent (5%). The Franchise Fee shall not exempt Franchisee from the payment of other lawful fees and taxes. If imposed, the Franchise Fee shall be collected and paid to The Town by the Franchisee quarterly. Any transaction or arrangement between Franchisee and any Wireless Carrier using the System, which has the effect of circumventing payment of the Franchise Fee or evasion of payment of the Franchise Fee by any means is prohibited. The Franchise Fee shall be considered a payment for the use of the Property and Structures.

- c. **Reports.** If The Town elects to charge a Franchise Fee, Franchisee shall provide The Town with an opportunity to (i) review copies of all Carrier Agreements within fourteen (14) days of entering such agreements during normal business hours at Franchisee's Denver, Colorado office; or (ii) upon request; Franchisee shall arrange temporary electronic access for two (2) people selected by The Town to view all Carrier Agreements. In addition, Franchisee shall permit The Town, its agents and employees at all times during normal business hours to review for any and all purposes complete and unredacted copies of the Carrier Agreements in the Denver, Colorado office of Franchisee and shall make unredacted copies available to The Town and its auditors for audits under this Agreement. No later than January 31 of each year, Franchisee shall provide to The Town an annual report showing all revenues received from Wireless Carriers and the calculation of the Franchise Fee for the preceding calendar year, or portion thereof ("Report") and The Town shall reconcile accounts as necessary to resolve any discrepancies between Franchise Fees paid and that set forth in the Report. No more than two (2) times during each calendar year, Franchisee shall afford The Town, upon reasonable prior notice during regular business hours, the right to review or audit Franchisee's books and records regarding operation of the System and performance of its obligations under this Agreement.
 - d. **Public Records.** If The Town receives a public records request for records, The Town shall notify Franchisee in writing of such request so that Franchisee may take appropriate protective measures.
 - e. **Taxes.** The Parties agree and acknowledge that The Town is a governmental entity and therefore is not subject to real estate or other taxes on the Property. Franchisee agrees that if personal property taxes are levied against the Property that are directly attributable to the improvements constructed by Franchisee, Franchisee shall reimburse The Town for such taxes. The Town agrees to provide Franchisee any documentation evidencing such personal property taxes are levied and how they are attributable to Franchisee's use. Franchisee reserves the right to challenge any such assessment and The Town agrees to cooperate with Franchisee in connection with any such challenge.
5. **Construction and Operation of the System.** Franchisee will not commence construction of the System until it receives a binding contractual commitment from at least one (1) Wireless Carrier to use the System ("Threshold Wireless Carrier"). If there is no Threshold Wireless Carrier by the second (2nd) anniversary of the Effective Date, The Town may at its option, and notwithstanding anything contained herein to the contrary, terminate this Agreement without cost or obligation by written notice to Franchisee. If Franchisee is to construct the System, it will do so at the Property at its own cost and expense as set forth in the DAS Order and in accordance with the following:
- a. **Approval Process for System.** Upon Franchisee desiring to implement the first DAS Order for the System, Franchisee shall first submit an application to The Town to review such infrastructure (the "Initial Application") which shall include, but not be limited to, review of the design characteristics, location, impact to the Property, existing Town infrastructure, Structures and the general impact to The Town from such System. The Initial Application shall be processed by The Town's Department of Planning and Development Services ("DPDS") who shall review the Initial Application to determine if it has sufficient information and details to make a determination on the Initial Application and, if not, it shall specify the information necessary to make a determination. DPDS shall coordinate all affected departments of The Town to review and comment on the Initial Application. Upon determining that the Initial Application has sufficient information and details to make a determination, the Initial Application shall be scheduled for review by the DRB in order for the DRB to make a recommendation solely on the aesthetics of the Initial Application to The Town Council (the "Council"). The Council shall then consider the Initial Application and shall (i) approve; (ii) approve with conditions; (iii) deny or (iv) continue deliberating the Initial Application with specific directions or request information from Franchisee.

- i. Upon receipt of the Initial Application and a determination that the Initial Application has sufficient information, The Town shall be required to notice the Initial Application by posting in a newspaper of general circulation, on The Town's website and in three designated Town posting locations for at least fifteen (15) days prior to Council's review of the Initial Application. In addition, upon a determination that the Initial Application has sufficient information by the Town, Franchisee shall send written notice of date of the DRB and Town Council meetings for which the Initial Application will be considered at least fifteen (15) days prior to each such meeting to all property owners within one hundred and fifty (150) feet of each proposed Node.
 - ii. Upon approval of the Initial Application, Franchisee may desire to implement subsequent DAS Orders. In this case, Franchisee shall submit subsequent applications (the "Subsequent Applications") which shall be processed and approved by DPDS staff, so long as the Subsequent Applications are (x) substantially similar to the Initial Application; (y) use similar materials and methods and (z) comply with any conditions of approval from the Initial Application.
 - iii. The approval process set forth herein is adopted by Ordinance number 2016-06 and is a specific approval process which supersedes The Town's Community Development Code with respect to the process for which the System is to be approved. However, The Town may use the Community Development Code as a guide for the type of information, application components or noticing requirements required for the Application.
 - iv. Only upon receipt of the approval required by this Section 5.a or 5.a.ii may the Structure Manager execute the DAS Order or amendment thereto.
- b. **Standard of Care.** Franchisee shall construct and maintain all Attachments in a safe condition in accordance with applicable Laws, industry standards and The Town's general construction and maintenance standards provided to Franchisee prior to the date of the DAS Order. No work shall be done by Franchisee when there is reason to suspect that working conditions on a Structure may be hazardous as the result of weather or any other conditions. As promptly as possible following Franchisee's completion of the System, Franchisee will provide The Town with as-built drawings showing the location of the Attachments, including Node and Hub Site locations and equipment layout and the Parties will amend the DAS Order as appropriate to incorporate such drawings.
 - c. **Contact.** Franchisee shall respond on a 24/7 basis to any reasonable problems or emergencies reported by the Structure Manager via contact to Franchisee's network operations center at (888) 632-0931.
 - d. **The Town Liability.** The Town reserves the right to maintain the Structures as necessary to fulfill its Primary Purpose. Except as expressly set forth in this Agreement, The Town shall not be liable to Franchisee for any interruption of service for the System or for any property of The Town used by Franchisee. Franchisee specifically waives any claim for indirect, special, consequential or punitive damages against The Town in connection with this Agreement, including any claims for loss or interruption of service. Nothing contained herein shall constitute a waiver of The Town's governmental immunity and any claim or damage or expense attributable to The Town shall be limited to the amounts prescribed by Colorado law for governmental entities.
 - e. **Franchisee Liability.** Franchisee shall exercise reasonable caution in performing the activities covered by this Agreement to avoid damage to the Structures. Franchisee hereby agrees to reimburse The Town for any direct costs incurred in making repairs to any Property damaged by Franchisee. Franchisee shall promptly advise The Town of all incidents and claims arising or alleged to have arisen in any manner by Franchisee's activities upon the Property. The Town specifically waives any claim for indirect, special, consequential or punitive damages against Franchisee in connection with this Agreement, including any claims for loss or interruption of service.
 - f. **Utilities.** The Town makes no representations or warranties with respect to availability of utilities to serve each Attachment. The Town shall allow Franchisee to access its electrical power, provided that Franchisee pay the cost of utility service provided to the Property and attributable to Franchisee's use. The Town will provide Franchisee and the Wireless Carriers, at no cost to The Town, with such reasonable assistance as is necessary to enable Franchisee and the Wireless Carriers to arrange for such utilities and services. Such costs

shall be billed monthly by The Town to Franchisee, with reasonable supporting documentation of such utility consumption and shall be paid by Franchisee upon receipt of such invoice. Franchisee agrees to pay for utilities based on (i) sub-metering equipment at the Hub Site, to be installed by Franchisee at its cost; (ii) estimated usage for each Node, based on equipment specifications and spot measurements; or (iii) as otherwise agreed between the Parties.

- g. **Hazardous Materials**. Franchisee shall not cause or permit the escape, disposal or release of any Hazardous Materials on or from the Property in any manner prohibited by Law. Franchisee shall indemnify and hold The Town harmless from all claims from the release of any Hazardous Materials on the Property if caused by Franchisee.
 - h. **The Town's Fiber Network Operation**. If a portion of The Town's Fiber Network is being made available to Franchisee, The Town shall maintain and operate The Town's Fiber Network in accordance with the Fiber Network Standards. This section shall only apply in the event that The Town and Franchisee reach an agreement for Franchisee to utilize The Town's Fiber Network other than the conduit portion of The Town's Fiber Network which shall be included in a DAS Order or amended DAS Order, as the case may be. The Town will deliver to Franchisee detailed maps showing in detail the locations of The Town's Fiber Network. In the event the Parties execute a DAS Order or amended DAS Order, as the case may be, allowing Franchisee to use The Town's Fiber Network, The Town will, at its sole cost and expense, subject to annual appropriation by the Town Council perform routine maintenance and repair checks and services, including regularly scheduled preventative inspections, as necessary to maintain The Town's Fiber Network in good working order and with the same care standard as The Town treats The Town's own fiber, but in no event with less than reasonable care. When The Town or The Town's Agents perform any routine maintenance, The Town will notify Franchisee at least seven (7) days before any such routine maintenance. Maintenance which is reasonably expected to produce any signal discontinuity will be coordinated between the Parties. The Town will make all reasonable efforts to schedule major system work, such as fiber rolls and hot cuts, between 2:00 a.m. and 6:00 a.m. local time. In the event The Town fails to meet the Fiber Network Standards, Franchisee may make any necessary repairs at its own expense and shall receive reimbursement from The Town for its reasonable costs incurred. The Town's Fiber Network demarcation points will be easily accessible fiber access points to be mutually agreed upon after site walks.
 - i. **Franchisee's Fiber Network Operation**. Franchisee shall maintain and operate Franchisee's Fiber Network in accordance with the Fiber Network Standards. Franchisee will, at its cost and expense, perform routine maintenance and repair checks and services, including regularly scheduled preventative inspections, as necessary to maintain Franchisee's Fiber Network in good working order.
6. **Removal and Relocation of Attachments**. Without limiting or terminating the Term of the Agreement, specific DAS Orders may be amended without fault to either Party upon the following conditions:
- a. **Amendment by Franchisee**. Franchisee may amend a DAS Order as to any Structure by removing its Attachments therefrom if, in its reasonable business judgment: (i) such removal will not materially degrade the RF coverage on the Property; or (ii) the Attachment being removed is to be relocated pursuant to a DAS Order amendment agreed to and signed by both Parties. At least thirty (30) days prior to removal, Franchisee shall give The Town notice of such removal substantially in the form attached hereto as **Exhibit B** hereto and the Parties will execute an amended DAS Order subject to The Town's review and approval pursuant to **Section 6.a.ii**.
 - b. **Relocation by The Town**. The Town may require Franchisee to remove any Attachment if The Town, in support of its Primary Purpose, intends to remove or substantially alter the Structure supporting such Attachment so that it is unable to support the Attachment. In order to require such removal, The Town must (i) provide at least sixty (60) days' written notice prior to the date of the proposed removal of any Attachment; (ii) propose a reasonable alternative location for such Attachment acceptable to Franchisee (the "**Alternate Location**"); and (iii) grant Franchisee at least sixty (60) days following receipt of all necessary Government Permits (but at least one hundred twenty (120) days for relocation of the Hub Site in the event the Hub Site is located on The Town's Property) to complete the relocation. The Town shall be responsible at its cost for providing an installation-ready location for Lessee's Hub Site, in the event the Hub Site is located on The Town's Property, including but not limited to (a) the construction or modification of Structures to

accommodate such Hub Site as proposed by The Town; and (b) any necessary extension of The Town's Fiber Network (as applicable according to Section 5.g herein) to serve the location. The Town and Franchisee shall work in good faith to determine a suitable Alternate Location for an Attachment; however, (y) the costs to remove and relocate such Attachment to the Alternate Location shall be at Franchisee's sole cost and expense and (z) The Town shall only request removal and relocation of three (3) Attachments in a twelve (12) month period. In the event Franchisee accepts the Alternate Location for its Attachment, The Town and Franchisee shall execute an amended DAS Order before construction commences.

- c. **Relocation by Franchisee.** Franchisee shall not change the location of its Attachments without the written consent of The Town, except in cases of emergency. In cases of emergency, Franchisee shall procure The Town's consent orally by contacting the Structure Manager and such request and consent may be confirmed in writing by Franchisee and approved in writing by The Town once the emergency has been resolved. Franchisee shall be responsible for its cost of relocating any Attachment.
 - d. **Conflict with Laws.** Upon written notice from The Town to Franchisee that the use of any Structure is forbidden by Law, the DAS Order to Attach to such Structure shall immediately be amended and the Attachments of Franchisee shall be removed by Franchisee from the affected Structures, provided, however, that Franchisee, with The Town's reasonable assistance, may contest such adverse decision in good faith, and during the pendency of such challenge may maintain such Attachment to the extent allowed by Government Authorities. The Town will cooperate with Franchisee to identify a suitable Alternative Location, in which case the Attachment shall be relocated in accordance with the process set forth in Section 6.b above.
7. **Non-Disclosure.** The Parties agree that without the express written consent of the other Party, neither Party shall reveal, disclose or publish to any third party during the Term of this Agreement any portion thereof, or any information disclosed hereunder, except to such third party's auditor, accountant, lender or attorney or to any federal, state or local governmental unit or agency thereof with jurisdiction if required by regulation, subpoena or government order to do so. If The Town receives a public records request pursuant to Law, The Town shall provide Franchisee notice of such request and reasonable cooperation with Franchisee so as to permit Franchisee to timely respond to such request for disclosure and take appropriate protective measures under the circumstances. Lessee may show this Agreement, any DAS Order or any relevant attachment or exhibit to this Agreement and any DAS Order (each with all confidential information redacted) to a third party, including to Wireless Carriers, to the extent reasonably necessary to demonstrate Lessee's rights under this Agreement or the DAS Order, as the case may be.
8. **Insurance; Casualty.** Franchisee shall carry insurance at its sole cost and expense to protect the Parties from risk arising out of placement of the Attachments on the Structures. Franchisee shall provide the specified insurance throughout the Term and shall file with The Town's designated risk manager certificates of insurance evidencing such coverage upon request. Certificates, policies or endorsements shall provide thirty (30) days' prior written notice of cancellation, except for non-payment of premiums to The Town.
- a. **Coverage Amounts.** Throughout the Term, Franchisee shall maintain the following insurance coverage from a carrier licensed to conduct business in the state where the Property is located:
 - i. Worker's compensation meeting statutory requirements.
 - ii. Commercial general liability insurance including personal injury, contractual liability, independent contractors and broad form property damage with the following minimum liability limits: (i) \$1,000,000 per occurrence combined single limit; (ii) \$2,000,000 general aggregate; and (iii) \$10,000,000 umbrella liability, with an endorsement stating The Town is an additional insured with respect to operations relating to this Agreement.
 - iii. Commercial automobile liability insurance with a minimum liability limit of \$1,000,000 per occurrence combined single limit.
 - b. **Waiver of Claims and Rights of Subrogation.** The Parties hereby waive any and all rights of action for negligence against the other on account of damage to the System, the Property or to any Attachment resulting

from any fire or other casualty of the kind covered by property insurance policies with extended coverage, regardless of whether or not, or in what amount, such insurance is carried by the Parties. All policies of property insurance carried by either Party for the System, the Property or to any Attachment shall include a clause or endorsement denying to the insurer rights by way of subrogation against the other Party to the extent rights have been waived by the insured before the occurrence of injury or loss.

- c. **Casualty and Restoration.** In the event that one or more of the Structures containing an Attachment is damaged or destroyed such that it cannot be used for an Attachment, then within thirty (30) days of such damage or destruction The Town shall notify Franchisee of its intent whether to repair the Structure, and if so, then the proposed schedule for such repair. Franchisee will have the option to: (i) in the event the repair schedule is proposed to be less than ninety (90) days, to abate all Franchise Fees with respect to the affected Attachments during the period the Structure is not available; (ii) in the event The Town chooses not to repair, or if the repair schedule is proposed to be greater than ninety (90) days, declare the DAS Order null and void with respect to the affected Attachments only and thereafter neither Party will have any liability or obligation hereunder for each such Attachments, in which event there shall be an amendment to the DAS Order and, if appropriate, an equitable adjustment in Franchise Fees; or (iii) in the event The Town chooses not to repair, or if the repair schedule is proposed to be greater than ninety (90) days, with respect to damage which will prevent continued operation of the Hub Site or the System in Franchisee's reasonable discretion, to terminate the affected DAS Order. The Parties may also agree to relocate the impacted Attachment(s) pursuant to mutually acceptable terms.

9. **Eminent Domain.** If The Town receives notice of a proposed taking by eminent domain (or any agreement in lieu of condemnation) of any part of the Property impacting any Attachment, The Town will notify Franchisee of the proposed taking within thirty (30) days of receiving such notice and Franchisee will have the option to: (i) declare the DAS Order null and void with respect to the affected Attachments only and thereafter neither Party will have any liability or obligation hereunder for each such Attachment, in which event there shall be an amendment to the DAS Order and, if appropriate, an equitable adjustment in Franchise Fees on account of the portion so taken; or (ii) with respect to a taking which will prevent continued operation of the Hub Site or the System in Franchisee's reasonable discretion, to terminate the affected DAS Order. With either option, Franchisee shall have the right to contest the taking in good faith and to directly pursue an award from the condemning authority. The Parties may also agree to relocate the impacted Attachment(s) pursuant to mutually acceptable terms.

10. **Default.**

- a. **Cure Period.** In the event of default by either Party (the "Defaulting Party") with respect to any of the provisions or obligations of this Agreement, the other Party (the "Non-Defaulting Party") shall give the Defaulting Party written notice of such default. After receipt of such written notice, the Defaulting Party shall have fifteen (15) days in which to cure any monetary default and thirty (30) days in which to cure any non-monetary default. The Defaulting Party shall have such extended periods as may be required beyond the thirty (30) day cure period to cure any non-monetary default if the nature of the cure is such that it reasonably requires more than thirty (30) days to cure, and the Defaulting Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion (the "Cure Period"). The Non-Defaulting Party may not maintain any action or effect any remedies for default against the Defaulting Party unless and until the Defaulting Party has failed to cure the same within the time periods provided in this Section. In the event the Defaulting Party fails to commence or to continuously and diligently pursue the cure to completion, the Non-Defaulting Party may, at its option, perform the cure activities of the Defaulting Party, in which event any expenditures reasonably made by the Non-Defaulting Party in this regard shall be deemed to be paid for the account of the Defaulting Party and the Defaulting Party agrees promptly to reimburse the Non-Defaulting Party for any such expenditures plus 12% interest on the unpaid balance and a \$500 administrative fee upon demand.
- b. **Remedies.** In addition to any remedies available to the Non-Defaulting Party, such Non-Defaulting Party upon an occurrence of default by the Defaulting Party which is not cured according to the Cure Period of Section 10.a of this Agreement, shall have the right to either (a) terminate this Agreement and seek damages or (b) impose a fine of \$100 per day for each day the default remains uncured.

- c. **Removal of Attachments.** Upon expiration or earlier termination of this Agreement or a DAS Order, as appropriate, Franchisee shall, within sixty (60) days following termination or expiration of the Term, remove at its sole cost and expense, all visible Attachments and restore all or any part of the Radio Space to the same condition as originally received by Franchisee (ordinary wear and tear excepted).
11. **Assignment.** This Agreement shall extend to and bind the successors, transferees and permitted assigns of the Parties. Any attempted assignment or transfer by a Party in violation of this Section shall be void.
- a. **Assignment by Franchisee.** Franchisee has the right to sublease the Radio Space and use of the System to any Wireless Carrier. Any assignment of this Agreement, other than (i) a sublease of Radio Space and use of the System to a Wireless Carrier or (ii) an assignment to an Affiliate of Franchisee, by Franchisee shall require the consent of The Town which The Town may accept or deny in its sole discretion. In the event Franchisee desires to assign this Agreement, Franchisee shall provide written notice to The Town of such desired assignment and shall include the qualifications of the proposed assignee as well as the proposed assignee's certification as a public utility in the State of Colorado for The Town's consideration. The Town shall either accept or reject the proposed assignment within sixty (60) days of a request by Franchisee. Franchisee may also assign or delegate all or a portion of this Agreement to an Affiliate or engage an Affiliate to perform the design or construction services hereunder upon notice to The Town.
- b. **Assignment by The Town.** The Town may assign or transfer its interest in this Agreement, provided that the assignee shall be bound by all provisions herein. Any sale or transfer (including by foreclosure) of The Town's real property interest in any portion of the Property containing an Attachment shall be subject to this Agreement, and any successor Property owner shall be bound by the terms and conditions herein.
12. **Notice.** Except as otherwise specified, any notice to be given to either Party under this Agreement shall be sent by registered mail, return receipt requested, or by overnight courier with a tracking record of delivery to the respective addresses set forth below. Except as otherwise stated herein, any notice shall be effective immediately upon being deposited with the applicable delivery agent.

The Town:

The Town of Mountain Village
Office of Town Manager
455 Mountain Village Blvd, Suite A
Mountain Village, CO 81435
(970) 728-8000

Franchisee:

NewPath Networks, LLC
c/o Crown Castle USA Inc.
General Counsel
Attn: SCN – Legal
2000 Corporate Drive
Canonsburg, PA 15317
(866) 482-8890

With a copy which shall not constitute notice to:

J. David Reed P.C.
1047 S. 1st Street
Montrose, CO 81401
(970) 249-3806

NewPath Networks, LLC
2000 Corporate Drive
Canonsburg, PA 15317
Attn: SCN Contract Management

13. **Miscellaneous.**

- a. **Governing Law.** This Agreement shall be governed by and interpreted according to the laws of the state of Colorado without reference to its choice of law rules.
- b. **Warranties.** Each Party represents and warrants to the other that: (a) such Party has full corporate and other authority to execute and deliver this Agreement and to consummate the transactions contemplated in this Agreement and will have the same with respect to each DAS Order; (b) the execution and delivery of this Agreement and the consummation of the transactions contemplated by that Party in this Agreement have been duly and validly authorized by all necessary corporate and other action; (c) such Party's Agreement execution and performance under this Agreement will not breach or violate such Party's operating authority,

any applicable law or terms of any agreement to which either is subject; (d) it has obtained or will obtain before the date required, all necessary licenses, permits and authorizations necessary to conduct the activities contemplated by this Agreement; and (e) as of the Effective Date and the date of each DAS Order, there is no action, suit, investigation, claim, arbitration or litigation pending or, to such Party's knowledge, threatened against, affecting or involving such Party, at law or in equity or before any court, arbitrator or governmental authority that is reasonably likely to result in a material adverse effect on such Party's ability to perform such Party's obligations under this Agreement.

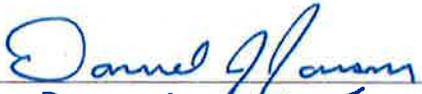
- c. **No waiver.** Except as expressly set forth in this Agreement: (i) neither Party shall be deemed to have waived any of its rights hereunder unless such waiver is in writing; (ii) no delay or omission by any Party in exercising any right shall operate as a waiver of such right or of any other right; and (iii) a waiver on any one occasion shall not be construed as a bar to, or waiver of, any right or remedy on any future occasion.
- d. **Interpretation.** The singular includes the plural and the plural includes the singular. Except as otherwise provided herein, references to a Section, Schedule or Exhibit mean a Section, Schedule or Exhibit contained in or attached to this Agreement, all of which are incorporated herein by reference. The caption headings in this Agreement are for convenience and reference only and do not define, modify or describe the scope or intent of any of the terms of this Agreement. This Agreement will be interpreted and enforced in accordance with its provisions and without the aid of any custom or rule of law requiring or suggesting construction against the Party drafting or causing the drafting of the provisions in question. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable by Law, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby. If any date herein set forth for the performance of any obligations by either Party or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday in Colorado, the compliance with such obligations or delivery shall be deemed acceptable on the next business day. These terms shall have the indicated meaning when used in this Agreement: (i) including shall mean including, without limitation; (ii) or shall mean and/or (unless indicated otherwise); and (iii) discretion means within the applicable party's sole discretion. Further, any reference to statute, act or code shall mean the statute, act or code as amended.
- e. **Entire Agreement.** This Agreement constitutes the entire and final expression of the Parties hereto with respect to the subject matter hereof and supersedes all previous agreements and understandings of the Parties, either oral or written. This Agreement can be amended only by written agreement signed by the Parties.
- f. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be fully executed as an original and all of which together shall constitute one and the same instrument.
- g. **Covenant of Quiet Enjoyment.** The Town covenants that, if Franchisee performs Franchisee's obligations under this Agreement, (a) Franchisee will and may, subject to this Agreement's terms and conditions, quietly and peaceably possess and enjoy the Radio Space (including the Hub Site) and the Fiber Network, and (b) the Wireless Carriers will and may, subject to this Agreement's terms and conditions, quietly and peaceably possess and enjoy the System, in each case throughout the applicable Term without any interruption or disturbance from the The Town or any person lawfully claiming by, through or under The Town consistent with this Agreement's terms and conditions.
- h. **Mortgage.** In the event one or more Leased Structures is or becomes encumbered by a mortgage, The Town shall obtain and furnish to Franchisee a non-disturbance agreement reasonably acceptable to Franchisee for each such mortgage, in recordable form.
- i. **Recording.** Franchisee shall have the right to, at its sole expense, record a memorandum of lease with the appropriate recording office. The Town shall cooperate with Franchisee in this regard and execute and deliver such a memorandum, for no additional consideration, promptly upon Franchisee's request.
- j. **Sales.** Any sales of equipment or other personal property under this Agreement will be made and fulfilled by CC S & E LLC, an Affiliate of Franchisee.

k. **Attorney's Fees.** In the event of dispute regarding the terms or performance of this Agreement, the prevailing Party in any legal action shall be entitled to its costs, including reasonable attorney's fees.

IN WITNESS WHEREOF, The Town and Franchisee have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

THE TOWN:
Town of Mountain Village, Colorado

FRANCHISEE:
NewPath Networks, LLC

By: 
Name: Daniel J Janscy
Title: Mayor
Date: 8-25-16

By: 
Name: ROD HANSEN
Title: UP/GENERAL MANAGER
Date: 9/2/16

With respect to Section 13.j only:
CCS & E LLC

By: 
Name: ROD HANSEN
Title: VP/GENERAL MANAGER
Date: 9/2/16

Schedule 1**Property**

For all purposes of this Agreement, the following terms shall be defined as follows:

Property:

	LONGITUDE	LATITUDE	DESCRIPTION
UMT-01	107.846493	37.940002	Town Road Right of Way - Sunny Ridge Place
UMT-02	107.938382	37.938382	Town Road Right of Way - Mountain Village Blvd.
UMT-03	107.845286	37.938404	Town Road Right of Way - Mountain Village Blvd.
UMT-04	107.8475656	37.937094888	Town Road Right of Way - Mountain Village Blvd.
UMT-05	107.8480058	37.935845342	Town Road Right of Way - Mountain Village Blvd.
UMT-06	107.847487	37.933829	Town Road Right of Way - Yellow Brick Road
UMT-07	107.8548698	37.934407451	Town Road Right of Way - 415 Mountain Village Blvd., Village Court Apartments*
UMT-08	107.851605	37.932753	Town Road Right of Way - Mountain Village Blvd.
UMT-09	107.854658	37.932298	Town Road Right of Way - Mountain Village Blvd.
UMT-10	107.848161	37.940188	Town Road Right of Way - Country Club Drive
UMT-11	107.845443	37.934995	Town Open Space Parcel OS-3W
UMT-12	107.850945	37.936291	Town Road Right of Way - Vischer Drive
* The Town of Mountain Village Housing Authority consented to the placement of UMT-07 at a May 19, 2016 meeting.			
MVM-001	107.855031	37.940806	Town Road Right of Way - Country Club Drive
MVM-002	107.858466	37.940054	Town Road Right of Way - Adams Ranch Road
MVM-003	107.860615	37.939607	Town Road Right of Way - Adams Ranch Road
MVM-004	107.860969	37.941683	Town Road Right of Way - Adams Ranch Road
MVM-005	107.8637183	37.942202971	Town Road Right of Way - Adams Ranch Road
MVM-006	107.860591	37.94304	Town Road Right of Way - Town Shop - 317 Adams Ranch Road, Lot 650
MVM-007	107.857158	37.938346	Town Road Right of Way - Russell Drive



Tax Parcel IDs: R1080395014 and R1080089650

Primary Purpose: The Town's Primary Purpose is to provide its residents and visitors with superior governance, municipal infrastructure and services.

Structures: Any physical improvements located on the Property capable of carrying Attachments, which have been authorized by The Town through the application process set forth in Section 5.a.

Schedule 2

Existing Agreements

None.

Exhibit A

Sample DAS Order

DAS Order: _____ **[Description]**

1. **Introduction.** This DAS Order (this "Order"), dated effective as of the date of the last signature below (the "Order Effective Date"), is an agreement entered into by and between **Town of Mountain Village, Colorado** ("The Town") and **NewPath Networks, LLC** ("Franchisee") pursuant to the Parties' DAS Facility Franchise Agreement dated _____ (the "Agreement").

2. **General Framework.** All of the Agreement's terms and conditions, including any Agreement attachments, as amended before the Order Effective Date (if applicable), are incorporated by reference into this Order. Capitalized terms used but not defined in this Order have the meanings designated in the Agreement; capitalized terms used and defined in this Order will have the meanings designated. If there is a conflict between the Agreement's terms and conditions and this Order's terms and conditions, or this Order contains terms and conditions not contained in the Agreement, then this Order will control over the Agreement, but only to the extent of the actual conflict or supplemental terms.

3. **DAS Order.** For good, valuable, and adequate consideration, which the Parties acknowledge receiving, in accordance with the Agreement's terms and conditions, as supplemented or amended by this Order, Franchisee is enabled by The Town, to use the following: (a) the Node and other Attachment locations described on Exhibits 1 and 2 to this Order, (b) the Hub Site location as more particularly described on Exhibits 1 and 3 to this Order, and (c) the Fiber Network described on Exhibits 1 and 4 to this Order. The Node equipment to be installed at the Leased Structures is described on Exhibit 2 to this Order.

4. **Applicable Exhibits.** The following exhibits are an integral part of this Order and are incorporated by this reference:

- Exhibit 1 – System Description
- Exhibit 2 – Node Equipment and Locations
- Exhibit 3 – Hub Site
- Exhibit 4 – Fiber Network
- Exhibit 5 – Sample Resolution

5. **Preliminary Drawings.** The Radio Space, Node, Hub Site, other Attachment and Fiber Network locations are generally identified in the attached preliminary network drawings. During the design and installation process, the actual locations thereof will be specifically identified and (may be changed) by mutual agreement of the Parties. Pursuant to Section 5.a of the Agreement, at the completion of the System installation, the Parties covenant that the drawings attached to this Order, as appropriate, will be replaced and updated with as-built drawings which shall become a part of this Order.

6. **Authorized Signatures.** This Order, together with the Agreement, contains the Parties' entire agreement regarding this Order's subject matter. Upon this Order's execution and delivery by the Parties' authorized representatives, this Order will be binding on the Parties and is incorporated by this reference into the Agreement. This Order is effective on the Order Effective Date.

THE TOWN
Town of Mountain Village, Colorado

FRANCHISEE
NewPath Networks, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CC S & E LLC

By: _____

Name: _____

Title: _____

Date: _____

Exhibit 1

Network Description

Preliminary Network Description.

- (a) **Node Locations.** (described in more detail in Exhibit 2 to this Order)

System Name	BU#	Address

- (b) **Hub Site Description.** The Hub Site being leased to Franchisee will be located at _____ (described in more detail in Exhibit 3 to this Order).
- (c) **The Town's Fiber Network Description.** The Town's Fiber Network will consist of _____ fiber strands, on a point-to-point basis, originating from the Hub Site and ending at the Node locations. A schematic drawing of The Town's Fiber Network is attached as Exhibit 4 to this Order.
- (d) **Franchisee's Fiber Network Description.** Franchisee's Fiber Network will consist of _____ fiber strands, on a point-to-point basis, originating from the Hub Site and ending at the Node locations. A schematic drawing of Franchisee's Fiber Network is attached as Exhibit 4 to this Order.

Exhibit 2

Node Equipment and Locations

Exhibit 3

Hub Site

Exhibit 4

Fiber Network

(Discuss what, if any, portion(s) of The Town's Fiber Network will be used.)

(Consider if any strands of fiber will be reserved for The Town's use from among Franchisee's Fiber Network.)

Exhibit 5

Sample Resolution

**RESOLUTION OF THE TOWN COUNCIL OF THE
TOWN OF MOUNTAIN VILLAGE, COLORADO,
APPROVING THE APPLICATION BY NEWPATH
NETWORKS FOR THE INSTALLTION OF A
DISPERSED ANTENNA SYSTEM PURSUANT TO A
FRANCHISE AGREEMENT BETWEEN THE TOWN
AND NEWPATH NETWORKS**

NO. 201_ - ____

RECITALS:

- A. The Town and NewPath Networks, LLC (“NewPath”) entered into a Franchise Agreement dated May __, 2016 (the “Franchise Agreement”) which granted NewPath the ability to install a Dispersed Antenna System (“DAS”) on certain area of Town owned property within the Town of Mountain Village.
- B. The Franchise Agreement requires NewPath to submit an initial application to the Town which allows the Town to review the initial proposed infrastructure improvements associated with the DAS.
- C. The Franchise Agreement also provided that the Town’s Design Review Board would review the initial application for aesthetics and make a recommendation to the Town Council.
- D. The DRB Hearing and Town Council Hearing were noticed in accordance with the Notice Requirements as set forth in the Franchise Agreement and Town of Mountain Village Ordinance No _____.
- E. The Town finds it in its best interest to accept the Initial Application in accordance with the terms and conditions set forth below.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF
THE TOWN OF MOUNTAIN VILLAGE AS FOLLOWS:**

- 1. The Town Council approves the Initial Application pursuant to Section 5(a) of the Franchise Agreement and makes the following findings:
 - a. TBD
- 2. The Town Council hereby makes the approval subject to the following conditions:
 - a.

ADOPTED AND APPROVED by the Town Council, at a regular meeting held on the _____ day of _____, 201__.

Town of Mountain Village, Town Council

By: _____
_____, Mayor

Attest:

By: _____
_____, Town Clerk

Approved as to form:

By: _____
_____, Town Attorney

Exhibit B

Notification of Removal by Franchisee

Town of Mountain Village, Colorado
C/O Town Manager
455 Mountain Village Blvd, Suite A
Mountain Village, CO 81435

RE: DAS FACILITY FRANCHISE AGREEMENT (Agreement) dated _____ by and between Town of Mountain Village, a home rule municipality and political subdivision of the state of Colorado ("The Town") and NewPath Networks, LLC ("Franchisee")

This letter shall confirm the agreement of The Town and Franchisee that the following Attachments were removed:

Node #	Node location	Removal Date

The DAS Orders for the above referenced Attachments are hereby modified as of the removal date set forth above.

THE TOWN:
Town of Mountain Village, Colorado

FRANCHISEE:
NewPath Networks, LLC

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Exhibit C

Fiber Network Standards

A. Application. These Fiber Network Standards shall apply to The Town's Fiber Network and Franchisee's Fiber Network.

B. Initial Minimum Standards at Installation.

All fiber connectivity will be a continuous path utilizing fusion splices from the Hub Site location(s) to the Node location(s). Below are the industry standard specifications for the Fiber Network at installation:

1. All splices must be sealed in waterproof splice enclosures.
2. The maximum bi-directional average splice loss will not exceed 0.15 dB.
3. The attenuation must not exceed 0.30 dB/km when measured bi-directionally at a 1550 nm wavelength and 0.40 dB/km when measured bi-directionally at a 1310 nm wavelength.
4. The attenuation must not exceed 0.1 dB/connector at all fiber termination locations.
5. The attenuation for the wavelength region from 1525 nm to 1575 nm must not exceed the attenuation at 1550 nm by more than 0.05 dB/km.
6. The fiber strands need to be single mode fiber and conform to a minimum SMF-28 fiber specification.
7. Unless otherwise specified in the DAS Order, all fiber will be standard single mode fiber, SMF-28 or better.

Optical Time Domain Reflectometer (OTDR) testing should be performed and the results provided to Lessee as the basis for the minimum standards (Baseline Standard) for the Fiber Network during the Term.

C. Operating Minimum Standards during Term.

Franchisee expects the Fiber Network to operate at the Baseline Standard as set forth in Section A above.

D. Maintenance and Response to Outages.

In the event of a Fiber Network failure and, after notification from The Town about the failure, Franchisee expects the Fiber Network to be fixed within two (2) hours as soon as commercially reasonable in order for Franchisee to meet its service level agreement requirements with the Wireless Carriers.