

**MASTER LICENSE AGREEMENT
FOR ATTACHMENT TO CITY UTILITY POLES**

This Master License Agreement for Attachments to City Utility Poles (“Agreement”) dated _____, 2019 (the “Effective Date”) is made by and between Kansas City, Missouri (“City”) and NEW CINGULAR WIRELESS PCS, LLC a Delaware limited liability company d/b/a AT&T Mobility (“Licensee”) (collectively referred to as the “Parties”).

RECITALS

1. The City owns, operates and maintains certain Utility Poles located in the City; and
2. Licensee is duly organized and existing under the laws of Delaware, and is authorized to conduct business in the State of Missouri; and
3. Licensee proposes to locate, place, attach, install, operate and maintain Licensee’s Small Wireless Facilities on or within the City’s right-of-way (a) on City Utility Poles in said areas, and (b) on or within the facilities (i.e. poles, lines, wires, and conduit) of other utility companies such as Evergy, Inc. pursuant to Licensee’s separate locate agreements with said utility companies; and
4. Licensee proposes to install and maintain Licensee's Small Wireless Facilities on City Utility Poles to provide Communications Services; and
5. The City is willing to grant Licensee a non-exclusive, revocable license under which the City will issue Permits authorizing the Licensee to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace Licensee’s Small Wireless Facilities on City Utility Poles, provided that the City may in its sole discretion, for reasons relating to insufficient capacity, safety, reliability, generally applicable engineering purposes or other governmental needs, uses, obligations and reasons, refuse to issue a Permit for any particular City Utility Pole so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties; and
6. The City's license of City Utility Poles is a commercial transaction involving the rental of City property and the City's intention to act in a non-discriminatory manner notwithstanding, such commitment shall only apply to this Agreement when viewed as a whole and nothing herein shall be construed as a requirement that any other license agreements be identical. Nor shall it be construed as an obligation to proactively ensure competitive neutrality.

In consideration of the above recitals and the following mutual covenants, agreements, and obligations of the Parties, the City and Licensee agree as follows:

1. DEFINITIONS

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 **Affiliate**: when used in relation to Licensee, means another entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **Antenna**: means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;
- 1.3 **Applicable Standards**: means all applicable engineering and safety standards governing the installation, maintenance and operation of equipment and the performance of all work in or around City Utility Poles and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of the City or other federal, State or local authority with jurisdiction over City Utility Poles.
- 1.4 **Attaching Entity**: means any other licensee, who, pursuant to a valid authorization with the City, places an attachment on City Utility Poles to provide Communications Service.
- 1.5 **Capacity**: means the ability of a City Utility Pole to accommodate an additional Small Wireless Facility based on Applicable Standards, including space and loading considerations.
- 1.6 **City Decorative Pole**: means a City Utility Pole that is specially designed and placed for aesthetic purposes.
- 1.7 **City Utility Pole(s)**: means any Utility Pole that is owned, managed, or operated by or on behalf of the City. City Decorative Poles, defined above, are also "City Utility Poles."
- 1.8 **Collocate or Collocation**: means to install, mount, maintain, modify, operate, or replace Small Wireless Facilities on or immediately adjacent to a City Utility Pole, provided that each antenna associated with the Small Wireless Facility is located on the City Utility Pole.

- 1.9 **Communications Equipment**: means wireline or wireless equipment including but not limited to fiber optic, copper and/or coaxial cables, wireless antennas, receivers or transceivers, mounting hardware, power supplies, grounding or bonding wires, and other equipment utilized to provide Communications Service, including any and all associated equipment.
- 1.10 **Communications Service**: means the transmission or receipt of voice, video, data, broadband internet or other forms of digital or analog signals over Communications Equipment.
- 1.11 **Conduit System**: means the City's conduits, Innerduct, manholes, handholes, vaults, pull- boxes and trenches.
- 1.12 **Innerduct**: means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.
- 1.13 **Licensee**: means New Cingular Wireless PCS, LLC, its Affiliates and their respective authorized agents, successors, designees and assigns.
- 1.14 **Make-Ready Work**: means all work, as reasonably determined by the City, required to accommodate Licensee's Small Wireless Facility and/or to comply with all Applicable Standards. Such work includes, but is not limited to, realignment of City Utility Poles or existing attachments, inspections, engineering work, permitting work, design, planning, construction, materials, cost of removal (less any salvage value), cost of expanding existing Conduit, cost of a (City- approved) substitution of poles, tree trimming (other than tree trimming performed for normal maintenance purposes), Facility construction, or Conduit System clearing, but does not include routine maintenance.
- 1.15 **Permit**: means written or electronic authorization of the City for Licensee to Collocate Small Wireless Facilities on specified City Utility Poles pursuant to the requirements of this Agreement and any applicable city code or regulation.
- 1.16 **Permit Application**: means the application for a Permit pursuant to the applicable requirements of this Agreement and any applicable city code or regulation.
- 1.17 **Post-Construction Inspection**: means the inspection by the City to determine and verify that the Collocation of the Small Wireless Facility has been performed in accordance with Applicable Standards and the Permit.
- 1.18 **Make-Ready Survey**: means all work or operations required by Applicable Standards to determine the potential Make-Ready Work necessary to accommodate Licensee's Small Wireless Facility on a City Utility Pole. Such work includes, but is not limited to, field inspection and administrative processing.

- 1.19 **Reserved Capacity:** means capacity or space on a City Utility Pole that the City has identified and reserved for City or other governmental requirements, including, but not limited to other municipalities and any local school districts.
- 1.20 **Right-of-Way:** means the area on, below or above the present and future city streets, alleys, bridges, bikeways, parkways and sidewalks.
- 1.21 **Site:** The location of the City Utility Pole for which Licensee obtains a Permit from the City pursuant to this Agreement for purposes of Collocating its Small Wireless Facility.
- 1.22 **Small Wireless Facility:** means a Wireless Facility that meets both of the following qualifications:
- (a) Each antenna could fit within an enclosure of no more than six cubic feet in volume; and
 - (b) All other equipment associated with the Small Wireless Facility, whether ground or pole mounted, is cumulatively no more than twenty-eight cubic feet in volume, provided that no single piece of equipment on the Utility Pole shall exceed nine cubic feet in volume; and no single piece of ground mounted equipment shall exceed fifteen cubic feet in volume, exclusive of equipment required by an electric utility or municipal electric utility to power the Small Wireless Facility.
- The following types of associated ancillary equipment shall not be included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs and related conduit for the connection of power and other services.
- 1.23 **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by the City and/or applicable federal, State or local regulations that will readily identify the Small Wireless Facility and its owner.
- 1.24 **Utility Pole:** means a pole or similar structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for the Collocation of Small Wireless Facilities.
- 1.25 **Wireless Facility:** means the equipment at a fixed location that enables wireless communications between user equipment and a communications network, including equipment associated with wireless communications and radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The term does not include:

- (a) The structure or improvements on, under, or within which the equipment is Collocated;
- (b) Coaxial or fiber-optic cable between Wireless Support Structures or Utility Poles;
- (c) Coaxial or fiber-optic cable not directly associated with a particular Small Wireless Facility; or
- (d) A Wireline Backhaul Facility.

1.26 Wireline Backhaul Facility: means a physical transmission path, all or part of which is within the right-of-way, used for the transport of communication data by wire from a wireless facility to a network.

2. SCOPE OF AGREEMENT

- 2.1 Grant of Collocation Licenses.** The City hereby grants Licensee a nonexclusive license to use City Utility Poles for the purpose of Collocating Small Wireless Facilities pursuant to the provisions of this Master License Agreement. In accordance with applicable law such Collocations are permitted uses not subject to zoning or land use approval, except that the placement in the Right-of-Way of new or modified Utility Poles in single-family residential or areas zoned as historic as of August 28, 2018, remains subject to any applicable zoning requirements that are consistent with Sections 67.5090 to 67.5103 RSMo. Small Wireless Facilities collocated outside the right-of-way in property not zoned primarily for single-family residential use shall be classified as permitted uses and not subject to zoning review or approval.
- 2.2 Conflicting Provisions.** In the event of any conflict between this Agreement and any Permit hereto, the terms and conditions of this Agreement, as amended from time to time, shall control.
- 2.3 Permit Issuance Conditions.** The City will issue a Permit(s) to Licensee only when the City determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Small Wireless Facility Collocation, (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.
- 2.4 In-Kind Compensation.** This Agreement does not contemplate any in-kind contributions from Licensee.
- 2.5 Reserved Capacity.** Access to space on City Utility Poles will be made available to Licensee with the understanding that City Utility Poles may be subject to Reserved Capacity for future governmental use. In such case the City may refuse to permit Small Wireless Facility Collocations on such City Utility Poles or may within its discretion permit Small Wireless Facility Collocations

subject to reclaiming its Reserved Capacity in the future. On giving Licensee as much advance written notice as practicable under the circumstances, but in no event less than one hundred and eighty (180) calendar day's prior notice, the City may reclaim such Reserved Capacity if required for future governmental use. The City may, within its reasonable discretion, give Licensee the option to remove its Small Wireless Facilities from the affected City Utility Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity to accommodate the governmental needs while at the same time maintaining Licensee's Small Wireless Facilities, if any, Collocated on the affected City Utility Pole(s).

- 2.6 No Interest in Property.** No use, however lengthy, of any City Utility Poles, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such City Utility Pole. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the City's rights to City Utility Poles. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.
- 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 Collocate Licensee's Small Wireless Facilities on any specific City Utility Pole.
- 2.8 City's Rights over City Utility Poles.** The Parties agree that this Agreement does not in any way limit the City's right to locate, relocate, operate, maintain or remove its City Utility Poles in the manner that will best enable it to fulfill any governmental requirements.
- 2.9 Expansion of Capacity.** The City may, at its sole discretion and subject to appropriation of funds, take steps as reasonably appropriate, in a competitively neutral manner, to modify City Utility Poles to accommodate Licensee's request for Collocation. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the City to install, retain, extend or maintain any City Utility Poles or portion of City Utility Poles for use when such City Utility Poles are not needed for the City's or any other governmental service requirements.
- 2.10 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding City Utility Poles into which the City has previously entered, or may enter in the future, with others not party to this Agreement, provided that any such future attachments shall not interfere with Licensee's Small Wireless Facilities previously Collocated on City Utility Poles.
- 2.11 No Use After Termination.** Nothing in this Agreement shall be construed to require the City to allow Licensee to use City Utility Poles after the termination of this Agreement.

- 2.12 Enclosures.** City, at its sole discretion and judgment, may authorize Licensee to place above-ground pedestals, enclosures or cabinets at the base of any City Utility Poles upon which Licensee has made authorized Collocations.

3. FEES AND CHARGES

- 3.1 Payment of Fees and Charges.** For authorized Collocations covered under this Agreement, Licensee shall pay to the City the fees and charges specified in Paragraph 3.1.1 below. Licensee's payments shall comply with the terms and conditions specified herein. The fees and charges listed in Paragraph 3.1.1 include any fees for access to or use of the Rights-of-Way and Collocation of Licensee's Small Wireless Facilities in the Rights-of-Way (including, without limitation, antenna fees, and fees or charges for Right-of-Way management costs under Section 67.1840, RSMo., as amended).

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. For authorized Collocations covered under this Agreement, Licensee shall pay to the City the fees and charges specified in Paragraph 3.1.1 below except with respect to amounts that have been disputed pursuant to the Dispute Resolution Process under the Agreement. All fees and charges will be rounded to the nearest dollar.

1. Annual Collocation Fee: \$150 annually, per approved City Utility Pole, per year, upon which Licensee Collocates Small Wireless Facilities.
2. Permit Application Fee: \$100.00 per Small Wireless Facility shall be provided with the Permit Application. For Permit Applications for installation, modification, or replacement of a Utility Pole located within the Right-of-Way and the Collocation of an associated Small Wireless Facility a Permit Application fee in the amount of \$500.00 shall be provided with the Permit Application. The Licensee shall also obtain any necessary and applicable ministerial permits of general applicability required for the work to be performed under this Agreement, including, as necessary, excavation permits and traffic control permits.
3. 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. For such work, the City shall provide an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials.
4. Unauthorized Collocation Penalty Fee: Three times the Annual Collocation Fee, per occurrence for Collocations of Small Wireless Facilities made without City approval that Licensee fails to remove within thirty (30) days after its receipt of City's written notice of such

unauthorized Collocation. Payment of this fee does not guarantee the Small Wireless Facility may remain on the City Utility Pole.

5. Failure to Timely Transfer or Remove Small Wireless Facilities Penalty Fee (holdover fee): \$100 per day, per Small Wireless Facility Collocation, for each day that Licensee fails to transfer, or remove, its Small Wireless Facilities beyond thirty (30) days after its receipt of City's written notice that the Licensee is delinquent in transferring or removing its Small Wireless Facilities.
6. Attachments to Other City Facilities Other than City Utility Poles. Fees for attachments to City Facilities other than City Utility Poles shall be negotiated separately, and confirmed by the Parties in writing.

3.2 Payment Period; Prompt Invoicing. Unless otherwise expressly provided, Licensee shall pay the full undisputed amount of any invoice it receives from the City pursuant to this Agreement within ninety (90) calendar days after the City delivers the invoice to Licensee, with supporting documentation reasonably necessary to substantiate the amount invoiced. Any charges, including but not limited to any interest charges, payable by Licensee under this Agreement, other than the Annual Collocation Fees, shall be billed by City within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by City and shall not be payable by Licensee.

3.3 Billing of Annual Collocation Fee.

1. The City shall invoice Licensee for the Annual Collocation Fee on or about January 1 of each year. The initial annual rental period shall commence upon the execution of this Agreement and conclude on December 31 of that year, and each subsequent annual rental period shall commence on the following January 1 and conclude on December 31 of that year. All invoices shall be sent by the City to Licensee at:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319
Re: Wireless Installation on Public Structures in Kansas City, MO
Fixed Asset #

2. The full undisputed amount of the Annual Collocation Fee shall be payable within forty-five (45) days of the delivery of an invoice by the City to the Licensee. The invoice shall set forth the total number of the City's Utility Poles on which Licensee was issued and/or holds a Permit(s) for Collocation of Small Wireless

Facilities during such annual rental period, including any previously authorized and valid Permits.

- 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 Collocation Fee going forward for any Permit for Small Wireless Facility Collocation surrendered in the previous calendar year, and Licensee shall be entitled to a refund upon discovery of such a billing error.
- 3.5 Inventory.** The City shall have the right to require a joint inventory of all Small Wireless Facility Collocations no more frequently than once every three (3) years by the City and Licensee, unless both Parties agree to a new inventory schedule. Each Party will be responsible for its own costs of inventory and any storage fees to accommodate the Small Wireless Facility Collocations.
- 3.6 Late Charge.** If the City does not receive payment for any fee, charges or other amount owed within forty-five (45) calendar days after it delivers written notice of non-payment to Licensee, Licensee shall pay interest to the City, at the rate of five percent (5%) per month, on the amount due. Interest under this Agreement shall not exceed the interest allowable under applicable law.
- 3.7 Determination of Fees and Charges.** If Licensee was required to perform work and fails to perform such work, the City at its sole discretion and after ten (10) days' notice to Licensee, may decide to complete the work. The charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. The City shall bill its services based upon actual costs, and such costs will be determined in accordance with the City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. The City may charge an additional ten percent (10%) to its costs.
- 3.8 Work Performed by City.** If the City decides to perform any work under this Agreement, Licensee acknowledges and agrees that the City, at its reasonable discretion, may utilize its employees or contractors, or any combination of the two to perform such work, or to permit the Licensee to perform the work.
- 3.9 Default for Nonpayment.** Nonpayment by Licensee of any amount due under this Agreement beyond ninety (90) days after City's written notice of non-payment shall constitute a material default of this Agreement.
- 3.10 Incremental Property Taxes.** If the property or ad valorem taxes payable by the City with respect to City Utility Poles, or lands at a Site(s) where Small Wireless Facilities are located, or the basis on which such taxes are calculated, increase following installation of the Small Wireless Facility, City shall invoice and Licensee shall reimburse the City for the portion of such increase or change attributable to any construction, installation or improvements provided pursuant

to this Agreement. Payment shall be made by Licensee within ninety (90) days after presentation of a receipted bill and/or assessment notice which is the basis for such taxes. Licensee shall be solely responsible for, and shall pay in a timely manner, any property or ad valorem taxes or other taxes or fees levied upon or with respect to the Small Wireless Facility and other Licensee property located on the Site(s) that are billed directly to Licensee by the taxing authorities. Licensee shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which Licensee is wholly or partly responsible for payment.

4. SPECIFICATIONS

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

4.1.1 The following lays out maintenance requirements for Licensee's Small Wireless Facilities Collocated on City Utility Poles.

1. For Collocations of Small Wireless Facilities on City Utility Poles: a) the Licensee is solely responsible for its Small Wireless Facilities; b) the Licensee must submit a safety response protocol document to the respective City department division responsible for maintenance of the City Utility Poles prior to Pole Collocation Permitting. The safety response protocol document will contain contact information for a locally based, City-approved maintenance contractor that is qualified to work on all Street Light, power and telecommunication equipment within the City right-of-way. The safety response protocol document will also state that the Licensee assumes all costs associated with collecting, transferring or storing of its Small Wireless Facility and will pay their locally based maintenance contractor directly to perform these tasks.

2. For Collocations of Small Wireless Facilities on City Utility Poles which require replacement of the existing City Utility Pole with a non-standard Utility Pole: a) the Licensee will provide a sufficient amount of City owned non-standard replacement spare poles (at least 1 pole for every 10 poles of each type and height, along with replenishment of spare poles as needed) that will be stored with (i) the City's streetlight maintenance contractor at Licensee's expense, or (ii) Licensee's contractor reasonably approved by City, and dedicated exclusively for replacement of non-standard poles which support Licensee's Small

Wireless Facilities; b) the Licensee is solely responsible for its Small Wireless Facility; c) the Licensee must submit a safety response protocol document to the respective City department division responsible for maintenance of the City Utility Poles prior to Pole Collocation Permitting. The safety response protocol document will contain contact information for a locally based, City approved maintenance contractor that is qualified to work with all Street Light, power, and telecommunication equipment within the City right-of-way. The safety response protocol document will also state that the Licensee assumes all costs associated with collecting, transferring or storing of its Small Wireless Facilities and will pay their locally based maintenance contractor directly to perform these tasks.

4.2 Authorized Collocation(s) and Installation Methods.

- 4.2.1** The City must approve the Attachment(s) that Licensee is authorized to place on City Facilities. Such approval will not be unreasonably withheld. Except as authorized by the City in writing, only the Attachments depicted and described in the approved Permit Application may be attached to any City Facility; provided, however, that different internal components may be substituted as part of an upgrade of the Communications Equipment subject to required standard permits; and further provided, different Attachments of similar or smaller size may be substituted upon the filing of a description and design of the new devices at least fifteen (15) days in advance of such change. Provided, any said upgrade or substitution must maintain the structural integrity of the City's Facility, and, upon request after any such upgrade or substitution, Licensee will provide all necessary supporting documentation reasonably required by the City to confirm that the upgrade or substitution will maintain the structural integrity of the City's Facility.
- 4.2.2** In no event may Licensee or any of its subcontractors install or construct new City Utility Poles or modify or repair existing City Utility Poles except as may be expressly authorized by this Agreement or by an approved Permit, or as is otherwise authorized in writing by the City.
- 4.2.3** Nothing in this Agreement shall be construed as a guaranty of the condition of any City Utility Pole in connection with Licensee's Collocation of Small Wireless Facilities on City Utility Poles or impose any obligation upon the City to repair or replace an existing City Utility Pole in order to accommodate a request by Licensee to Collocate a Small Wireless Facility.
- 4.3** **Tagging.** Licensee shall Tag all of its Small Wireless Facilities in accordance with any applicable federal, State and local regulations upon installation of such Small Wireless Facility(s).
- 4.4** **Interference.** Licensee shall not allow its Small Wireless Facilities to impair the ability of the City or any then-existing third party to use City Utility Poles, nor shall Licensee allow its Small Wireless Facilities to interfere with the operation and maintenance of any City or other governmental Utility Poles.

- 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 Small Wireless Facilities.
- 4.4.2** In the event that the installation, operation or maintenance of the Small Wireless Facility(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 as recommended by the City or regulatory agencies, to eliminate such interference. In the event that the installation, operation or maintenance of the Small Wireless Facility(s) 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, and after City has notified Licensee of such interference by a written communication and a call to Licensee's Network Operations Center at (800) 638-2822, Licensee will take all commercially reasonable steps necessary to correct and eliminate, at its sole cost, the interference including, but not limited to, at Licensee's option, powering down the interfering equipment and later powering up the interfering equipment for intermittent testing. If Licensee is unable or refuses to eliminate such interference, the City may terminate Licensee's use of or right to use the City Utility Pole upon which such interfering Small Wireless Facility is Collocated, and Licensee shall promptly remove the Small Wireless Facility from the City Utility Pole.
- 4.4.3** In the event a third party applies for Collocation of a Small Wireless Facility on a City Utility Pole in which Licensee previously installed Small Wireless Facilities, City shall provide Licensee written notice of such application in order for Licensee to evaluate potential interference issues. Notwithstanding the foregoing, if equipment installed on a City Utility Pole by any third party using the City Utility Pole pursuant to an agreement with the City subsequent to the Collocation of the Licensee's Small Wireless Facility on the Site causes interference, either electronically or physically, with Licensee's previously installed Small Wireless Facilities, then upon thirty (30) days written notice to the City, Licensee shall have the right to terminate the affected Permit. In addition, the Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.
- 4.5** **Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of the general public and the City's Facilities.
- 4.6** **Violation of Specifications.** If Licensee's Small Wireless 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 or, if the violation(s) cannot reasonably be remedied in such time, if the Licensee does not commence a remedy within the allotted thirty (30) days and diligently pursue the cure to completion, 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 Utility Poles, 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.

- 4.7 **Restoration of City Service.** The City's service restoration requirements shall take precedence over any and all work operations of Licensee on City Utility Poles.
- 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 Small Wireless 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 Collocation Fees it has paid in advance with respect to expired Permits.
- 4.9 **Power.** Licensee's power consumption may be metered, sub-metered, or unmetered at any specific Site as mutually determined by the Parties in consideration of the requirements of the local utility provider for each Site. Licensee's power consumption shall be billed directly by the utility to Licensee.

5. PRIVATE AND REGULATORY COMPLIANCE

- 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 Small Wireless Facilities on public and/or private property before it occupies any portion of City Utility Poles. 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 Collocate Licensee's Small Wireless Facilities on City Utility Poles or to provide particular Communications Services.

- 5.2 Lawful Purpose and Use.** Licensee's Small Wireless Facilities must at all times serve a lawful purpose, and the use of such Small Wireless 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.
- 5.3 Forfeiture of City's Rights.** No Permit granted under this Agreement shall extend to any City Utility Poles or portions thereof on/in which the Collocation of Licensee's Small Wireless Facilities would result in a forfeiture of the City's rights. Any Permit, which on its face would cover Small Wireless Facilities that would result in forfeiture of the City's rights, is invalid. Further, if any of Licensee's existing Small Wireless Facilities Collocated on City Utility Poles, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Small Wireless Facilities upon receipt of written notice from the City. If the Small Wireless Facilities in question are not removed within ninety (90) days receipt of the City's written notice, the City may at its option perform such removal and store the Small Wireless Facilities in question 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. At the time of Licensee's Permit Application, the City will endeavor to determine whether any such forfeiture would result from Licensee's proposed Collocation, and in that event, the City will not grant the Permit.
- 5.4 Effect of Consent to Construction/Maintenance.** Consent by the City to the construction or maintenance of any Small Wireless Facility Collocations by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Small Wireless Facility Collocations. It is Licensee's responsibility to obtain all necessary approvals for each Small Wireless Facility Collocation from all appropriate parties or agencies.

6. PERMIT APPLICATION PROCEDURES

- 6.1 Permit Required.** Licensee shall not install any Small Wireless Facilities on any City Utility Poles 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 Paragraph 6.1.1 below.

- 6.1.1 Parks and Recreation Department Permit:** 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 Collocation of Small Wireless Facilities on City Right-of-Way 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.
- 6.1.2 Public Works Department Permit:** 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 Collocation of Small Wireless Facilities 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.
- 6.2 Professional Certification.** Unless otherwise waived in writing by the City, as part of the Permit Application process and at Licensee's sole demonstrated, 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 Small Wireless Facilities can be and were installed on the identified City Utility Poles 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 Permit Application.** Licensee shall file with the City a Permit Application for one or more City Utility Poles where Licensee desires to Collocate Small Wireless Facilities through the City's online permitting portal (CompassKC). The Permit Application, together with the applicable Permit Application fees, shall be submitted on CompassKC by uploading the same through the "Pole Attachment – License Agreement" Permit section.
- 6.3.1** Within fifteen (15) days of the receipt of a Permit Application, the City shall determine and notify the Licensee in writing (at the email address provided in the Permit Application) whether the Permit Application is complete. If a Permit Application is incomplete, the City shall specifically identify the missing information in writing ("Notice of Incompleteness").
- 6.3.2** A Permit Application for a Collocation shall be deemed approved if the City fails to approve or deny the Permit Application in writing within 45 days of receipt of the Permit Application; provided, however, that the 45 day processing deadline shall

be tolled from the time the City delivers the Notice of Incompleteness to the time the Licensee provides the missing information. If the City timely rejects the Permit Application, the review period will be suspended until Licensee cures the non-compliance.

6.3.3 A Permit Application for installation, modification, or replacement of a Utility Pole located within the Right-of-Way and the Collocation of an associated Small Wireless Facility shall be deemed approved if the City fails to approve or deny the Permit Application in writing within 60 days of receipt of the Permit Application; provided, however, that the 60 day processing deadline shall be tolled from the time the City delivers the Notice of Incompleteness to the time the Licensee provides the missing information. If the City timely rejects the Permit Application, the review period will be suspended until Licensee cures the non-compliance.

6.4 The Licensee may, at its discretion, file a consolidated Permit Application and receive a single Permit for the Collocation of multiple Small Wireless Facilities on City Utility Poles; provided, however, the denial of one or more Small Wireless Facilities in a consolidated Permit Application shall not delay processing of any other Small Wireless Facilities in the same batch. A consolidated Permit Application may include up to twenty separate Small Wireless Facilities, provided that they are for the same or materially same design of Small Wireless Facility being Collocated on the same or materially the same type of City Utility Pole and geographically proximate. In rendering a decision on a consolidated Permit Application for multiple Small Wireless Facilities, the City may approve the consolidated Permit Application as to certain individual Small Wireless Facilities while denying it as to others based on applicable requirements and standards identified in this Section 5. The City's denial of any individual Small Wireless Facility or subset of Small Wireless Facilities within a consolidated Permit Application shall not be a basis to deny the consolidated Permit Application as a whole.

6.5 **Review Criteria.** The City may deny a Permit Application, in whole or in part, only for one or more of the following reasons:

6.5.1 The proposed Collocation could reasonably be expected to:

1. Materially interfere with the safe operation of traffic control equipment or City-owned communications equipment;
2. Materially interfere with sight lines or clear zones for transportation, pedestrians, or nonmotorized vehicles;
3. Materially interfere with compliance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101 to 12213, or similar federal or state standards regarding pedestrian access or movement;
4. Materially obstruct or hinder the usual travel or public safety on the

Right-of-Way;

5. Materially obstruct the legal use of the Right-of-Way by the City, a utility, or other third party;
6. Fail to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance or regulations promulgated by the state highways and transportation commission that concern the location of ground mounted equipment and new Utility Poles. Such spacing requirements shall not prevent a wireless provider from serving any location and shall include a waiver, zoning, or other process that addresses wireless provider requests for exception or variance and does not prohibit granting of such exceptions or variances;
7. Fail to comply with applicable building codes, electrical codes, or industry standards, including nationally recognized engineering standards for Utility Poles; or
8. Fail to comply with the reasonably objective and documented aesthetics of a City Decorative Pole and the Licensee does not agree to pay to match the applicable decorative elements.
9. Fail to comply with reasonable and nondiscriminatory undergrounding requirements contained in local ordinances as of January 1, 2018, or subsequently enacted for new developments, that require all utility facilities in the area to be placed underground and prohibit the installation of new or the modification of existing utility poles in a Right-of-Way without prior approval, provided that such requirements include a waiver or other process of addressing requests to install such Utility Poles and do not prohibit the replacement or modification of existing Utility Poles consistent with this section or the provision of wireless services;

The City shall document the complete basis for a denial in writing and send the documentation to the Licensee on or before the day the City denies a Permit Application. The Licensee may cure the deficiencies identified by the City and resubmit the Permit Application within thirty (30) days of the denial without paying an additional Application fee. The City shall approve or deny the revised Permit Application within thirty (30) days. Any subsequent review of the revised Permit Application shall be limited to the deficiencies cited in the denial.

If the Permit Application is complete and in compliance with all applicable requirements as outlined above, or if the Permit Application is deemed accepted, the City shall provide Licensee with written notification of approval of the Permit Application and issue the Permit after receipt of payment of the initial annual Collocation License Fee by Licensee, thereby granting Licensee a Collocation License for the approved City Utility Pole(s), which shall be effective as of the date of issuance of the Permit. The term for each

Collocation License shall commence as provided for in Section 12 of this Master License Agreement.

6.6 Permit as Collocation License. Upon approval of the Permit Application, the City will issue a renewable permit, subject to conditions, that shall serve as authorization for the Licensee to Collocate its Small Wireless Facility(s) and the permit shall be a License to Collocate, subject to conditions and terms of this Agreement (“Collocation License”).

6.7 Completion of Collocations. Collocations for which a Collocation License is granted under this Section 6 shall be completed within one year after the Permit issuance date unless: (i) the City and the Licensee agree to extend this period; or (ii) the Licensee notifies the City that the delay is caused by a lack of commercial power or communications transport facilities to the site, in which case the Licensee shall have such additional time to complete the Collocations, as may reasonably be necessary under the circumstances.

7. MAKE-READY WORK/INSTALLATION

7.1 Make-Ready Survey. When the City receives a Permit Application from Licensee, a make-ready survey (the "Make-Ready Survey") will be submitted, at Licensee's demonstrated, reasonable cost, to determine the adequacy or the capacity of the City Utility Poles to accommodate Licensee's Small Wireless Facilities without jeopardizing the safety of the City Utility Poles or placing the City in violation of generally applicable zoning or other restrictions. Licensee shall be responsible for performing and paying all demonstrated, reasonable costs associated with the Make-Ready Survey. Licensee shall perform a field inspection and structural analysis as part of the Make-Ready Survey. All Make-Ready Surveys shall be submitted to the City for approval, which will not be unreasonably withheld or delayed. The City will review the Make-Ready Survey and notify Licensee what make-ready work is required within no more than forty-five (45) days after receipt. If the City rejects the Make Ready Survey, it will provide the specific reasons for rejection in writing at the time of disapproval.

7.2 Make-Ready Work

7.2.1 Except where the City denies the application, whenever any City Utility Pole to which Licensee seeks to Collocate its Small Wireless Facilities requires modification or replacement to accommodate both Licensee's Small Wireless Facilities and the existing attachments or equipment of the City and other Attaching Entities, the Licensee will perform Make Ready Work the City believes to be necessary to prepare the City Utility Poles for Licensee's Small Wireless Facility. All Make-Ready Work will be performed at the sole cost and expense of Licensee. Any reference to costs or expenses borne by Licensee within Paragraphs 7.1 and 7.2 may also include administrative time incurred by the City or expenses that third-party Attaching Entities are obligated to bear under pre-existing agreements.

- 7.2.2** After receiving City's approval for the Make-Ready Work, Licensee or Licensee's contractors shall perform all the Make Ready Work. The contractors shall be approved by the City to work on City Utility Poles using qualified linemen. The City will inspect the make ready work and the Small Wireless Facility Collocation after work is completed. Notwithstanding anything contained in this Agreement to the contrary, Licensee's obligations to proceed with and perform the Make Ready Work are limited to Licensee's determination, in its sole and absolute discretion, to proceed with the Make-Ready Work.
- 7.2.3** Licensee shall be solely responsible for all coordination, notification, and any modifications that affect existing Attaching Entities. Licensee will use commercially reasonable efforts to notify the existing Attaching Entities and coordinate the rearrangements of their attachments. To the extent third-party equipment is affected by Licensee's Permit Application, Licensee will follow the procedure as described in Paragraphs 7.2.1, 7.2.2 and 7.2.3, but only to the extent such existing Attaching Entities do not elect to perform the rearrangement or are not already obligated to rearrange attachments and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.
- 7.3** **Replacement Poles; Make-Ready Work.** The City may require replacement of the City Utility Pole on a nondiscriminatory basis for reasons of safety and reliability, including a demonstration that the Collocation would make the City Utility Pole structurally unsound. The Licensee may also replace City Decorative Poles, at its sole cost, when necessary to Collocate a Small Wireless Facility, but any replacement City Decorative Pole shall reasonably conform to the design aesthetics of the Decorative Pole being replaced. The Licensee shall be solely responsible for the costs associated with any City Utility Pole replacement, or other Make-Ready Work necessary to enable the City Utility Pole to support the requested Collocation.
- 7.4** **Licensee's Installation/Removal/Maintenance Work.**
- 7.4.1** All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of City Utility Poles or other property or equipment, or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Article 18.
- 7.4.2** All of Licensee's installation, removal and maintenance work performed on or within City Utility Poles 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 Small Wireless Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Specifications required by Article 4.

7.4.3 Notwithstanding any other provision to the contrary, subsequent to the initial installation of a Small Wireless Facility, Licensee's maintenance of Small Wireless Facilities may be performed without obtaining approval from City. However, Licensee must comply with all applicable regulations as required by Article 4. Licensee shall be responsible to repair and restore, at its cost, any and all park property which has been damaged or disturbed as a result of the installation of the Small Wireless Facilities. All disturbed areas shall be restored to City standards as uniformly applied by the City. All turf areas disturbed by the installation of the Small Wireless Facilities shall receive sod. The Licensee shall replace all trees which are significantly damaged or die as a result of the installation of the Small Wireless Facilities, as mutually determined by the City forester and the Licensee's representative. Trees damaged by Licensee's installation of the Small Wireless Facilities will be removed by the Licensee within thirty (30) days from the date of notification by the City, and replaced with trees of the same or similar species and size, but in no case less than 2" caliper or more than 5" caliper, and at no cost to the City. All replacement trees shall meet the standards of the American Association of Nurserymen. The size, species and location of replacement trees shall be determined by the City. All trees which are damaged as a result of construction shall be repaired by the Licensee as soon as possible, per the City forester's instructions.

8. TRANSFERS

8.1 Required Transfers of Licensee's Small Wireless Facilities. If the City reasonably determines that a transfer of Licensee's Small Wireless Facilities is necessary, the City shall provide notice thereof to Licensee, and Licensee agrees to allow such transfer or remove the affected Small Wireless Facilities. In such instances, the City may require Licensee to perform routine transfers or removals at Licensee's own expense upon at least ninety (90) calendar days after receipt of notice from the City, unless the City advises that an urgent need exists in which case Licensee shall use its best efforts to complete the transfer or removal within thirty (30) days of such notice. If Licensee fails to transfer its Small Wireless Facility within these periods, the City shall have the right to transfer Licensee's Small Wireless Facility using its personnel and/or contractors. The costs of such transfers shall be apportioned as specified under Article 9. The City shall not be liable for damage to Licensee's Small Wireless Facility except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply to emergency situations creating an imminent threat to public safety, in which case the City shall provide such advance notice as is practical given the urgency of the particular emergency situation. The City shall then provide written notice of any such actions taken within five (5) business days of the occurrence.

9. MODIFICATIONS AND/OR REPLACEMENTS

9.1 Licensee's Action Requiring Modification/Replacement. In the event that any City Utility Pole to which Licensee desires to Collocate its Small Wireless

Facilities is unable to support or accommodate the additional Small Wireless Facilities in accordance with all Applicable Standards, the City will notify Licensee. If the City is willing to allow a modification or replacement of the City Utility Pole to accommodate Licensee's Small Wireless Facility, the City will notify Licensee of the necessary work to provide an adequate City Utility Pole, including but not limited to replacement of the City Utility Pole and rearrangement or transfer of the City's equipment, as well as the equipment of other Attaching Entities. Licensee shall be responsible for making arrangements and coordinating with other Attaching Entities concerning the relocation or rearrangement of such entities' existing Attachments. Licensee shall be responsible for directly paying such other Attaching Entities for their relocation or rearrangement charges; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct third party or Licensor attachments that are non-compliant at the time of Licensee's Application. Licensee shall provide to the City evidence that the other Attaching Entities agreed to the work being proposed. If Licensee selects a City Utility Pole that is structurally inadequate to accommodate Licensee's Small Wireless Facilities, Licensee may at its sole cost and expense replace the City Utility Pole (a "Replacement Pole") with one that is acceptable to and approved by the City.

9.2 Treatment of Multiple Requests for Same City Utility Pole. If the City receives Permit Applications for the same City Utility Pole 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 Small Wireless Facility Collocation request through a modification the City will allocate among such licensees the applicable costs associated with such modification or replacement.

9.3 Allocation of Costs. The costs for any rearrangement or transfer of Licensee's Small Wireless Facility or the replacement of a City Utility Pole (including any related costs for tree cutting or trimming or Conduit clearing) shall be allocated to the City and/or Licensee and/or other Attaching Entity on the following basis:

9.3.1 If the City intends to modify or replace a City Utility Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the City Utility Pole. Licensee shall be responsible for all demonstrated, reasonable costs associated with any necessary modification or relocation of Licensee's Small Wireless Facility. Prior to making any routine modification or replacement of the City Utility Pole, the City shall provide Licensee at least ninety (90) days' written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify, relocate or add to its existing Small Wireless Facility. Should Licensee so elect, it must seek the City's written permission per this Agreement. The City may shorten the required notice to Licensee to as little as thirty (30) days if the City's need to modify or replace its

Facility is urgent. If Licensee elects to add to or modify its Small Wireless Facility, Licensee shall bear the total incremental and reasonable costs incurred by the City in making the space on the City Utility Pole accessible to Licensee.

- 9.3.2** If the modification or replacement of a City Utility Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the City Utility Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Equipment as well as those of the City. Licensee shall submit to the City evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to transfer or rearrange such Entities' Equipment prior to the commencement of any Make- Ready Work. The City shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Equipment pursuant to this Paragraph.
- 9.3.3** If the modification or the replacement of a City Utility Pole is the result of an additional Small Wireless Facility Collocation on the City Utility Pole or the modification of an existing Small Wireless Facility Collocated on the City Utility Pole sought by an Attaching Entity other than the City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or pole replacement, as well as the costs for rearranging or transferring Licensee's Small Wireless Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's Small Wireless Facilities.
- 9.3.4** If a City Utility Pole must be modified or replaced for other reasons unrelated to the use of the Facility by Attaching Entities (e.g., storm, accident, deterioration), the City shall pay the costs of the modification or replacement of the City Utility Pole; provided, however, that Licensee shall be responsible for the costs of rearranging or transferring its Small Wireless Facility. If a particular City Utility Pole is required to accommodate the Licensee's Small Wireless Facility as determined by the Parties, the cost to modify, or replace the City Utility Pole shall be the sole responsibility of Licensee.
- 9.4** **City Not Required to Relocate.** No provision of this Agreement shall be construed to require City to relocate its Attachments or modify/replace its City Utility Poles for the benefit of Licensee, provided, however, any denial by the City for modification of City Utility Poles is based on nondiscriminatory standards of general applicability.

10. ABANDONMENT OR REMOVAL OF CITY UTILITY POLES

- 10.1** **Notice of Abandonment or Removal of City Utility Poles.** If the City desires at any time to abandon, remove or underground any City Utility Poles to which Licensee's Small Wireless Facilities are attached, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it

intends to abandon or remove such City Utility Poles. Notice may be limited to thirty (30) calendar days if the City is required to remove or abandon its City Utility Poles as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether the City is offering Licensee an option to purchase the City Utility Poles (which option shall not apply to City Street Lights). If, following the expiration of the applicable notice period, Licensee has not yet removed and/or transferred all of its Small Wireless Facilities therefrom and has not entered into an agreement to purchase the City Utility Poles pursuant to Paragraph 10.2, the City shall have the right, subject to any applicable laws and regulations, to have Licensee's Small Wireless Facilities removed and/or transferred from the City Utility Poles at Licensee's expense. The City shall give Licensee fifteen (15) days prior written notice of any such removal or transfer of Licensee's Small Wireless Facilities.

- 10.2 Option to Purchase Abandoned City Utility Poles.** Should the City desire to abandon any City Utility Poles, the City, in its reasonable discretion, may grant Licensee the option of purchasing such City Utility Poles at a rate and terms negotiated with the City, except that this option shall not apply to City Street Lights. Licensee must notify the City in writing within thirty (30) calendar days of the date of the City's notice of abandonment that Licensee desires to purchase the abandoned City Utility Poles. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the City Utility Poles within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should the City and Licensee fail to enter into an agreement for Licensee to purchase the Facility prior to the end of the forty-five (45) calendar days, Licensee must remove its Small Wireless Facilities as required under Paragraph 10.1. The City is under no obligation to sell Licensee the City Utility Poles that it intends to remove or abandon.

11. REMOVAL OF LICENSEE'S SMALL WIRELESS 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 Small Wireless Facilities from the affected City Utility Poles at its own expense. After removal, Licensee shall restore the City Utility Poles, City Right-of-Way and other City Property, as applicable, to their condition immediately prior to the date such Collocations were made, excepting normal wear and tear. If Licensee fails to properly remove such Small Wireless Facilities within one hundred eighty (180) calendar days of expiration or termination or some greater period as allowed by the City, the City shall have the right to have such Small Wireless Facilities removed at Licensee's demonstrated, reasonable expense.
- 11.2 Licensee Removal.** Licensee may, at any time, remove its Small Wireless Facilities from any City Utility Poles, 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 Utility Poles and other City property, including Right-of-Way. After removal, Licensee shall restore the City Utility Poles City Right-of-Way and other City Property, as applicable, to their condition immediately prior to the date such Collocations were made, excepting normal wear and tear. Any removal by Licensee must be done properly and without damage to the City's Utility Poles, Right-of-Way or other property.

12. TERMINATION OF PERMIT

- 12.1 Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall have a term of no less than ten (10) years unless this Agreement terminates sooner, in which case permits shall automatically terminate when Licensee ceases to have authority to construct and operate its Small Wireless Facility on public or private property at the Site of the particular City Utility Pole Collocation covered by the Permit. Subject to the requirements of applicable law, pursuant to Paragraph 24.1, Licensee shall have one hundred and eighty (180) days to remove Wireless Installations from all City Utility Poles upon termination of this Agreement.
- 12.2 Surrender of Permit.** Licensee may at any time surrender any Permit and remove its Small Wireless Facilities from the affected City Utility Poles, 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 approximate 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 Small Wireless Facilities from City Utility Poles within thirty (30) calendar days thereafter, the City shall have the right to remove Licensee's Small Wireless Facilities at Licensee's expense.
- 12.3 Term of Collocation Licenses.** Collocation Licenses shall have a term of ten (10) years beginning on the day the City issues the Permit associated with the approved Permit Application; provided, pursuant to Section 4.8, Licensee shall be entitled to a refund of any Annual Collocation Fees it has paid in advance with respect to expired Permits. Unless Licensee provides written notice to the City prior to the expiration of the then-current term that Licensee will not renew the term, the term will automatically renew for three (3) consecutive five (5) year periods, subject, however, to the Licensee's right to terminate at any time. The term of each Collocation License shall survive the expiration or earlier termination of the MLA.

13. INSPECTION OF LICENSEE'S SMALL WIRELESS FACILITIES COLLOCATED ON CITY UTILITY POLES

- 13.1 Inspections.** The City may conduct an inventory and inspection of Small Wireless Facilities Collocated on City Utility Poles at any time. Licensee shall notify the City when any Small Wireless Facility Collocation work is completed. Licensee shall provide to the City as-built records of its work after it is completed. Licensee shall correct all Small Wireless Facility Collocations 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 Collocated a Small Wireless Facility without a Permit, Licensee shall pay an Unauthorized Access Penalty Fee as specified in Article 3 in addition to the applicable Permit and Make-Ready Costs. If it is found that five percent (5%) or more of Licensee's Small Wireless Facilities Collocated on City Utility Poles 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 Small Wireless Facility Collocation 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 Small Wireless Facilities Collocated on City Utility Poles in an electronic format specified by the City.

14. UNAUTHORIZED OCCUPANCY OR ACCESS

- 14.1 Penalty Fee.** If any of Licensee's Small Wireless Facilities are found occupying any City Utility Poles for which no Permit has been issued, the City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Attachment Penalty Fee as specified in Article 3. In the event Licensee fails to pay such Fee within sixty (60) calendar days of receiving written notification thereof, the City has the right to remove such Small Wireless Facilities at Licensee's expense and without liability.
- 14.2 No Ratification of Unlicensed Use.** No act or failure to act by the City with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by the City of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be

subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

15. REPORTING REQUIREMENTS

Concurrently with Licensee's Annual Collocation Fee payment, Licensee shall report any Collocation Licensee has removed from City Utility Poles during the relevant reporting period. The report shall identify the City Utility Pole from which the Small Wireless Facility was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit pursuant to Paragraph 12.2.

16. LIABILITY AND INDEMNIFICATION

16.1 Liability. The City reserves to itself the right to maintain and operate its City Utility Poles in such manner as will best enable it to fulfill its governmental service requirements. Licensee agrees with respect to its use of City's City Utility Poles that Licensee bears all risks of loss or damage, relocation or replacement of Communications Equipment and materials installed in the Right-of-Way and/or on City Utility Poles. Notwithstanding the foregoing, the City shall exercise reasonable precaution to avoid damaging Licensee's Small Wireless Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. The City shall not be liable to Licensee for any cost of replacement or repair to damaged Communications Equipment, including, without limitation, damage caused by the City's removal of the Communications Equipment as permitted herein, except to the extent such loss or damage was caused by the willful misconduct, recklessness, or sole negligence of any City Indemnitees (as defined below). The Licensee shall be liable to the City for the actual cost of repair, or replacement, as the case may be, for damage to City Utility Poles caused by Licensee, including, without limitation, damage caused by the Licensee's installation or removal of its Communications Equipment, except to the extent such loss or damage was caused by the willful misconduct, recklessness, or sole negligence of any City Indemnitees (as defined below).

16.2 Indemnification. Licensee shall defend, indemnify and hold harmless the City and its officials, officers, council members, commissioners, representatives, employees, agents, and contractors (collectively, the "City Indemnitees") against any and all claims, losses, 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) arising from the negligence of Licensee, its employees, contractors, subcontractors or agents, except to the extent the covered claims were caused by the sole negligence, recklessness, or willful misconduct of any City Indemnitee.

16.3 Procedure for Indemnification.

- 16.3.1** The City shall give prompt notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against the City, the City shall give the notice to Licensee no later than fifteen (15) calendar days after the City receives written notice of the action, suit or proceeding.
- 16.3.2** The City's failure to give the required notice will not relieve Licensee from its obligation to indemnify the City unless and only to the extent Licensee is materially prejudiced by such failure.

16.4 Environmental Hazards. Licensee represents and warrants, in connection with its use of City Utility Poles, that it will not store, generate, or dispose of on or about City Utility Poles, or transport to City Utility Poles, any Hazardous Substance in violation of applicable federal, state or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar terms, by any applicable federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. Licensee shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety (collectively, "EH&S Laws"). Pursuant to this Section, Licensee shall indemnify and hold harmless the City Indemnitees from claims to the extent resulting from Licensee's negligence. The Parties recognize that Licensee shall not be responsible for any environmental condition or issue except to the extent resulting from Licensee's specific activities and responsibilities. In the event that Licensee encounters any hazardous substances that do not result from its activities, Licensee may relocate its Small Wireless Facilities to avoid such Hazardous Substances to a mutually agreeable location.

16.5 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable State limits on municipal liability or governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies the City shall be construed in any way to limit any other indemnification provision contained in this Agreement.

16.6 Liens. In the event any lien is filed upon any City Utility Pole as a result of any claim against Licensee, Licensee agrees, within 120 days of the filing of such lien, to cause the same to be released of record by payment or posting of a bond in a form and issued by a surety acceptable to the City; provided, however, that Licensee shall have the right to contest in good faith said mechanics' liens, and in such event, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom as long as such lien is bonded over and/or released of record as set forth herein.

- 16.7 **Limitation of Liability.** Except for indemnification pursuant to Paragraphs 16.2 and 16.4, or a violation of law, neither Party shall be liable to the other, or any of their respective agents, representatives, or employees for any lost revenue, lost profits, or incidental, punitive, indirect, special or consequential damages, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

17. **DUTIES, RESPONSIBILITIES, AND EXCULPATION**

- 17.1 **Duty to Inspect.** Licensee acknowledges and agrees that the City does not warrant the condition or safety of City Utility Poles, or the premises surrounding the City Utility Poles, and Licensee further acknowledges and agrees that it has an obligation to inspect City Utility Poles and/or premises surrounding the City Utility Poles, prior to commencing any work on City Utility Poles or entering the premises surrounding such City Utility Poles.

- 17.2 **Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the City Utility Poles, difficulties and restrictions attending the execution of such work.

- 17.3 **DISCLAIMER.** **THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE CITY'S UTILITY POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

- 17.4 **Duty of Competent Supervision and Performance.** Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of the City and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.

18. **INSURANCE**

- 18.1 **Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

- 18.1.1 Workers' Compensation and Employers' Liability Insurance.** Workers' compensation benefits in compliance with the statutory requirements of the State of Missouri and employers' liability insurance with a limit of \$1,000,000 each accident/disease/policy limit including a waiver of subrogation in favor of the City.
- 18.1.2 Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal and advertising injury, blanket contractual coverage, independent contractor's coverage with Limits of liability of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate, \$2,000,000 products/completed operations aggregate.
- 18.1.3 Automobile Liability Insurance.** Commercial automobile liability policy covering all owned, hired and non-owned vehicles with Limits of \$5,000,000 combined single limit each accident for bodily injury and property damage.
- 18.1.4 Umbrella Excess Liability Insurance.** Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability \$1,000,000 each occurrence, \$1,000,000 aggregate. Licensee may use any combination of primary and excess to meet required total limits.
- 18.1.5 Property Insurance.** As applicable, each Party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Utility Poles to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.
- 18.2 Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Missouri and have an "A-" or better rating in Best's Guide. Such insurance will be primary. Licensee shall require all contractors and all of their subcontractors who perform work on behalf of Licensee to obtain and maintain substantially the same coverage with reasonable and prudent limits.
- 18.3 Certificate of Insurance; Other Requirements.** Upon the execution of this Agreement and within ten (10) days of each insurance policy expiration date during the term of this Agreement, Licensee will furnish the City with a certificate of insurance ("Certificate") evidencing the coverage required by this Agreement. The Certificate shall reference this Agreement. Upon receipt of notice from its insurer(s) Licensee shall endeavor to provide The City with thirty (30) calendar days advance notice of cancellation of required insurance if not replaced during the term of this Agreement. The City, its council members, board members, commissioners, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be included as an Additional Insured as

their interest may appear under this Agreement under all of the required policies, except workers' compensation and employer's liability, which shall be so stated on the Certificate of Insurance. All required policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. Licensee shall defend, indemnify and hold harmless the City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the City upon request. Notwithstanding the foregoing, Licensee may self-insure the required insurance under the same terms and conditions as outlined above.

- 18.4 Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the Parties and a corresponding amendment to this Agreement, which consent will not be unreasonably withheld by either Party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee's exposure to risk.
- 18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (2) that exclude coverage of liability arising from excavating, collapse, or underground work, or (3) that exclude coverage for injuries to the City's employees or agents. In addition to the prohibited exclusions listed above, no policies of insurance required to be obtained by Licensee's contractors or subcontractors shall contain provisions that exclude coverage of liability for injuries or damages caused by Licensee's contractors or subcontractors or their respective employees or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 18.6 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.
- 18.7 No Waiver of Sovereign Immunity.** In no event shall the language in this Article 18 constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

19. AUTHORIZATION NOT EXCLUSIVE

The City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use City Utility Poles covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

20. ASSIGNMENT

- 20.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. It shall be unreasonable for the City to withhold consent without cause to an assignment of all of Licensee's interests in this Agreement to its Affiliate. Notwithstanding, Licensee may, without the City's consent but upon written notice to the City, assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any Affiliate of Licensee; (ii) any successor in interest to Licensee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of Licensee's assets used to provide Communications Services in the market defined by the FCC in which the City is located by reason of a merger, acquisition or other business reorganization.
- 20.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish the City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the express written consent to the release of Licensee by the City.
- 20.3 Sub-licensing.** Without the City's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to allowing third parties to place Attachments on City Utility Poles. Any such action shall constitute a material breach of this Agreement. Notwithstanding the foregoing, and subject to the reasonable approval of the City, the installation and use of internal space within Licensee's Small Wireless Facilities for third party wireless providers utilizing Licensee's Communications Equipment is not subject to this Paragraph 20.3. Furthermore, the use of Licensee's Small Wireless Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Small Wireless Facilities or Communications Equipment or overlapping is not subject to this Paragraph 20.3.

21. FAILURE TO ENFORCE

Failure of the City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

22. ISSUE RESOLUTION PROCESS

- 22.1 Dispute Resolution.** Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the Parties are unable to resolve the dispute, then all disputes relating to this Agreement, or the breach thereof, the Parties shall be entitled to pursue all available remedies at law or equity. Each Party will bear its own costs for dispute resolution activity.
- 22.2 Confidential Settlement.** Unless the Parties otherwise agree in writing and subject to the Missouri Sunshine Law, communication between the Parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery, and inadmissible in litigation.
- 22.3 Business As Usual.** Unless an emergency condition exists, during any dispute resolution procedure or lawsuit, the Parties will continue providing services to each other and performing their obligations under this Agreement.

23. TERMINATION OF AGREEMENT

- 23.1** The City shall have the right, subject to the procedure set out in this Paragraph 23, to terminate this Agreement with respect to the applicable Permit(s) issued hereunder, whenever Licensee is in default of any material term or condition of this Agreement, including but not limited to the following circumstances:
- 23.1.1** Construction, operation, maintenance, or Collocation of Licensee's Small Wireless Facilities in violation of law or in aid of any unlawful act or undertaking; or
- 23.1.2** Construction, operation, maintenance, or Collocation of Licensee's Small Wireless Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority or violation of any other agreement with the City; or
- 23.1.3** Construction, operation, maintenance, or Collocation of Licensee's Small Wireless Facilities without the insurance coverage required under Article 18.
- 23.1.4** The expiration, termination or revocation of any of Licensee's required regulatory authorization (as required by Article 5); provided, Licensee shall have a reasonable period of time to obtain the reinstatement of any such authorization.
- 23.2** The City will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph 23.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days after written demand from the City, unless the nature of the condition is such that it cannot be fully cured within thirty (30) days due to circumstances not under Licensee's control, in which case the

period of time in which Licensee must cure the violation shall be extended for such additional time reasonably necessary to complete the cure, provided that: (a) Licensee has promptly commenced the cure within said thirty (30) day period; and (b) Licensee is diligently pursuing its efforts to cure. Licensee shall confirm in writing to the City that the cited condition(s) has (have) ceased or been corrected, or are in the process of being corrected.

- 23.3** If the Parties are unable to resolve the dispute and Licensee fails to eliminate or correct such condition(s) and/or fails to give the required confirmation, the City may immediately terminate the affected Permit(s) granted hereunder. In the event of such termination, the City may seek removal of Licensee's Small Wireless Facilities pursuant to the terms of Article 11 with respect to the specific City Utility Poles covered by the affected Permit(s). In such instance, Licensee shall remain liable for and pay all fees and charges accrued pursuant to the terms of this Agreement to the City until Licensee's Small Wireless Facilities are actually removed.

24. TERM OF AGREEMENT

- 24.1** This Agreement shall be effective for a term beginning on the effective date of this Agreement and, if not lawfully terminated sooner, remain in full force and effect for a term of twenty (20) years, ending on December 31, 2038. Thereafter, this Agreement will automatically renew for up to three (3) additional five (5) year terms, unless either Party notifies the other Party of its intent to terminate the Agreement at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this Agreement and not as a new agreement. Upon termination of this Agreement, Licensee shall remove Wireless Installations from all City Utility Poles within one hundred and eighty (180) days. If not so removed within one hundred and eighty (180) days following such termination, Licensor shall have the right to remove such Wireless Installations, and to dispose of same, at Licensee's sole expense and without any liability to Licensee for such removal and disposition.
- 24.2** Upon written request, either Party may require this Agreement to be renegotiated to conform to any new requirements of federal or state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either Party, including but not limited to the scope of the Agreement granted to Licensee or the compensation to be received by the City hereunder. The Parties agree that any fees relating to attachments contained in a new law shall apply prospectively from the new law's effective date. No provision of this Agreement shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law.
- 24.3** In the event the Parties are actively negotiating in good faith a new Agreement or an amendment to this Agreement upon the termination date of this Agreement, the Parties by written mutual agreement may extend the termination date of this

Agreement to allow for further negotiations. Such extension period shall be deemed a continuation of this Agreement and not as a new Agreement.

- 24.4** Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Attachments as provided for in Article 16.

25. AMENDING AGREEMENT

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both Parties.

26. NOTICES

- 26.1** Wherever in this Agreement notice is required to be given by either Party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

To the City:

Public Works Director
20th Fl., City Hall
414 E. 12th St.
Kansas City, MO 64106
Attn: Sherri McIntyre

Parks and Recreation Director
Terry R. Dopson Administration Bldg.
4600 E. 63rd St.
Kansas City, Missouri 64130-4629

With a copy to:

City Attorney's Office
28th Fl., City Hall
414 E. 12th St.
Kansas City, MO 64106
Attn: City Attorney

To Licensee:

New Cingular Wireless PCS, LLC
Attn: Tower Asset Group – Lease
Administration
Re: Wireless Installation on Public

Structures (Kansas City) (MO)

FA No.: _____

1025 Lenox Park Blvd NE

3rd Floor

Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC

Attn: Legal Department, Network

Operations

Re: Wireless Installation on Public

Structures (Kansas City) (MO)

FA No: _____

208 S. Akard Street

Dallas, TX 75202-4206

And:

Senior Real Estate and Construction

Manager

12851 Manchester Road, Room 2W317

Des Peres, MO 63131

or to such other address as either Party, from time to time, may give the other Party in writing.

26.2 The above notwithstanding the Parties may agree to utilize electronic communications such as email for notifications related to the Permit Application and approval process and necessary transfer or City Utility Pole modifications.

26.3 During the term of this Agreement, Licensee shall maintain its staffed 24-hour Network Operations Center ("NOC") (800-638-2822) where the City can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the Parties. The NOC shall be staffed with qualified employees or contractors able to respond to the City's concerns and requests. Failure to maintain the NOC shall eliminate the City's liability to Licensee for any actions that the City deems reasonably necessary, after reasonable efforts to contact Licensee via the NOC, given the specific circumstances.

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 Small Wireless Facilities on City Utility Poles 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.

28. SEVERABILITY

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either Party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the Parties that this Agreement be administered as if not containing the invalid provision.

29. GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Licensee: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum *non conveniens* as an objection to the location of any litigation.

30. INCORPORATION OF RECITALS

The recitals stated above are incorporated into and constitute part of this Agreement.

31. RESERVED

32. FORCE MAJEURE

32.1 In the event that either the City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the Party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such Party shall endeavor to remove or overcome such inability as soon as reasonably possible.

32.2 The City shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay as described in Paragraph 32.1, provided that Licensee presents the City with a written description of such force majeure within a reasonable time after occurrence of the event or cause relied on.

33. CASUALTY LOSSES

The City will provide notice to Licensee of any casualty, fire, storm damage or other harm affecting any City Utility Poles ("Casualty Event") as soon as reasonably possible after its occurrence. In the event of damage by a Casualty Event to a City Utility Pole that cannot reasonably be expected to be repaired within forty-five (45) days following such Casualty Event or which the City elects not to repair, or if such Casualty Event is reasonably be

expected to disrupt Licensee's operations on the City's Facility for more than forty-five (45) days, then Licensee may, at any time following such casualty or harm; (i) terminate the applicable Permit upon fifteen (15) days' written notice to the City; (ii) place a temporary facility, if feasible and in compliance with Applicable Standards and permitting requirements, at a location equivalent to Licensee's current use of the City Utility Pole until such time as the City Utility Pole is fully restored to accommodate Licensee's Wireless Installation; or (iii) submit a new Application for Permit for an alternate location equivalent to Licensee's current use of the City Utility Pole, and the City shall waive the application fee and transfer all remaining rights to the new City Utility Pole so long as such relocation was due to a Casualty Event not directly caused by Licensee. Any such notice of termination shall cause the applicable Permit to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the applicable Permit.

34. RELATIONSHIP OF PARTIES

Nothing in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise. Licensee is not the City's agent. Licensee has no authority to take any action or execute any documents on behalf of the City.

35. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

36. SURVIVAL

Any termination of this Agreement shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

37. NON-WAIVER OF CLAIMS

Notwithstanding anything contained in this Agreement, each party reserves and by entering into this Agreement does not waive any right or claim that it has or may have in the future, including the right to challenge any rate, term or condition of this Agreement in a proceeding before an agency or court of competent jurisdiction.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

KANSAS CITY, MISSOURI

LICENSEE

**NEW CINGULAR WIRELESS PCS, LLC,
a Delaware Limited Liability Company**

By: AT&T Mobility Corporation, Its Manager

By: _____
Name: _____
Director of Public Works

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Director of Parks & Recreation

APPROVED AS TO FORM:

Assistant City Attorney