

AMENDMENT NO. 1**MASTER LICENSE AGREEMENT
FOR ATTACHMENT TO CITY FACILITIES**

THIS AMENDMENT is made and entered into this _____ day of June, 2016 between Kansas City, Missouri, a constitutionally chartered municipal corporation, (City) and Mobilitie, LLC, a Nevada limited liability company, ("Licensee") whereby the parties desire to amend the Master License Agreement for Attachments to City Facilities Agreement that was entered into on February 19, 2015 as follows:

WHEREAS, City has previously entered into an agreement with Licensee dated _____, for the purpose of allowing Licensee to attach its Communications Equipment on or within the City's right-of-way (a) on or within the City Facilities in said areas, and (b) on or within the facilities (i.e. poles, lines, wires, and conduit) of other utility companies such as Kansas City Power & Light Company (KCP&L) and AT&T pursuant to Licensee's separate locate agreements with said utility companies; and

WHEREAS, Licensee wishes to install new facilities for its Communication Equipment; and

WHEREAS, City is agreeable to such installations under certain circumstances; and

WHEREAS, City and Licensee have agreed to terms and conditions under which new facilities will be considered; and

NOW, THEREFORE, in consideration of the mutual agreements contained in this First Amendment, City and Licensee agree as follows:

Sec. 1. Sections Amended. The following section(s) are hereby added to the Agreement:

1. **2.12 Ownership.** The parties agree that any New Facility installed by Licensee in the City's right-of-way pursuant to this Agreement will be and remain the property of Licensee. If, pursuant to this Agreement, Licensee replaces an existing City-owned street light pole with a new pole that exceeds the City's street light design criteria regarding height, the new pole will be owned by Licensee. The City shall be allowed to install attachments to any Licensee-owned facility.

Sec. 2. Sections Amended.

- a. Section 1.13 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted sections:

1.13 New Facility: means Licensee-owned poles installed by Licensee within the City's right-of-way. City-owned poles that are being replaced by Licensee with poles of the same or lesser height are not considered New Facility.

- b. Section 2.1 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted sections:

2.1 Grant of License. Subject to the provisions of this Agreement, the City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to (a) upon receiving the necessary City Right-of-Way Permit, enter upon the City's Right-of-Way to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace Licensee's Attachments or New Facilities and (b) to install and maintain Permitted Attachments on or within specified City Facilities. Placement of Licensee's Attachments on or within any specific City Facility may be within the reasonable discretion of the City so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties.

- c. Section 2.7 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

2.7 Licensee's Right to Attach. Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to attach Licensee's Attachment(s) to or within any specific City Facility or portion of Facilities or installed New Facilities.

- d. Section 3.1 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

3.1 Payment of Fees and Charges. For authorized Attachments covered under this Agreement, Licensee shall pay to the City the fees and charges specified in the City's permit. Licensee's payments shall comply with the terms and conditions specified herein. The above notwithstanding, the Parties may by mutual written agreement adjust the fees and charges specified to account for in-kind contributions from Licensee in the form of service to the City as is reasonably determined by the City to be valued as at least roughly comparable to the fees and charges.

3.1.1 The following fees and charges are established based on the descriptions listed below. These fees/charges shall be administered in a competitively neutral and non-discriminatory manner. All fees/charges will be rounded to the nearest dollar.

1. Street Light Pole Annual Attachment Fee: \$540 annually, per City Street Light Pole with Licensee's Attachment.

2. New Facility Installation Fee: \$1500 annually, per New Facility installation in City's right-of-way

3. Permit Application Fee: an amount equal to the fee for a Right-of-Way Permit, intended to reimburse the City for costs incurred for project management services, review of the Permit Application, and site design approval, excavation permit, and traffic control permit.

4. Inspection Fees: Licensee shall reimburse the City for all demonstrated and reasonable actual work done or contracted by the City for any necessary inspections. The charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs.

5. Unauthorized Attachment Penalty Fee: Three times the Annual Attachment Fee, per occurrence for Attachments made without City approval. Payment of this fee does not guarantee the Attachment may remain on the City Facility.

6. Failure to Timely Transfer. Abandon or Removal Facilities Penalty Fee (holdover fee): \$100 per day, per pole Attachment.

- e. Section 3.3 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

3.3 Billing of Annual Attachment and New Facility Fees. The City shall invoice Licensee for the Annual Attachment Fee and New Facility Fee on or about January 1 of each year. The initial annual period shall commence upon the execution of this Agreement and conclude on December 31 of the next year, and each subsequent annual period shall commence on the following January 1 and conclude on December 31 of the subsequent year. For the Annual Attachment Fee, the invoice shall set forth the total number of the City's Poles or portion of Conduit on/in which Licensee was issued and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits. For the Annual New Facility Fee, the invoice shall set forth the total number of New Facilities Licensee installed since the effective date of this Agreement.

- f. Section 3.4 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

3.4 Refunds. No fees and charges shall be refunded on account of any surrender of a Permit granted hereunder. Notwithstanding the forgoing, the City shall not continue to charge the Annual Attachment Fee going forward for any Permit for attachment surrendered in the previous calendar year, and Licensee shall be entitled to a refund upon discovery of such a billing error. City shall continue to assess, and Licensee shall continue to pay, the Annual New Facility Fee unless and until Licensee removes a new Facility and restores the right-of-way to its original condition.

- g. Section 4.1 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

4.1 Installation/Maintenance of Attachment. When a Permit is issued pursuant to this Agreement, Licensee's Attachment(s) and New Facilities shall be installed and maintained in accordance with the City's applicable requirements and specifications. All of Licensee's Attachments and New Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Attachments and New Facilities. Licensee shall, at its own expense, make and maintain its Attachments and New Facilities in safe condition and good repair, in accordance with all Applicable Standards; and Licensee shall replace, remove, reinforce or repair any defective Attachments or New Facilities (unless otherwise agreed to by the City in writing).

- h. Section 4.4 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

4.4 Interference. Licensee shall not allow its Attachment(s) to impair the ability of the City or any third party to use City Facilities, nor shall Licensee allow its Attachment(s) or New Facilities to interfere with the operation and maintenance of any City or other governmental Facilities.

4.4.1 Licensee shall comply with all Federal Communications Commission ("FCC") and other federal, state and local laws, rules, orders and regulations and all directives of the relevant regulatory agencies that are applicable in connection with the installation and operation of Licensee's Attachments and New Facilities.

4.4.2 In the event that the installation, operation or maintenance of the Attachment(s), whether or not such operation is in compliance with the terms of Licensee's applicable FCC licenses, creates any interference with the operation of the City's or any other governmental entity's communication or other equipment, Licensee shall immediately, at Licensee's sole cost and expense, take such reasonable steps as may be necessary or recommended by the City or regulatory agencies to eliminate such interference. In the event that the installation, operation or maintenance of the Attachment(s) or New Facilities creates any interference with the operation of the pre-existing equipment of third parties using the Site pursuant to an agreement with the City or any other pre-existing uses of electronic equipment, Licensee shall immediately, at Licensee's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements. If Licensee is unable or refuses to eliminate such interference, the City may terminate Licensee's use of or right to use the Facility upon which such interfering Attachment is located or the right to use City's right-of-way where a New Facility is located, and Licensee shall promptly remove the Attachment from the Facility or remove the New Facility.

4.4.3 Notwithstanding the foregoing, if equipment installed on a Facility by any third party using the Facility pursuant to an agreement with the City subsequent to the installation of the Licensee's Attachment on the Site causes interference, either electronically or physically, with Licensee's previously installed Attachments then upon thirty (30) days written notice to the City, Licensee shall have the right to terminate the affected Permit.

- i. Section 4.6 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

4.6 Violation of Specifications. If Licensee's Attachment(s) or New Facilities, or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from the City, the City at its option, may unilaterally correct such conditions. The City will attempt to notify Licensee in writing prior to performing such work whenever practicable. When the City reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the City's service obligations or pose an immediate threat to the physical integrity of City Facilities, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, the City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual, demonstrated and reasonable costs incurred by the City in taking action pursuant to this Paragraph, and shall indemnify the City from liability for all such work.

- j. Section 4.8 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

4.8 Effect of Failure to Exercise Access Rights. If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension thereof, the City may use the space scheduled for Licensee's Attachment(s) or New Facilities for its own needs or other Attaching Entities. In such instances, the City shall endeavor to make other space available to Licensee, upon written Permit Application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement. Licensee may obtain a refund on a pro-rata basis of any Annual Attachment Fees it has paid in advance with respect to expired Permits.

- k. Section 5.1 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

5.1 Necessary Authorizations. Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Equipment on public and/or private property before it occupies any portion of City Facilities. The City retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way, including, but not limited to, any applicable FCC or PSC authorization, City's street lighting approval, any ROW Permit, or any applicable zoning or land use approval, and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse the City for all loss and expense, including reasonable attorney's fees, that the City may incur as a result of claims by owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Equipment on or within City Facilities or install New Facilities or to provide particular Communications Services.

- l. Section 5.2 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

5.2 Lawful Purpose and Use. Licensee's Attachments and New Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, State and local laws, including but not limited to all applicable City ordinances. This Agreement is not a waiver of any City regulatory power or Licensee's obligation to meet any applicable City regulation.

- m. Section 5.3 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

5.3 Forfeiture of City's Rights. No Permit granted under this Agreement shall extend to any Facilities or portions thereof on/in which the attachment of Licensee's Attachments and installation of New Facilities would result in a forfeiture of the City's rights. Any Permit, which on its face would cover Attachments or New Facilities that would result in forfeiture of the City's rights, is invalid. Further, if any of Licensee's existing Attachments or New Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Attachments or New Facilities upon receipt of written notice from the City. If the Attachments or New Facilities in question are not removed within thirty (30) days receipt of the City's written notice, the City may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated under the Agreement provided that Licensee shall indemnify the City for any actual damages that may result during Licensee's challenge.

- n. Section 6 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

6. PERMIT APPLICATION PROCEDURES

6.1 Permit Required. Licensee shall not install any Attachments on or within any City Facilities or install any New Facilities without first applying for and obtaining a Permit pursuant to the applicable City requirements. Attachments to or rights to occupy or utilize City property not covered by this Agreement, such as the lease and use of City-owned fiber optic capacity or any other City property, including, but not limited to, City offices, must be separately negotiated unless the City agrees to follow the permit provisions authorized by this Agreement. The Parties agree that property under the control of the City's Board of Parks and Recreation Commissioners is covered by this Agreement, subject to Section 6.1.1 below.

6.1.1 Parks and Recreation Department Permit for Attachments: Unless otherwise agreeable to the Parties, the Licensee shall submit a Permit Application to the City's Parks and Recreation Department for every proposed above-ground Site of Attachment that is within, on, or over any City boulevard, parkway, park property or landmark as set forth in the Reference Book of the Kansas City Parks and Recreation Department, which Permit Application shall be accompanied by: (i) plans for all Attachments depicting City asset information and proposed attachments; (ii) photos of the subject Facility and surrounding location; (iii) equipment specifications and method of attachment; (iv) a site sketch that depicts the proposed installation specifications such as attachment height and attachment methods on the subject City Facility(ies); (v) pole loading analysis certified by a professional structural engineer; and (vi) make ready work summary to accommodate attachment sealed by a professional electrical engineer for NESC clearance requirements.

6.1.2 Public Works Department Permit for Attachments: Unless otherwise agreeable to the Parties, the Licensee shall submit a Permit Application to the City's Public Works Department for every proposed above-ground Site of Attachment on City Right-of-Way that is not within, on, or over any City boulevard, parkway, park property or landmark as set forth in the Reference Book of the Kansas City Parks and Recreation Department, which Permit Application shall be accompanied by: (i) plans for all Attachments depicting City asset information and proposed attachments; (ii) photos of the subject Facility and surrounding location; (iii) equipment specifications and method of attachment; (iv) a site sketch that depicts the proposed installation specifications such as attachment height and attachment methods on the subject City Facility(ies); (v) pole loading analysis certified by a professional structural engineer; and (vi) make ready work summary to accommodate attachment sealed by a professional electrical engineer for NESC clearance requirements.

6.1.3 Permits for New Facilities. Licensee shall not install a New Facility without a permit. Licensee may apply for a permit for a New Facility within City right-of-way after evaluating the potential to attach to City owned facilities or on the facilities of other utility companies such as Kansas City Power & Light Company (KCP&L) and AT&T where available, including evaluating replacing city owned street light poles to provide poles with proper capacity for attachments.

a. The Licensee shall submit a Permit Application to the City's Public Works Department for every proposed New Facility, which Permit Application shall be accompanied by: (i) plans for the New Facility which include the location of the closest two existing streetlights and the location of the closest existing antenna owned or available to the applicant; (ii) photos of the surrounding location; (iii) equipment specifications of each New Facility, and a statement of whether or not the New Facility is of like material and of the same height as set forth in the City's streetlight design criteria for the location of the New Facility; and (iv) pole loading analysis certified by a professional structural engineer.

b. Except when Licensee proposes to replace a City Facility with a New Facility or unless otherwise approved by the Director of Public Works, Licensee will not install a New Facility within 300 linear feet from another existing facility.

c. Licensee will concentrate siting of New Facilities within public rights of way in industrial and commercial areas where possible.

d. Where Licensee proposes New Facilities it will seek to aesthetically blend with the surrounding area, and will match adjacent material and structural standards and follow the City's streetlight design criteria.

e. The Director of Public Works will review applications for New Facilities as follows:

- i. In commercial and industrial zoning districts: a) where the proposed New Facility is less than or equal to 45 feet in height (including all appurtenances), the Public Works Department will review permits following its standard procedures; b) where the proposed New Facility is greater than 45 feet in height, property owners within 500 feet shall be notified. The City will oversee the notification process and Licensee will be responsible for any costs associated with the process.
- ii. In residential areas, New Facilities will be limited to 45 feet in height (including all appurtenances). When New Facilities are being considered, property owners within 500 feet of the proposed location shall be notified. The City will oversee the notification process and Licensee will be responsible for any costs associated with the process.

f. Any New Facility within, on, or over any City boulevard or parkway as set forth in the City's Major Street Plan, or any park property or landmark as set forth in the Reference Book of the Kansas City Parks and Recreation Department will only be proposed when necessary in which case they will be limited to 45 feet in height (including all appurtenances). Any such request for a new facility shall be presented to the Board of Parks and Recreation Commissioners for consideration.

6.2 Professional Certification. Unless otherwise waived in writing by the City, as part of the Permit Application process and at Licensee's sole documented, reasonable expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by the City (such approval not to be unreasonably withheld), must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Attachments and New Facilities can be and were installed on or within the identified Facilities in compliance with the standards in Paragraph 4.1 and in accordance with the Permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work.

6.3 City Review of Permit Application. Upon receipt of a properly executed Permit Application, which shall include the Pre-Construction Survey, certified per Paragraph 6.2 above, and detailed plans for the proposed Attachments or New Facilities in a form acceptable to City staff, the City will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. The City acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed the Permit Application process shall be consistent with the following timeline.

6.3.1 Review Period. The City shall review and respond to properly executed and complete Permit Applications within thirty (30) days of receipt; provided, the Parties agree and acknowledge that the grant or denial of Licensee's request may take longer than 30 days if the Parties are communicating and mutually proceeding diligently with the Permit Application in good faith. The City's response will either provide a written explanation as to why the Permit Application is being denied, either in whole or in part.

6.3.2 Make-Ready Work and access to Conduits by Licensee shall be provided on a mutually agreeable, reasonable, and timely basis.

6.3.3 Licensee may toll the time period for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters or other emergency situations as determined by the City.

6.4 Permit as Authorization to Attach or Install New Facilities. Subject to the City's final approval of any necessary Make-Ready Work by Licensee, work, the City will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s) or install New Facilities.

- o. Section 7.3.2 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

7.3.2 All of Licensee's installation, removal and maintenance work performed on or within City Facilities or City right-of-way, or in the vicinity of other City property, either by its employees or contractors, shall be in compliance with all applicable regulations specified in Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Attachment(s) is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Specifications required by Article 4.

- p. Section 9.2 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

9.2 Treatment of Multiple Requests for Same Facility. If the City receives Permit Applications for the same Facility or New Facility from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodation of both requests is not possible, the City will authorize the earliest complete Permit Application received. If it is possible to accommodate more than one Attachment request through a modification the City will allocate among such licensees the applicable costs associated with such modification or replacement.

- q. Section 11 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

11. REMOVAL OF LICENSEE'S ATTACHMENTS AND NEW FACILITIES

11.1 Removal on Expiration/Termination. At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Attachment(s) from the affected Facilities or its New Facility from the City right-of-way at its own expense. After removal, Licensee shall restore the City Facilities, the City right-of-way and any other City property to their condition immediately prior to the date such Attachments were made or New Facilities were installed, excepting normal wear and tear. If Licensee fails to properly remove such Equipment or New Facilities within sixty (60) calendar days of expiration or termination or some greater period as allowed by the City, the City shall have the right to have such Equipment or New Facilities removed at Licensee's demonstrated, reasonable expense.

11.2 Licensee Removal. Licensee may, at any time, remove its Attachment(s) from any City Facility or remove its New Facility, provided it gives the City at least fourteen (14) days prior written notice. The City may require Licensee to leave in place any conduit, innerduct or similar Communications Equipment within a City Conduit in order to prevent damage to City Facilities and other City property, including right-of-way. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made or New Facilities were installed, excepting normal wear and tear. Any removal by Licensee must be done properly and without damage to the City's Facilities or property.

- r. Section 12 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

12. TERMINATION OF PERMIT

12.1 Automatic Termination of Permit. Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Attachment or New Facility on public or private property at the Site of the particular Facility covered by the Permit.

12.2 Surrender of Permit. Licensee may at any time surrender any Permit for Attachment or New Facility installation and remove its Communications Equipment from the affected Facilities or remove the New Facility, provided, however, that before commencing any such removal Licensee must obtain the City's written approval of Licensee's plans for removal, such approval not to be unreasonably withheld, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or charges will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from City Facilities within thirty (30) calendar days thereafter, the City shall have the right to remove Licensee's Attachments at Licensee's expense.

- s. Section 13 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

13. INSPECTION OF LICENSEE'S ATTACHMENTS AND NEW FACILITIES

13.1 Inspections. The City may conduct an inventory and inspection of Attachments and New Facilities at any time. Licensee shall notify the City when any Attachment or New Facility installation work is completed. Licensee shall provide to the City as-built records of their work after it is completed. Licensee shall correct all Attachments or New Facilities that are not found to be in compliance with Applicable Standards within thirty (30) calendar days of notification. If it is found that Licensee has made an Attachment or installed a New Facility without a Permit, Licensee shall pay an Unauthorized Access Penalty Fee as specified in Article 3 in addition to applicable Permit and Make-Ready Costs. If it is found that five percent (5%) or more of Licensee's Attachments or New Facilities are either in non-compliance or not permitted, Licensee shall pay its pro-rata share of the costs of the inspection.

13.2 Notice. The City will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.

13.3 No Liability. Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

13.4 Attachment Records. Notwithstanding the above inspection provisions, Licensee is obligated to furnish the City on an annual basis an up-to-date map depicting the locations of its Attachments and New Facilities in an electronic format specified by the City.

- t. Section 15 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

15. REPORTING REQUIREMENTS

Concurrently with Licensee's Annual Attachment and New Facility Fee payment, Licensee shall report any Attachment Licensee has removed from City Facilities and any New Facility Licensee has removed from City right-of-way during the relevant reporting period. For Attachments, The report shall identify the Facility from which the Attachment was removed, describe the removed equipment, and indicate the approximate date of removal. For New Facilities, the report shall identify the location from which the New Facility was removed and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit pursuant to Paragraph 12.2.

- u. Section 16.2 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

16.2 Indemnification. Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless the City and its officials, officers, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by the City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of the City and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Attachments or New Facilities, except to the extent of the City's sole negligence, gross negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

16.2.1 Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;

16.2.2 Cost of work performed by the City that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer or remove Licensee's Attachment(s) and New Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes the City to perform on Licensee's behalf;

16.2.3 Damage to any property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents or contractors, pursuant to this Agreement;

16.2.4 Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of Missouri, the City or any other governmental entity or administrative agency.

- v. Section 27 of the Agreement is hereby deleted and the following new section is inserted to replace the deleted section:

27. ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, whether written or oral, between the City and Licensee for placement and maintenance of Licensee's Attachments and New Facilities on or within City Facilities or within City's right-of-way within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

Sec. 3. Sections not Amended. All other sections of the Agreement shall remain in full force and effect.

Sec. 4. Authorization. This Amendment requires City Council or Park Board authorization. .

Sec. 5. Effectiveness; Date. This amendment will become effective when all the parties have signed it. The date this amendment is signed by the last party to sign it will be deemed the date of this amendment.

Each party is signing this amendment on the date stated opposite that party’s signature.

LICENSEE

I hereby certify that I have authority to execute this document on behalf of Licensee

By:

Date:_____

Title:

KANSAS CITY, MISSOURI

By:

Date:_____

Title:

Authorized by the Board of Parks and Recreation Commissioners, Resolution Number _____.

Secretary to the Board

Approved as to form:

Assistant City Attorney