

Exhibit A
Public Assets License Agreement

This License Agreement (“License”) is made ___ day of _____, 200___ between the County of Oakland, a Michigan Constitutional Corporation, located at 1200 North Telegraph Road, Pontiac, Michigan 48341 (“County”), on behalf and as an agent of City of Rochester Hills, located at 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309 (“Municipality”) and Michtel Communications, LLC, located at 10 West Huron, Pontiac, Michigan 48342 (“Licensee”).

The Parties agree to the following terms and conditions:

1. **Definitions.** The following words and expressions used throughout this License, whether used in the singular or plural, within or without quotation marks, or possessive or non-possessive, shall be defined, read, and interpreted as follows:
 - 1.1. **Agreement** means the terms and conditions of this License, the Attachments attached hereto, and any other mutually agreed to written and executed modification, amendment, or addendum.
 - 1.2. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Municipality, as defined herein, whether such Claim is brought in law or equity, tort, contract, or otherwise.
 - 1.3. **Contract** means the contract between the County and Licensee and all the properly promulgated amendments.
 - 1.4. **County** means Oakland County, a Municipal and Constitutional Corporation including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons’ successors.
 - 1.5. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
 - 1.6. **Equipment** means the access points or their equivalents used to operate the wireless internet service and that will be placed on the Public Assets.
 - 1.7. **Licensee** means Michtel Communications, LLC, 10 West Huron, Pontiac, Michigan 48342, and all employees, subcontractors, and agents of Licensee.
 - 1.8. **Municipality** means the City of Rochester Hills, located at 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, a Municipal and Constitutional Corporation including, but not limited to, its Council, Board, any and all of its departments, its divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons’ successors.

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- 1.9. **Public Assets** means the real or personal property owned by the Municipality and identified as Public Assets by the Municipality pursuant to Section 3.1 of the Agreement.
- 1.10. **Wireless Oakland Initiative** means the wireless internet service that will blanket all of Oakland County which will be provided, owned, and operated by a contractor selected by Oakland County.
2. **Grant of License.** The County, on behalf of and as an agent of the Municipality, grants a non-exclusive license to use the Public Asset solely for the purposes set forth in this License.
3. **Term.** The term of this License shall be until the earlier of the following:
 - 3.1. December 31, 2012; or
 - 3.2. When the Equipment has not been used to provide wireless internet service by Licensee for a period of ninety (90) consecutive Days; or
 - 3.3. When Licensee, at its election and with or without cause, delivers written notice of termination to County at least one-hundred and eighty (180) Days prior of the date of such termination;
 - 3.4. Upon either Licensee or the County giving written notice to the other of the occurrence or existence of a default by the other Party under the License or the Contract and the defaulting Party fails to cure, or commence good faith efforts to cure, such default within sixty (60) Days after delivery of such notice; or
 - 3.5. Unless the County grants a written extension, one year from the effective date of this License if Licensee has not started the construction and installation of the Equipment and two (2) years from the effective date of this License, if by such time construction and installation of the Equipment is not complete.
4. **Use.**
 - 4.1. Licensee shall use the license provided under this License for providing wireless internet service as more fully described in the Contract.
 - 4.2. Licensee and its Equipment may not unduly burden or interfere with the present or future use of the Public Asset. Except as otherwise provided by law, the Municipality may not unduly burden or interfere with or authorize third parties to unduly burden or interfere with Licensee's Equipment. Licensee's Equipment shall not endanger or injure persons or property in or about the Public Asset. If the County or Municipality reasonably determine that any portion of the Equipment constitutes an undue burden or interference, due to changed circumstances, Licensee, at its sole expense, will modify the Equipment or take such other actions as the County or Municipality may determine is in the public interest to remove or alleviate the burden, and Licensee will do so within a reasonable time period.
 - 4.3. **Restoration of Public Asset.** Licensee will immediately, subject to seasonal work restrictions, restore, at Licensee's sole expense, in a manner approved by the Municipality, any portion of the Public Asset that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the

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Equipment to a reasonably equivalent, or at Licensee's option, a better condition. In the event that Licensee fails to make such repair within a reasonable time, the Municipality may make the repair and Licensee will pay the costs the Municipality incurs for such repair.

- 4.4. Removal of Equipment. Within ninety (90) Days of termination of this License, Licensee shall remove all Equipment on the Public Asset and restore the Public Asset according to Section 4.3. In the event, Licensee fails to remove the Equipment within the ninety (90) day period, the Municipality may remove such Equipment and Licensee shall pay all costs, to the Municipality associated with the removal.
- 4.5. Marking. Licensee will mark the Equipment pursuant to the Municipality's requirements, including but not limited to, ordinances, rules, regulations, and policies. The Licensee will use its best efforts to have the Equipment blend in with the surroundings and minimize visibility of the Equipment.
- 4.6. Tree Trimming. Licensee may trim trees upon and overhanging the Public Asset to prevent the branches of such trees from coming into contact with the Equipment, consistent with any standards adopted by the Municipality. Licensee will dispose of all trimmed materials at its sole cost and expense. Licensee will minimize the trimming of trees to that essential to maintain the integrity of the Equipment. Except in emergencies, all trimming of trees on the Public Asset must have advanced approval of Municipality.
- 4.7. Installation and Maintenance. The construction, installation, and maintenance of the Equipment shall only be performed pursuant to permit plans approved by the Municipality, prior to such construction, installation or maintenance. Licensee will install and maintain the Equipment in a safe condition. Licensee may perform maintenance on the Equipment without prior approval of the Municipality, if Licensee obtains any permits required by the Municipality for any maintenance, which would disturb or block vehicular traffic or is otherwise required by the Municipality.
- 4.8. Relocation. If Municipality or County requests Licensee to relocate, protect, support, disconnect, or remove its Equipment because of street or utility work, or other public projects, Licensee will relocate, protect, support, disconnect, or remove its Equipment, at its sole cost and expense, for the duration of the work or project. The work shall be completed within a reasonable time.
- 4.9. Public Emergency. The Municipality or County has the right to sever, disrupt, or otherwise destroy the Equipment of Licensee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, the Municipality will attempt to provide notice to Licensee. Public emergencies are any condition, which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, terrorism, etc. Licensee is responsible for repair, at its sole cost and expense, of any of its Equipment damaged pursuant to any such action taken by the Municipality or County under this Section.

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4.10. Access. The Municipality may impose certain reasonable restrictions on the access to the Public Assets in accordance with ordinances, customs, rules, or regulations of the Municipality.

5. **General Terms.**

5.1. Compliance with Laws. Licensee must comply with all laws, statutes, ordinances, rules, policies, and regulations (including but not limited to tax statutes) regarding the construction, installation, and maintenance of its Equipment, whether federal, state or local, now in force or which may be promulgated. Before any installation is commenced, Licensee must secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law. Licensee must comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) the National Electric Code (latest edition), and the International Construction Code (latest edition).

5.2. Identification. All personnel of Licensee who have as part of their normal duties contact with the public will wear on their clothing a clearly visible identification card bearing Licensee's name, their name and photograph. Licensee will account for all identification cards at all times. Every service vehicle of Licensee will be clearly identified as such to the public, for example, a magnetic sign with Licensee's name and telephone number.

5.3. Indemnification.

5.3.1. Indemnity. Licensee shall release, defend, indemnify, protect, and hold harmless the County and Municipality from any and all Claims arising out of or resulting from the acts or omissions of Licensee, or anyone claiming by or through them.

5.3.2. Notice, Cooperation. The Municipality or the County will notify Licensee promptly in writing of any Claim. Municipality or County will cooperate with Licensee in every reasonable way with respect to the defense of any such Claim.

5.3.3. Settlement. Municipality or County will not settle any Claim subject to indemnification without the advance written consent of Licensee, which consent may not unreasonably be withheld. Licensee has the right to defend or settle, at its own expense, any Claim against Municipality or County for which Licensee is responsible.

5.4. Insurance.

5.4.1. Coverage Required. Licensee must obtain all insurance as set forth below and file certificates evidencing it with the Municipality and the County. Such insurance must be maintained in full force and effect until the end of the Term.

- Commercial general liability insurance, including products and completed operations liability, independent contractors liability, contractual liability coverage, railroad protective coverage and coverage for property damage

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from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than \$5,000,000.00.

- Liability insurance for sudden and accidental environmental contamination with minimum limits of \$1,000,000.00 and providing coverage for claims discovered within three (3) years after the term of the policy.
 - Automobile liability insurance including automobile no-fault and hired and non-hired automobiles in an amount not less than \$5,000,000.00.
 - Workers' compensation insurance with statutory limits, employer's liability insurance with \$1,000,000.00 limits, and any applicable Federal insurance of a similar nature.
 - The coverage amounts set forth above may be met by a combination of underlying or primary and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy must provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverage for any reason during the Term, or, when longer, for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
 - Prior to execution of the License by the County, Licensee shall provide evidence of the insurance coverage required herein; thereafter, Licensee will annually provide the Municipality and the County with a certificate of insurance evidencing such coverage.
 - All insurance policies, other than environmental contamination, will be written on an occurrence basis and not on a claims-made basis and the insurance policies shall contain a general aggregate per project.
- 5.4.2. Additional Insured. The Municipality and the County shall be named as an additional insured on all policies other than worker's compensation and employer's liability. All insurance policies will provide that they may not be canceled, materially changed or not renewed unless the insurance carrier provides sixty (60) Days prior written notice to the County.
- 5.4.3. Qualified Insurers. All insurance will be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do

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business in Michigan. All insurance and surplus line carriers will be rated A+ or better by A.M. Best Licensee.

- 5.4.4. Deductibles. The insurance policies required by this section shall not have deductibles in excess of \$50,000. Licensee will indemnify and save harmless the Municipality or County from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished.
- 5.4.5. Contractors. Licensee's contractors and subcontractors working on the Public Asset will carry in full force and effect all insurance coverages required by this License. In the alternative, Licensee, at its expense, may provide such coverage for any or all its contractors or subcontractors by adding them to Licensee's policies.
- 5.4.6. Insurance Primary. Licensee's insurance coverage shall be primary and non-contributory over any other valid insurance or self-insurance carried by either the Municipality or the County.
- 5.4.7. Subrogation. The Licensee's insurance policies providing coverage for real and/or personal property shall contain a waiver of subrogation by which the insurance carrier waives all of such carrier's rights to proceed against the County and/or the Municipality. Licensee releases the County and the Municipality from any claims by them or anyone claiming through or under them by way of subrogation for damage caused by or resulting from risks insured under any insurance policy carried by Licensee.
- 5.5. Fees/Costs. Licensee is still subject to all municipal construction permitting requirements (including but not limited to fees and costs), unless such fees or costs are waived by the Municipality.
- 5.6. Assignment. Licensee shall not assign the License, unless prior written approval is received from the County and the Municipality.
- 5.7. Notices.
 - 5.7.1. Notices. All notices under this License must be given as follows:
 - If to Municipality:
 - If to County:
 - If to Licensee:
 - 5.7.2. Change of Address. Licensee and Municipality or County may change its address or personnel for the receipt of notices at any time by giving notice to the other as set forth above.
- 5.8. Bond. Licensee shall supply a bond payable to the Municipality and the County which shall be executed by a corporation authorized to contract as a surety in the State of Michigan and which is on the United States Treasury list. The amount of the bond shall be \$100,000.00 and shall ensure the performance of all requirements of this License. Prior to execution of the License by the County, Licensee shall provide evidence of

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- the bond required herein. This bond shall be renewed annually and the amount of the bond shall be reviewed annually by the County and Licensee to determine if the amount should be increased or decreased based upon the number of Public Assets utilized. Evidence of such bond shall be provided to the County and the Municipality upon request. The bond shall provide that it may not be canceled, materially changed or not renewed unless the corporation provides sixty (60) Days prior written notice to the County.
- 5.9. Interpretation and Severability. The provisions of this License are liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision of this License be held unconstitutional, invalid, overbroad or otherwise unenforceable, such holding may not be construed as affecting the validity of any of the remaining conditions of this License. If any provision in this License is found to be partially overbroad, unenforceable, or invalid, Licensee and County may nevertheless enforce such provision to the extent permitted under applicable law.
- 5.10. Governing Law. This License is governed by the laws of the State of Michigan.
- 5.11. Discrimination. The Licensee shall not discriminate against their employees, agents, applicants for employment, or another persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.
- 5.12. Reservation of Rights. This License does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Municipality or the County.
- 5.13. No Implied Waiver. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this License shall constitute a waiver of those rights with regard to any existing or subsequent breach of this License. No waiver of any term, condition, or provision of this License, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this License. No waiver by either Party shall subsequently affect its right to require strict performance of this License.
- 5.14. Captions. The section and subsection numbers, captions, and any index to such sections and subsections contained in this License are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this License. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this License shall be deemed the appropriate plurality, gender or possession as the context requires.
- 5.15. Modifications or Amendments. Any modifications, amendments, recessions, waivers, or releases to this License must be in writing and agreed to by both Parties.
- 5.16. Entire Agreement. This License represents the entire agreement and understanding between the Parties. This License supersedes all other oral or written agreements between the Parties. The language of this License shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

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IN WITNESS WHEREOF, Bryan K. Barnett, Mayor acknowledges that he/she has been authorized to execute this License on behalf of Licensee and hereby accepts and binds Licensee to the terms and conditions of this License.

EXECUTED: _____ DATE: _____
Bryan K. Barnett, Mayor
City of Rochester Hills

WITNESSED: _____ DATE: _____

IN WITNESS WHEREOF, _____ acknowledges that he has been authorized to execute this License on behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of this License.

EXECUTED: _____ DATE: _____

WITNESSED: _____ DATE: _____