

MASTER LICENSE AGREEMENT FOR ATTACHMENT TO CITY FACILITIES

This Master License Agreement for Attachments to City Facilities ("Agreement") dated _____, 2015 (the "Effective Date") is made by and between Kansas City, Missouri ("City") and Selective Site Consultants, Inc., a Kansas corporation ("Licensee") (collectively referred to as the "Parties").

RECITALS

1. The City owns, operates and maintains certain Facilities located in the City; and
2. Licensee is a a developer of infrastructure used by wireless carriers for providing Communications Services; and
3. Licensee proposes to locate, place, attach, install, operate and maintain Licensee's Communications Equipment on or within the City's right-of-way (a) on or within the City Facilities in said areas, and (b) on or within the facilities (i.e. poles, lines, wires, and conduit) of other utility companies such as Kansas City Power & Light Company (KCP&L) and AT&T pursuant to Licensee's separate locate agreements with said utility companies; and
4. Licensee proposes to install and maintain Licensee's Attachments on or within City Facilities 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 enter upon the City's Right-of-Way to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace Licensee's Communications Equipment Attachments, and for the placement or installation of Licensee's Attachments on or within specified City Facilities, 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 Facility 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 lease of Facilities 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 or prevent the City from obtaining in-kind consideration in instances where it is mutually agreeable to the parties.

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 owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **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 Facilities 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 Facilities.
- 1.3 **Attaching Entity**: means Licensee, who, pursuant to a valid authorization with the City, places an Attachment on or within City Facilities to provide Communications Service.
- 1.4 **Attachment(s)**: means Licensee's Communications Equipment that is placed directly on or within City Facilities.
- 1.5 **Capacity**: means the ability of a City Facility to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- 1.6 **City Facilities or Facilities**: means City-owned Street Lights, poles, rooftops, or Conduits, and associated property, capable of accommodating Communications Equipment in accordance with Applicable Standards. Provided, however, no Attachments will be allowed on any traffic control signal (as defined in the Manual on Uniform Traffic Devices).
- 1.7 **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.
- 1.8 **Communications Service**: means the transmission or receipt of voice, video, data, broadband Internet or other forms of digital or analog signals over Communications Equipment.
- 1.9 **Conduit System**: means the City's conduits, Innerduct, manholes, handholes, vaults, pull- boxes and trenches.
- 1.10 **Innerduct**: means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.
- 1.11 **Licensee**: means Selective Site Consultants, Inc., its authorized agents, successors, designees and assigns.
- 1.12 **Make-Ready Work**: means all work, as reasonably determined by the City, required to accommodate Licensee's Attachment and/or to comply with all Applicable Standards. Such work includes, but is not limited to, realignment of City Facilities 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 light poles, tree trimming (other than tree trimming performed for normal maintenance purposes), Facility construction, or Conduit System clearing, but does not include routine maintenance.
- 1.13 **Permit**: means written or electronic authorization of the City for Licensee to make or maintain Attachments to specific City Facilities pursuant to the requirements of this Agreement and any applicable city code or regulation.

- 1.14 **Permit Application**: means the application for a Permit pursuant to the applicable requirements of this Agreement and any applicable city code or regulation.
- 1.15 **Post-Construction Inspection**: means the inspection by the City to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.16 **Pre-Construction Survey**: means all work or operations required by Applicable Standards to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on or within a City Facility. Such work includes, but is not limited to, field inspection and administrative processing.
- 1.17 **Reserved Capacity**: means capacity or space on or within a Facility 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.
- 1.18 **Right-of-Way**: means the area on, below or above the present and future city streets, alleys, bridges, bikeways, parkways and sidewalks.
- 1.19 **Site**: Each place where City Facilities for which Licensee obtains a Permit from the City pursuant to this Agreement for purposes of installing its Attachment.
- 1.20 **Street Light**: Each City-owned street light fixture including poles and attached photocell, together with the bracket arm on which the street light fixture is mounted.
- 1.21 **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 type of Attachment and its owner.

2. SCOPE OF AGREEMENT

- 2.1 **Grant of License**. Subject to the provisions of this Agreement, the City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to (a) upon receiving the necessary City Right-of-Way Permit, enter upon the City's Right-of-Way to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace Licensee's Attachments and (b) to install and maintain Licensee's Attachments on or within specified City Facilities. Placement of Licensee's Attachments on or within any specific City Facility shall be at the sole discretion of the City so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties.
- 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 Attachment(s), (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**. The Parties may by mutual agreement adjust the fees and charges specified in Article 3 to account for in-kind contributions from Licensee in the form of service to the City as is reasonably determined by the City to be valued as at least roughly comparable to the Attachment fees and charges.
- 2.5 **Reserved Capacity**. Access to space on City Facilities will be made available to Licensee with the understanding that City Facilities may be subject to Reserved Capacity for future governmental use. In such case the City may refuse to permit attachments on such Facilities or

may within its discretion permit Attachments, subject to reclaiming its Reserved Capacity in the future. On giving Licensee at least one hundred and eighty (180) calendar days 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 Attachment(s) from the affected Facilities 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 the Licensee's Attachments on the affected Facilities.

- 2.6 No Interest in Property.** No use, however lengthy, of any City Facilities, 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 Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the City's rights to City Facilities. 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 attach Licensee's Attachment(s) to or within any specific City Facility or portion of Facilities.
- 2.8 City's Rights over Facilities.** The Parties agree that this Agreement does not in any way limit the City's right to locate, relocate, operate, maintain or remove its Facilities 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 expand Facilities to accommodate Licensee's request for Attachment. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the City to install, retain, extend or maintain any Facility or portion of City Facilities for use when such Facilities 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 Facilities 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 Attachments.
- 2.11 No Use After Termination.** Nothing in this Agreement shall be construed to require the City to allow Licensee to use Facilities 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 Facilities upon which Licensee has made authorized Attachments.

3. FEES AND CHARGES

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

3.1.1 The following fees and charges are established based on the descriptions listed below.

These fees/charges shall be administered in a competitively neutral and non-discriminatory

manner. All fees/charges will be rounded to the nearest dollar.

1. Street Light Pole Annual Attachment Fee: \$540 annually, per City Street Light Pole with Licensee's Attachment.
2. Permit Application Fee: an amount equal to the fee for a Right-of-Way Permit, intended to reimburse the City for costs incurred for project management services, review of the Permit Application, and site design approval, excavation permit, and traffic control permit.
3. Inspection Fees: Licensee shall reimburse the City for all 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.
4. Unauthorized Attachment Penalty Fee: Three times the Annual Attachment Fee, per occurrence for Attachments made without City approval. Payment of this fee does not guarantee the Attachment may remain on the City Facility.
5. Failure to Timely Transfer, Abandon or Removal Facilities Penalty Fee (holdover fee): \$100 per day, per pole Attachment.

3.2 Payment Period. Unless otherwise expressly provided, Licensee shall pay any invoice it receives from the City pursuant to this Agreement within thirty (30) calendar days after the City issues the invoice.

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

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 rent going forward for any Permit 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 Attachments no more frequently than once every three (3) years by the City and Licensee, unless both parties agree to a new inventory schedule. The cost of the inventory and any storage fees to accommodate the Attachments shall be the responsibility of the Licensee.

3.6 Late Charge. If the City does not receive payment for any fee, charges or other amount owed within thirty (30) calendar days after it becomes due, Licensee shall pay interest to the City, at the rate of ten percent (10%) 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, 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 either charge an additional ten percent (10%) to its costs or, if applicable, assess the Failure to Timely Transfer, Abandon or Removal Facilities Penalty Fee.

- 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 sole 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 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 Facilities or lands at a Site(s) are located on the basis on which such taxes are calculated, increase following installation of the Attachment, 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 as Project Cost. 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 Attachment and other Licensee property located on the Site(s) that are billed directly to Licensee by the taxing authorities.

4. SPECIFICATIONS

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

4.2 Authorized Attachment(s) and Installation Methods.

- 4.2.1** The City must approve the Attachment(s) that Licensee is authorized to place on City Facilities. 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; 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 Licensee will provide all necessary supporting documentation.
- 4.2.2** In no event may Licensee or any of its subcontractors install or construct new City Facilities or modify or repair existing City Facilities 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 Facility in connection with Licensee's Attachments or impose any obligation upon the City to repair or replace an existing City Facility in order to accommodate a request by Licensee to install an Attachment.

- 4.3 Tagging.** Licensee shall Tag all of its Communications Equipment in accordance with any

applicable federal, State and local regulations upon installation of such Attachment(s).

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

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

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

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

4.5 **Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

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

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 Facilities.

4.8 **Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right

granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension thereof, the City may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. In such instances, the City shall endeavor to make other space available to Licensee, upon written Permit Application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement. Licensee may obtain a refund on a *pro-rata* basis of any Annual Attachment Fees it has paid in advance with respect to expired Permits.

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 Communications Equipment on public and/or private property before it occupies any portion of City Facilities. The City retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way, including, but not limited to, any applicable FCC or PSC authorization, City's street lighting approval, any ROW Permit, or any applicable zoning or land use approval, and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse the City for all loss and expense, including reasonable attorney's fees, that the City may incur as a result of claims by owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Equipment on or within City Facilities or to provide particular Communications Services.
- 5.2 Lawful Purpose and Use.** Licensee's Attachments must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, State and local laws, including but not limited to all applicable City ordinances. This Agreement is not a waiver of any City regulatory power or Licensee's obligation to meet any applicable City regulation.
- 5.3 Forfeiture of City's Rights.** No Permit granted under this Agreement shall extend to any Facilities or portions thereof on/in which the attachment of Licensee's Attachment(s) would result in a forfeiture of the City's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of the City's rights, is invalid. Further, if any of Licensee's existing Attachments, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Attachments upon receipt of written notice from the City. If the Attachments in question are not removed within thirty (30) days receipt of the City's written notice, the City may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated under the Agreement provided that Licensee shall indemnify the City for any actual damages that may result during Licensee's challenge.
- 5.4 Effect of Consent to Construction/Maintenance.** Consent by the City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

6. PERMIT APPLICATION PROCEDURES

- 6.1 Permit Required.** Licensee shall not install any Attachments on or within any City Facilities without first applying for and obtaining a Permit pursuant to the applicable City requirements.

Attachments to or rights to occupy or utilize City property not covered by this Agreement, such as the lease and use of City-owned fiber optic capacity or any other City property, including, but not limited to, City offices, must be separately negotiated unless the City agrees to follow the permit provisions authorized by this Agreement. The parties agree that property under the control of the City's Board of Parks and Recreation Commissioners is covered by this Agreement, subject to Section 6.1.1 below.

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

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

6.2 Professional Certification. Unless otherwise waived in writing by the City, as part of the Permit Application process and at Licensee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by the City, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Attachments can be and were installed on or within the identified Facilities in compliance with the standards in Paragraph 4.1 and in accordance with the Permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work.

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

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

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

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

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

7. MAKE-READY WORK/INSTALLATION

7.1 Make-Ready Survey. When the City receives an attachment or placement request from Licensee, a make-ready survey (the "Make-Ready Survey") may be necessary, at Licensee's cost, to determine the adequacy or the capacity of the City Facilities to accommodate Licensee's Communications Equipment without jeopardizing the safety of the City Facilities or placing the City in violation of generally applicable zoning or other restrictions. Licensee shall be responsible for performing and paying all 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.

7.2 Make-Ready Work

7.2.1 Except where the City denies the application, whenever any City Facility to which Licensee seeks attachment or occupancy requires modification or replacement to accommodate both Licensee's Attachment 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 Facilities for Licensee's Attachment. 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 or in City Facilities using qualified linemen. The City will inspect the make ready work and the attachment 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 is 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 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 Licensee's Installation/Removal/Maintenance Work.

- 7.3.1** 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 Facilities 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.
- 7.3.2** All of Licensee's installation, removal and maintenance work performed on or within City Facilities or in the vicinity of other City property, either by its employees or contractors, shall be in compliance with all applicable regulations specified in Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Attachment(s) is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Specifications required by Article 4.
- 7.3.3.** Notwithstanding any other provision to the contrary, maintenance of utility equipment may be performed only after the issuance of subsequent and appropriate permits have been issued by City, except for emergencies and in such case Licensee shall give City notice of Licensee's emergency maintenance and repair as soon as practicable under the circumstances. Licensee shall be responsible to repair and restore, at their cost, any and all park property which has been damaged or disturbed as a result of the installation of the utility equipment for a period of one year after completion. All disturbed areas shall be restored to existing or better condition. All turf areas disturbed by the installation of the utility equipment shall receive sod and the sod shall be kept watered by the Licensee until it is completely established. The Licensee shall replace all trees which are significantly damaged or die within two years as a result of the installation of the utility equipment, as mutually determined by the City forester and the Licensee's representative. Dead or damaged trees will be removed by the Licensee within thirty 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 replacement trees shall have a one year warranty and shall be watered throughout the warranty period to ensure establishment. 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 Attachments.** If the City reasonably determines that a transfer of Licensee's Attachments is necessary, Licensee agrees to allow such transfer or remove the affected Attachment pursuant to Paragraph 12.2. In such instances, the City shall

require Licensee to perform such transfer or removal at Licensee's own expense within thirty (30) calendar days after receipt of notice from the City. If Licensee fails to transfer its Equipment within thirty (30) calendar days after receiving such notice from the City, the City shall have the right to transfer Licensee's Equipment 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 Equipment except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply to emergency situations, 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 Facility to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional Equipment 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 Facility to accommodate Licensee's Attachment, the City will notify Licensee of the necessary work to provide an adequate Facility, including but not limited to replacement of the Facility and rearrangement or transfer of the City's equipment, as well as the equipment of other Attaching Entities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities' existing Attachments. Licensee shall also be responsible for obtaining, and furnishing to the City before the commencement of any Make- Ready Work, agreements between Licensee and the other Attaching Entities concerning the relocation or rearrangement of their Attachments.

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

9.3 Allocation of Costs. The costs for any rearrangement or transfer of Licensee's Attachment or the replacement of a City Facility (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 Facility solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the City Facility. Licensee shall be responsible for all costs associated with any necessary modification or relocation of Licensee's Attachment. Prior to making any such modification or replacement of the City Facility, the City shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify, relocate or add to its existing Attachment. Should Licensee so elect, it must seek the City's written permission per this Agreement. The notification requirement of this Paragraph shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Attachment, Licensee shall bear the total incremental costs incurred by the City in making the space on or within the Facilities accessible to Licensee.

9.3.2 If the modification or replacement of a Facility is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Facilities 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 Facility is the result of an additional Attachment or the modification of an existing Attachment 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 Attachment. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's Equipment.

9.3.4 If a Facility 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 Facility; provided, however, that Licensee shall be responsible for the costs of rearranging or transferring its Attachment. If a particular Facility is required to accommodate the Licensee's Attachment as determined by the Parties, the cost to modify, maintain, or replace the Facility 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 Facilities for the benefit of Licensee, provided, however, any denial by the City for modification of the Facility is based on nondiscriminatory standards of general applicability.

10. ABANDONMENT OR REMOVAL OF CITY FACILITIES

10.1 **Notice of Abandonment or Removal of City Facilities.** If the City desires at any time to abandon, remove or underground any City Facilities to which Licensee's Attachments are attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such City Facilities. Notice may be limited to thirty (30) calendar days if the City is required to remove or abandon its City Facilities 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 Facilities. If, following the expiration of the applicable notice period, Licensee has not yet removed and/or transferred all of its Attachments therefrom and has not entered into an agreement to purchase City Facilities pursuant to Paragraph 10.2, the City shall have the right, subject to any applicable laws and regulations, to have Licensee's Attachment removed and/or transferred from the Facility at Licensee's expense. The City shall give Licensee fifteen (15) days prior written notice of any such removal or transfer of Licensee's Equipment.

10.2 **Option to Purchase Abandoned Poles.** Should the City desire to abandon any Facility, the City, in its sole discretion, may grant Licensee the option of purchasing such Facility at a rate and terms negotiated with the City. 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 Facility. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Facility 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 Attachments as required under Paragraph 10.1. The City is under no obligation to sell Licensee the City Facilities that it intends to remove or abandon.

11. REMOVAL OF LICENSEE'S ATTACHMENTS

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

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

12. TERMINATION OF PERMIT

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

12.2 Surrender of Permit. Licensee may at any time surrender any Permit for Attachment and remove its Communications Equipment from the affected Facilities, provided, however, that before commencing any such removal Licensee must obtain the City's written approval of Licensee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or charges will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from City Facilities within thirty (30) calendar days thereafter, the City shall have the right to remove Licensee's Attachments at Licensee's expense.

13. INSPECTION OF LICENSEE'S ATTACHMENTS

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

pay its pro-rata share of the costs of the inspection.

- 13.2 Notice.** The City will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.
- 13.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee is obligated to furnish the City on an annual basis an up-to-date map depicting the locations of its Attachments in an electronic format specified by the City.

14. UNAUTHORIZED OCCUPANCY OR ACCESS

- 14.1 Penalty Fee.** If any of Licensee's Attachments are found occupying any Facility for which no Permit has been issued, the City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Penalty Fee as specified in Article 3. In the event Licensee fails to pay such Fee within thirty (30) calendar days of receiving notification thereof, the City has the right to remove such Attachment 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 Attachment Fee payment, Licensee shall report any Attachment Licensee has removed from City Facilities during the relevant reporting period. The report shall identify the Facility from which the Attachment 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 Facilities in such manner as will best enable it to fulfill its governmental service requirements. Licensee agrees to use City's Facilities at Licensee's sole risk. Notwithstanding the foregoing, the City shall exercise reasonable precaution to avoid damaging Licensee's Attachment(s) and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors.
- 16.2 Indemnification.** Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless the City and its officials, officers, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by the City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable

attorney's fees of the City and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Attachments, except to the extent of the City's gross negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

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

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

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

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

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 that its use of City Facilities will not generate any Hazardous Substances, that it will not store or dispose on or about City Facilities or transport to City Facilities any hazardous substances and that Licensee's Attachment(s) will not constitute or contain and will not generate any hazardous substance in violation of 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, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Attachment(s) would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the City and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs and expenses of litigation)

arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to City Facilities attributable to Licensee's use of City Facilities.

- 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 Facility 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.

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 Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect City Facilities and/or premises surrounding the Facilities, prior to commencing any work on City Facilities or entering the premises surrounding such Facilities.
- 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 Facilities, 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 FACILITIES, 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.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Missouri law at the time of the application, of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of the City. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- 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 injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.
- 18.1.3 Automobile Liability Insurance.** Business automobile policy covering all owned, hired and nonowned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
- 18.1.4 Umbrella 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 not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.
- 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 Facilities 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. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 18 with the same limits.
- 18.3 Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish the City with a certificate of insurance ("Certificate") and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. The City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. The City, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by the City. 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.

- 18.4 Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, 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 (1) that exclude coverage of liability assumed by this Agreement with the City except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to the City's employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' 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 section 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 Facilities 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. 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, 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 the Licensee's assets used to provide Communications Services. An "affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the

management of such entity.

20.2 Obligations of Assignee/Transferee and Licensee. No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and 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 or within City Facilities. 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 Attachments for third party wireless providers utilizing Licensee's Communications Equipment is not subject to this Paragraph 20.3. Furthermore, the use of Licensee's Attachments by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or overflashing 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 Notwithstanding the City's rights under Article 12, the City shall have the right, pursuant to the procedure set out in Paragraph 23, to terminate this entire Agreement, or any Permit 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 or maintenance of Licensee's Attachment(s) in violation of law or in aid of any unlawful act or undertaking; or
 - 23.1.2** Construction, operation or maintenance of Licensee's Attachment(s) 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 or maintenance of Licensee's Attachment(s) 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, or such longer period mutually agreed to by the parties, and 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 discontinue or correct such condition(s) and/or fails to give the required confirmation, the City may immediately terminate this Agreement or any Permit(s) granted hereunder. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, the City may seek removal of Licensee's Attachments pursuant to the terms of Article 11, with respect to specific Facilities or from the City's entire system. 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 Attachments 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 ending on December 31, 2025. Thereafter, this Agreement will automatically renew for up to two 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.
- 24.2** Upon written request of either party, this Agreement shall be renegotiated at any time in accordance with the requirements of 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.
- 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

To Licensee:

Selective Site Consultants, Inc.
9900 West 109th Street, Suite 300
Overland Park, KS 66210
Attn: Property Manager

With a copy to:

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

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 Facility modifications.
- 26.3** Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where the City can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the City's concerns and requests. Failure to maintain an emergency contact shall eliminate the City's liability to Licensee for any actions that the City deems reasonably necessary 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 Attachments on or within City Facilities 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. PERFORMANCE BOND

On execution of this Agreement, Licensee agrees to provide to the City a performance bond in an amount of Fifty Thousand Dollars (\$50,000.00). The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties, fees and charges due to the City which arise by reason of the construction, operation, maintenance or removal of Licensee's Attachments on or about City Facilities.

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 31.1, provided that Licensee present the City with a written description of such force majeure within a reasonable time after occurrence of the event or cause relied on.

33. 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.

34. NO THIRD-PARTY BENEFICIARIES

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

35. 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.

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

KANSAS CITY, MISSOURI

**SELECTIVE SITE DEVELOPMENT,
INC.**

By: _____
Name: _____
Director of Public Works

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Assistant City Attorney