

**GENERAL AGREEMENT FOR  
NON-EXCLUSIVE USE OF CITY UTILITY POLES**

This Agreement made and entered into as of the Effective Date, as defined herein, between **City of Columbia, Missouri**, a municipal corporation organized under the laws of the State of Missouri, hereinafter referred to as the "CITY" and "LICENSOR," and Union Electric Company, d/b/a Ameren Missouri, a corporation of the state of Missouri having a principal office located at 1901 Chouteau Ave, St. Louis, Missouri 63101 hereinafter referred to as the "LICENSEE."

**WHEREAS**, CITY is the owner of certain utility poles located within its corporate limits;

**WHEREAS**, LICENSEE desires to use such poles and facilities of the CITY for the purpose of construction, operation, and maintenance of a telecommunication device or devices, consisting of wires, routers, collectors, cables, conduits, fixtures, and other appurtenances whose means of attachment is mechanically fastened to the pole, hereinafter referred to as "Attachments".

**WHEREAS**, CITY finds such use to be in the public interest and is willing to enter into an agreement to allow LICENSEE to utilize certain city-owned utility poles for such purpose and to provide for the use of CITY-owned utility poles to meet their service requirements;

**WHEREAS**, LICENSEE acknowledges that the CITY's facilities are primarily for service to the public and that licensing use by others is an accommodation by the CITY for which LICENSEE intends and agrees to be bound by the terms and provisions of all applicable sections of the CITY code and further subject to the provisions of the license granted hereunder; and

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE I  
SCOPE OF AGREEMENT**

**Section 1. License.** The CITY hereby grants to LICENSEE a non-exclusive license to attach a telecommunications device or devices, consisting of wires, routers, collectors, cables, conduits, fixtures, and other appurtenances for the provision of any lawful communication service upon the CITY's Poles included within Section 3 of this Article, and subject to the conditions set forth below and all other regulatory approvals, business licenses, franchises, or other requirements as may be required by law for the use of pole or the operation within the City.

Licensor agrees that the License includes, and Licensor hereby further grants and conveys to Licensee, the right for Licensee to install, own, operate, maintain, repair and access, in, on, upon, along, over, through, across and under the License Area, communications lines and associated equipment and other technology, whether fiber optic or otherwise, and whether used for internal purposes and/or related to or distinct from Licensee's business, and for the transmission, monitoring and distributions of communications, data, signals for utility or other types of usage, including, but not limited to, non-commercial or commercial communications or data purposes, whether presently known or developed in the future, and in each case, for internal or external, or commercial, non-commercial or any other purposes as determined by Licensee. The Facilities

may include, and Licensee may install and transmit data upon and through, fiber optic lines or systems, cells, communication lines, broadband service cables, and other installations or equipment for the purposes set forth in this License, whether presently known or developed in the future, for use by Licensee or any third parties, as determined by Licensee. Licensee has the right of removing at any time, any or all of the facilities without surrendering its License and rights stated herein.

**Section 2. Territory.** This Agreement shall be in effect as to the geographical area located within the municipal and jurisdictional boundaries of the CITY ("Territory").

**Section 3. Facilities Covered.** This Agreement shall govern the use of all utility poles owned or controlled by the CITY, now existing or hereafter erected within the Territory located within any public right-of-way or utility or other easement of CITY under which such joint use may be authorized by the CITY, all subject to prior approval by the CITY pursuant to Article II of this Agreement, sometimes referred to herein as "CITY Poles" or the "Facilities."

**Section 4. Written Approval Required.** For all covered Facilities, the LICENSEE shall give written notice and obtain prior written approval of the LICENSEE's plans in accordance with Article II of this Agreement.

**Section 5. Limitations of Agreement.** This Agreement is limited to only those terms and conditions relevant to use of the Facilities described in Section 3 of this Article. Unless otherwise provided herein, this Agreement does not grant a franchise, right-of-way agreement, or except as provided herein, grant authority to use right-of-way to the LICENSEE to provide service within the CITY limits of the City of Columbia, Missouri, nor does it grant to the LICENSEE any other right or license which might be granted to the LICENSEE by the CITY. This Agreement does not create or convey any ownership, leasehold or other property interest in CITY Facilities or public right-of-way to LICENSEE other than a non-exclusive license for the purpose stated herein, which shall not be sublet or otherwise transferred or assigned except as provided herein. Nothing herein contained shall be construed to compel CITY to maintain any of its Poles or any public right-of-way in a certain manner or for a period longer than is necessary for its own service requirements. LICENSEE shall respect the rights and property of the CITY and other authorized users of streets, sidewalks, easements, Poles, street lights, vault conduits, and right-of-way and other facilities and property of other owners. This Agreement shall in no way prevent or prohibit the CITY from using any CITY easement or right-of-way or other public properties or affect its jurisdiction over these or any part of them, and the CITY shall retain all power and make any and all necessary changes, relocations, repair, maintenance, establishment, improvement, or dedication of same as the CITY may deem fit, including other public properties of every type and description. Nothing in this Agreement shall allow LICENSEE to sublease the use of City Facilities, and any third party must have consent for use of the right of way pursuant to CITY'S ROW Code before LICENSEE may sell or lease dark fiber to such third parties.

**Section 6. Pole Use Subject to Provisions of CITY ROW Code.** This Agreement fully incorporates the provisions of all applicable sections of the CITY code, as may be amended (the "Code" or "ROW Code") and the use of CITY Facilities authorized herein shall be subject to compliance with such provisions of the Code. It is agreed that by such incorporation of the Code, LICENSEE has elected to have this Agreement also constitute LICENSEE's right-of-way

agreement granting nonexclusive authority to use the CITY's right-of-way to accommodate the Attachments and subject to all terms and requirements herein, the ROW Code, and other applicable law. The provisions of the Code shall be deemed incorporated as express terms of this Agreement, except to the extent any term of this Agreement is not consistent with the Code, the terms of this Agreement shall prevail or supplement. LICENSEE's compliance with the terms of the Code shall be deemed an additional material term of this Agreement enforceable under the terms of this Agreement, in addition to any applicable penalty or provision for enforcement set forth in the Code. The CITY and LICENSEE agree that upon expiration or termination of this Agreement, LICENSEE shall either execute a new right-of-way use agreement as required by the CITY ROW Code or remove its Attachments from the public right-of-way of the CITY within 90 days of such expiration or termination.

LICENSEE requests and agrees to this incorporation of ROW requirements as an accommodation to LICENSEE to avoid the costs of multiple agreements. Subject to the terms and conditions of this Agreement, and the CITY ROW Code, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Attachments in, through, and along the City's rights-of-way and utility easements for the purposes of supplying communications services through the covered Attachments within the City, subject, however, to the terms and conditions herein set forth within this Agreement, the CITY ROW Code. As a condition of this grant, LICENSEE is required to obtain and maintain any permit, license certification, grant, registration, or any other authorization lawfully required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission, or the Missouri Public Service Commission. In the event that the use of the right-of-way is proposed to change or to provide services other than as described, LICENSEE shall be required to seek amendment hereto prior to commencing such service or changed use.

**Section 7. Use of Facilities. Subordinate; Police Powers; No Warranty.** LICENSEE shall construct and maintain its Attachments and other use of the CITY's Facilities and right-of-way in accordance with all applicable federal, state, and local laws, including all permit requirements, and fee payments, and all other CITY codes and ordinances in effect as of the date of this Agreement or hereinafter adopted to the extent not in contravention of state or federal law. No provision of this Agreement shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and such provision shall be automatically interpreted and applied as required by law. The CITY makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Attachments on any particular location. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the LICENSEE. The use of the Attachments and right-of-way authorized by this Agreement shall in all matters be subordinate to the CITY's use and rights therein and LICENSEE shall be limited to such uses as have been expressly granted to LICENSEE by the CITY. LICENSEE shall construct and maintain its Attachments and equipment so as not to materially interfere with other users of CITY Facilities and right-of-way.

## ARTICLE II USE

**Section 1. Access.** Except as otherwise provided by law, CITY reserves the right to deny LICENSEE access to any Pole, conduit, particular location, or other covered Facilities, on a non-discriminatory basis, where there is insufficient capacity on or in CITY's Poles, conduits, or right-

of-way or for reasons of safety or public welfare, reliability, interference with existing or anticipated uses, or generally applicable engineering standards, failure to comply with all applicable codes and regulations of CITY, non-compliance with CITY established aesthetic standard, prior leases for banners, advertising for events or other approved uses, or exclusion of CITY owned power poles pursuant to State statutes. Provided that before CITY denies access based on insufficient capacity, CITY shall explore potential accommodations in good faith and take all reasonable steps to accommodate LICENSEE's request for access, which are not otherwise inconsistent with applicable law. In the event that the CITY ultimately denies access to a Facility, the CITY's decision shall be final and LICENSEE's sole remedy under this Agreement shall be termination of this Agreement as provided for in Article XIV.

**Section 2. Prior Written Approval Required.** LICENSEE shall not make any new Attachments to any Facilities, make alterations to Attachments, remove Attachments, or begin excavation within any right-of-way of CITY until the LICENSEE has obtained prior written approval of its plan for Attachments or construction and excavation by the CITY and been issued a permit by the CITY authorizing the Attachment to each affected Pole or excavation of the right- of-way. Minor alterations may be approved by the CITY by a bulk permit authorizing multiple future alterations where the purpose of this Agreement is satisfied.

**Section 3. Notification / Plan.** Prior to making any new Attachments to Facilities, the LICENSEE shall provide written notice to the CITY fully describing the Facilities to which Attachments are to be made and the nature of the Attachments and the route for excavation and construction. With such notice, LICENSEE shall provide to CITY plans showing the location of the Poles to be attached, rearrangement of existing attachments to accommodate LICENSEE's Attachments, the proposed construction Attachments of cables and other equipment including information as may be required regarding any strengthening of Poles required to accommodate the Attachments of LICENSEE, and any other information regarding the Attachments reasonably requested by the CITY or detailed construction plans to include the route of the System to be installed and any other information reasonably requested by the CITY.

**Section 4. Expenses.** All costs and expenses related to LICENSEE's use authorized by this Agreement, including but not limited to the construction or installation of LICENSEE's Attachments , and additional strengthening of the Pole or rearrangement of other attachments made necessary by LICENSEE's use or items within the right-of-way, whether or not owned by CITY, shall be borne solely by LICENSEE.

**Section 5. Inspections.** CITY may inspect each new installation of LICENSEE's Attachments on CITY's Poles and construction and excavation within the CITY's right-of-way and thereafter may make such periodic inspections as are reasonable. The inspections, whether made or not, shall not operate to relieve LICENSEE or LICENSEE's insurer of any responsibility, obligation, or liability assumed under this Agreement.. LICENSEE shall

reimburse LICENSOR for all costs and expenses of conducting inspections, no more frequently than annually, to the extent such expenses are attributable to LICENSEE'S Attachments, if LICENSOR determines that LICENSEE has significant attachment violations.

**Section 6. Change, Removal or Replacement of Equipment.** Whenever the CITY determines for its own needs that it is necessary for any Attachment or equipment of the LICENSEE to be changed, removed, relocated, or replaced or the right-of-way that contains the System to be relocated to accommodate the needs of CITY, such Attachment or equipment shall be changed, removed or replaced by LICENSEE, within sixty (60) days of such written notification unless such other time is specified by the CITY due to greater or lesser time practically required for such changes, and the cost of such work shall be borne by LICENSEE. Where the CITY agrees with LICENSEE to have the CITY relocate LICENSEE's Attachment(s), LICENSEE shall make payment for such relocation within thirty (30) days of receiving an invoice. If any change, removal, or replacement of LICENSEE's Attachment or equipment is required solely to accommodate a third party as determined and approved by the CITY, including any third party utility, the party being accommodated shall reimburse LICENSEE for the cost of such work, provided it shall be the responsibility of LICENSEE to obtain such reimbursement directly from the third party being accommodated. Any changes requiring replacement of Poles having any CITY attachments shall be done only by CITY personnel or CITY contractors and only after CITY approval of the change. In the event CITY moves its Facilities to a new Pole and allows LICENSEE additional time to relocate its Attachments to the new Pole or otherwise, LICENSEE may remain on the existing Pole until its relocation is completed within the additional time granted by the CITY, and at the CITY's option, LICENSEE shall at its cost remove the original Pole ("Stubbed Pole") upon such relocation of LICENSEE's equipment. In no event shall LICENSEE remain on the Stubbed Pole permanently or beyond the time directed by the CITY without an express application and approval of the CITY, which may be denied at CITY's sole discretion, after payment to the CITY purchasing the Pole or otherwise compensating the CITY for this additional approval. If LICENSEE does not remove a Stubbed Pole after at least thirty day's written notice by the CITY, CITY may remove the Stubbed Pole, and terminate or relocate LICENSEE's Attachments, and thereafter invoice LICENSEE who shall be responsible to pay all such costs incurred by the CITY and LICENSEE shall be responsible for all liability and cost therefrom, and the CITY shall bear no cost or responsibility to LICENSEE or others for damage resulting from such termination or relocation. In the event of any emergency, the CITY may relocate LICENSEE's Attachments to a new Pole and thereafter invoice LICENSEE who shall be responsible to pay all such costs incurred by the CITY for such relocation of LICENSEE's Attachments.

**Section 7. Failure to Remove, Change, or Replace Equipment.** In the event that LICENSEE fails to remove, change, or replace Attachments in the allotted time following written notification by the CITY or fails to remove Attachments, within a reasonable time after written termination of this Agreement, CITY may perform the work requested and be

reimbursed by LICENSEE for the reasonable cost of the work performed by the CITY at CITY's actual expense; including, but not limited, to labor costs for CITY employees and equipment and material. In addition, the CITY may pursue, at its option, any other remedy at law, equity or otherwise, including any other remedy provided for in this Agreement.

**Section 8. Erection of Poles.** LICENSEE shall not erect poles of its own nor construct or lay any equipment on the surface or under the surface in any of the public right-of-way within the CITY limits of the CITY without first obtaining written permission from the CITY and obtaining any and all necessary permits, which may be denied or delayed in the CITY's sole reasonable discretion.

**Section 9. Damages and Repairs.** Any street, sidewalk, or other public or private property disturbed or injured by the LICENSEE in its activities covered under this Agreement shall be promptly repaired at LICENSEE's own expense, to the reasonable satisfaction of the CITY.

**Section 10. Adjustment of CITY Pole for LICENSEE USE.** If LICENSEE or CITY determines that any CITY Pole or Facility must be replaced, strengthened, or otherwise altered or adjusted to accommodate LICENSEE's use of such Pole or Facility, LICENSEE shall bear the full cost of such replacement, strengthening, or other alteration or adjustment.

**Section 11. Electrical connection and usage.** Each Attachment shall have its own separate above ground electrical meter approved and installed by the CITY. LICENSEE shall promptly pay on a monthly basis for all electric usage provided by CITY with a minimum monthly use charge as set forth in Section 27-114 of the CITY Code.

### ARTICLE III PRACTICES

**Section 1. Compliance with Safety and Electrical Codes.** LICENSEE shall at all times comply fully with all material safety, electrical codes, and building codes enacted by the CITY, and supplemental specifications and standards established by the CITY, and all applicable state or federal governments, as well as the standards and requirements of the National Electrical Safety Code (NESC), applicable to activities covered under this Agreement. If LICENSEE discovers or if LICENSEE is notified that it is not in compliance with an applicable law or this Agreement, it shall make diligent efforts to remedy such noncompliance as soon as practicable and as otherwise directed by the CITY.

All of LICENSEE's Attachments shall be in compliance with RF emissions standards established by the federal regulations. Such compliance shall be certified by a RF engineer acceptable to the CITY.

**Section 2. Compliance with CITY Ordinances.** LICENSEE shall at all times comply fully with all material CITY ordinances applicable to activities covered under this Agreement.

**Section 3. Compliance with State and Federal Laws.** LICENSEE shall at all times comply fully with state and federal laws, rules, and regulations applicable to activities covered under this Agreement.

**Section 4. Supplemental Work Practices.** The CITY and the LICENSEE may prepare such supplemental operating routines or work practices as they may mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement. However, LICENSEE acknowledges and agrees that in particular cases the CITY shall have the right, to be applied on a nondiscriminatory basis, to make more stringent operating routines or work practices that are necessary in CITY's determination in order to meet the public health, safety, and welfare concerns of the CITY.

**Section 5. Tree Trimming.** It shall be the sole responsibility of LICENSEE to take reasonable measure to protect and defend its Attachments in the public right-of-way from harm or damage, including from trees and related root systems. If LICENSEE fails to accurately or timely locate Attachments in accordance with the applicable requirements when requested by CITY, LICENSEE shall be responsible for any damage resulting therefrom, except to the extent the resulting damage is solely due to the intentional or negligent conduct of another, if wholly outside the control or privity of LICENSEE. LICENSEE shall be authorized to trim the trunks and branches of trees along or over the right-of-way in the CITY and shall implement a maintenance and tree trimming program for all of its Attachments consistent with industry standards and applicable state and local requirements as needed to ensure that LICENSEE renders efficient and continuous service. LICENSEE and its agents shall exercise proper care and discretion in cutting and trimming said trees and all parts thereof and further provided that such actions of LICENSEE shall continue to be subject to any direction or requirements thereto as may be reasonably required by the CITY. LICENSEE shall make reasonable effort to notify property owners prior to tree and vegetation maintenance actions on such property. LICENSEE shall maintain with CITY a copy of LICENSEE's tree trimming program in compliance with this Agreement.

#### **ARTICLE IV LIABILITY, INDEMNIFICATION, AND INSURANCE**

**Section 1. Risk of Loss.** CITY reserves to itself, its successors and assigns, the right to maintain its Poles, to operate its Attachments thereon, and to maintain and use the CITY's right-of-way and public property and easements in such manner as will best enable it to fulfill its own service requirements or otherwise satisfy the public interest. CITY shall not be liable to LICENSEE, its customers, or any others, for any interruptions in services of LICENSEE, or for interference with the operation of LICENSEE's Attachments arising in any manner out of the use of CITY's Poles hereunder or the use of the CITY's right-of-way. LICENSEE assumes all risk and responsibility for all loss and expense incurred by CITY or existing attachers as a result of any damages caused by LICENSEE or its agents to Poles or the associated CITY equipment or the equipment of existing attachers. LICENSEE shall immediately report to the CITY the occurrence of any damage or loss.

**Section 2. Indemnification.** LICENSEE at its sole cost and expense, hereby agrees to indemnify, protect, defend (with counsel acceptable to the CITY), and hold harmless the CITY, its elected officials, officers, employees, boards, commissions, attorneys, and agents from and against any and all claims, causes of action, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the the activities performed, or failed to be performed, by LICENSEE, on CITY Poles, within the right- of-way, Facilities therein or under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of CITY, its elected officials, officers, employees, or agents. The obligations set forth in this Section shall survive for a period of five (5) years from the date of expiration or termination of this Agreement.

**Section 3. Insurance.** Throughout the Term, LICENSEE must obtain and maintain insurance coverage with a financially reputable insurer that is licensed to do business in all areas in the State of Missouri, or in all areas where LICENSEE makes Attachments under this Agreement, in the following types and amounts of coverage:

- (1) Workers' Compensation as provided for under any Workers' Compensation or similar law;
- (2) Commercial General Liability, including coverage for Contractual Liability and Products/Completed Operations Liability, with a limit of not less than \$2,762,789 combined single limit per occurrence for bodily injury, property damage, and personal injury liability and \$2,762,789 general aggregate, and umbrella liability coverage of no less than \$5,000,000, naming the CITY as additional insured; and
- (3) Business Vehicle insurance covering the ownership, maintenance or use of any owned, non-owned, or hired vehicle with a limit of not less than \$2,762,789 combined single limit per accident for bodily injury and property damage liability, naming the CITY as additional insured.

Provided that the minimum insurance coverage limits established herein shall at all times be not less than the sovereign immunity limits as established by RSMo. §537.610, or its successor, and shall automatically increase as may be necessary to maintain not less than the amounts set forth in that statute. LICENSEE shall maintain on file with CITY, and prior to a party making any Attachments shall deliver to CITY, a certificate of insurance naming the CITY as an additional insured with full and equivalent coverage as the insured and otherwise reasonably satisfactory to CITY evidencing that the required insurance is in force and will not be canceled without first giving the CITY thirty (30) days prior written notice ("Certificate of Insurance"). Any self-insurance or deductible above fifty thousand dollars (\$50,000.00) must be declared to and pre-approved by the City.

**Section 4. No Cause of Action Against the CITY.** LICENSEE shall have no remedy or recourse whatsoever against the CITY for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by said CITY, or for the failure of said CITY to have the authority to grant, all, or any part, of the



rights herein granted; provided that said LICENSEE expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said CITY to enter into the Agreement herein with LICENSEE; provided further that the LICENSEE acknowledges by its acceptance of said Agreement that it has not been induced to enter into this Agreement upon any understanding, or promise, whether given verbally or in writing, by or on behalf of said CITY, or by any other person concerning any term or condition of this Agreement not expressed herein; provided further that the LICENSEE acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions. Nothing in this Agreement shall be deemed to waive the CITY's sovereign immunity, official immunity, or any other immunity established by the State of Missouri, State of Missouri Constitution, US Constitution or Federal law.

**Section 5. Disclaimer of Warranties.** LICENSEE ACKNOWLEDGES THAT CITY (NOR ANYONE ON CITY'S BEHALF) HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS, TO, CONCERNING, OR WITH RESPECT TO:

- (a) THE VALUE, NATURE, QUALITY, PHYSICAL, OR OTHER CONDITION OF POLES;
- (b) THE SUITABILITY OF POLES FOR ANY ACTIVITIES AND USES WHICH LICENSEE MAY OR PLANS TO CONDUCT ON POLES;
- (c) THE COMPLIANCE OF OR BY POLES OR THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES, ORDERS, DECISIONS, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY;
- (d) THE HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF POLES;
- (e) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIAL INCORPORATED INTO POLES;
- (f) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF POLES; OR
- (g) ANY OTHER MATTER WITH RESPECT TO POLES AND, SPECIFICALLY, THAT CITY HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL LAW, PROTECTION, POLLUTION, LAND USE, ZONING, DEVELOPMENT, OR IMPACT LAWS, RULES, REGULATIONS, ORDERS, DECISIONS, OR REQUIREMENTS.

## ARTICLE V MAINTENANCE

**Section 1. Maintenance of Equipment.** LICENSEE, at its sole cost and expense, shall at all times maintain all of its Attachments located within the CITY's right-of-way in accordance with the practices mentioned in Article III, and shall keep them in safe condition and in thorough repair.

**Section 2. Notification.** LICENSEE shall promptly notify CITY of damage of any kind caused to the Poles, CITY's attachments located on the Poles covered by this Agreement, and any Facilities located within the CITY's right-of-way of which LICENSEE is aware, whether directly or indirectly associated with LICENSEE's use or activities. Prior to making any repairs or conducting maintenance work on its Attachments to the covered Poles located within the CITY's right-of-way, that alters, adds, or removes Facilities from property or Facilities of the CITY, LICENSEE shall provide written notice to the CITY with a plan which fully describes the Facilities on which the repairs or work will be conducted and the nature of the repairs, maintenance, or work. Such notice shall be provided to the CITY at least five (5) days prior to such repairs, maintenance, or work, except in the case of emergency repairs, in which case notice shall be delivered as soon as practical after such repairs are completed. Minor alterations may be approved by the CITY by a bulk permit authorizing multiple future alterations where the purpose of this Agreement is satisfied.

**Section 3. Non-Interference with Other Equipment.** LICENSEE shall at all times maintain all of its Attachments such that they do not interfere with the safe and reliable operation of equipment, attachments, or facilities belonging to or authorized by the CITY. LICENSEE shall construct and maintain its Attachments to be so located, constructed, and maintained as to avoid interference with the proper use of all right-of-way and so as not to materially or without authority interfere with other users of the right-of-way.

## ARTICLE VI ABANDONMENT OF SYSTEM OR POLES

**Section 1. Notification.** If the CITY desires at any time to abandon or remove any used Pole or right-of-way, it shall give the LICENSEE notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon or remove such Pole or right-of-way upon which LICENSEE shall assume responsibility for such Pole or remove its Facilities, as may be directed by the CITY.

**Section 2. Removal of Attachments.** LICENSEE may remove Attachments from the CITY's Poles or items from the CITY's right-of-way following notification to the CITY and receipt of a permit therefor. The removal of Attachments or items shall not affect the terms of this Agreement or the license issued hereunder; provided however that if LICENSEE removes Attachments from all CITY Facilities or ceases to provide its services in the area covered by this Agreement, this

Agreement and the license issued hereunder shall automatically terminate effective the day after the later to occur of: (i) removal of the last Attachments, or (ii) the final day that services were provided to the covered area by LICENSEE. If LICENSEE fails to remove any Attachment from CITY Facilities within thirty (30) days of termination of this Agreement, such Attachments shall be deemed to be abandoned and CITY may remove and dispose of LICENSEE's Attachments without further notice to LICENSEE and LICENSEE shall be liable to CITY for all cost incurred by CITY for such removal.

## ARTICLE VII FEES FOR USE

**Section 1. Pole Rental.** LICENSEE shall pay in advance to the CITY an annual Pole rental fee ("rental fee") for each Pole utilized by LICENSEE hereunder during the term in the amount of One Hundred Fifty Dollars (\$150.00) per Pole annually from the Effective Date of this Agreement or such other fee as may be annually set by the CITY as hereinafter established the City Council; provided that LICENSEE has been provided written notice of such increase or revised rate at least sixty (60) days prior to the effective date of such change. Payment of a Pole rental fee shall entitle LICENSEE to one Attachment to a CITY Pole or Facility and LICENSEE shall pay an additional Pole rental fee for each separate Attachment on a City Pole. Each Attachment of any of LICENSEE's facilities in direct contact with or otherwise supported by a pole or other CITY facilities shall be considered a separate pole attachment. Annual pole rental fees shall be in addition to application and permit fees, right of way fees, make ready fees, franchise fees, applicable linear foot fees, gross receipts fees, and any other fees required by the applicable CITY codes.

**Section 2. Payment.** Commencing effective the Effective Date defined in Section 1 of Article XIV below, and no later than fifteen (15) days after January 1 of each year thereafter ("Due Date"), LICENSEE shall pay to the CITY the rental fee rate as an annual payment for that current year (January 1 through December 31) based on the Attachments existing on the Due Date. Such annual payments shall made as non-refundable compensation for the annual period commencing from the Due Date. LICENSEE agrees that it shall pay the rental fee on or before the Effective Date the first partial year through December 31, 2022 in an amount of the rental fee rate of One Hundred Fifty Dollars (\$150.00) multiplied by number of poles multiplied by timing of pro-ration to reflect a prorated first year payment being made upon or before submission to the CITY of this executed Agreement. If any payment, or any portion thereof, is not postmarked or delivered on or before the Due Date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent (1.5%) per month, unless such other maximum rate is established by law. Any additional attachments made during the year shall be paid for in advance to the CITY on a pro rata basis at the time of installation and thereafter included in the total.

## ARTICLE VIII CURRENT NUMBER OF USED POLES

**Section 1. Number of Used Poles.** For the purposes of making Pole rental payments as described in Article VII, the number of Poles used at any time shall be determined, at the CITY's option by one of the following methods:

(a) The previous year's number of used Poles adjusted for any additional Attachments or removals made during previous year

or,

(b) The number of used Poles determined by the last complete field inventory, adjusted for any additional Attachments or removals made since the completion of said inventory.

**Section 2. CITY Use of LICENSEE Poles.** To the extent LICENSEE shall maintain its own poles or facilities, CITY shall have the right to use LICENSEE's poles provided any poles owned by LICENSEE and used by the CITY for CITY attachments, if any, shall be deducted from the number of Poles used by LICENSEE to obtain a net number of Poles for which rental payments are owed by LICENSEE. LICENSEE shall have no right to install or replace poles of LICENSEE within the CITY without written consent of the CITY.

#### **ARTICLE IX WAIVER OF TERMS OR CONDITIONS**

**Section 1. Waivers.** The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

#### **ARTICLE X DEFAULTS**

**Section 1. Suspension or Termination for Default.** If LICENSEE shall default in any of its obligations under this Agreement and such default continues thirty (30) days after written notice thereof by the CITY, the CITY may suspend the rights of LICENSEE under this Agreement, and if such default shall continue for a period of sixty (60) days after such suspension or if LICENSEE has not taken diligent steps to correct such default, the CITY may forthwith terminate this Agreement and the license issued hereunder and/or seek all remedies available to it at law or equity.

**Section 2. Reimbursement.** If LICENSEE shall default in the performance of any work it is obligated to do under this Agreement, the CITY may elect to do such work, and the LICENSEE shall reimburse the CITY for the reasonable cost thereof. Failure of LICENSEE to make such payment within sixty (60) days upon presentation of the bill therefore shall, at the election of the CITY, constitute a default under Section I of this Article.

#### **ARTICLE XI PAYMENT OF TAXES**

**Section 1. Payment of Taxes and Fees.** LICENSEE shall pay all fees, taxes, and assessments lawfully levied by the CITY on its own property within the CITY or on business or transactions undertaken within the CITY, including but not limited to real and personal property taxes, business license taxes, sales taxes, video service provider fees, and other applicable taxes or fees imposed by the CITY. LICENSEE shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the right-of-way. Such taxes shall be in addition to compensation provided herein.

## **ARTICLE XII NOTICES**

**Section 1. Designated Contacts.** Any written notice required or authorized by this Agreement shall be deemed properly given or served to the CITY if delivered by regular or certified mail, return receipt requested, or by reputable overnight delivery service with tracking capabilities to:

City of Columbia Director of Public Works  
701 E Broadway  
PO Box 6015  
Columbia, Missouri 65201

City of Columbia Law Department  
701 E Broadway  
PO Box 6015  
Columbia, Missouri 65201

and shall be deemed properly given or served on the LICENSEE if delivered by regular or certified mail, return receipt requested, or by reputable overnight delivery service with tracking capabilities to:

**Ameren Missouri**  
**PO Box 6149**  
**St. Louis, MO 63101**  
**Attn: Ameren Legal Department**

**Section 2. Change of Designated Contact.** The designation of the person to be notified, or the address of such person, may be changed at any time, and from time to time, by providing written notice to the other party.

**Section 3. Effective Date of Notices.** Notices shall be effective on the date of receipt or refusal of receipt.

**Section 4. Use of Forms.** Where provided, all applications and notices required under this Agreement or otherwise shall be made on forms substantially as provided by the CITY's Director of Public Works.

## **ARTICLE XIII ASSIGNMENT**

**Section 1. Assignment.** LICENSEE shall not assign or transfer this Agreement or any part hereof or the privileges hereby granted, without CITY's prior written consent, which shall not be unreasonably conditioned or withheld, provided that the assignee is in full compliance with applicable CITY ordinances and state and federal law and all costs of the CITY in reviewing and acting on the request are paid by LICENSEE. Consent is not required to assign this Agreement to an affiliated entity which

wholly controls, or is wholly controlled by LICENSEE; provided that LICENSEE provides CITY at least thirty (30) days prior written notice and that the entity is in full compliance with applicable CITY ordinances and state and federal law. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Licensee shall not change its name under which it does business under this Agreement without providing at least thirty (30) days prior notice to the City.

**Section 2. Assignment Upon Consent.** In the event the CITY consents to an assignment, or consent to assignment is not required as per Section 1 above, the Agreement shall extend to and bind the successors and assigns of the parties hereto. In the event that an assignee fails to obtain consent when required, the terms of this Agreement shall extend to and bind the successors and assigns of LICENSEE until a new binding Agreement with the CITY has been approved and is effective, but nothing herein shall limit any remedy of CITY as may otherwise exist for operation without such Agreement or otherwise.

**Section 3. Request for Consent.** LICENSEE's request for consent to assignment or transfer shall be set forth in writing and include the details of the proposed transfer including the name, business, and financial condition of the prospective assignee, and a statement that the assignee has received any licenses, franchises, authorizations, or other approvals required by applicable state or federal law for the intended use, and any other information reasonably requested by CITY in writing that is material to the assignment or transfer (within 30 days of receipt of CITY's request), as well as the prospective assignee's signed written acceptance hereof; provided that CITY agrees that any written request for such consent complying with this provision shall be decided by the CITY within 30 days of the CITY's receipt of such complying request and requested information.

#### **ARTICLE XIV TERM OF AGREEMENT**

**Section 1. Effective Date/Term: Annual Renewal.** This Agreement shall become effective on the date of the last signature on this Agreement after signed by all parties and shall continue for one year from the Effective Date, and shall thereafter automatically renew for one-year periods, until terminated by either party as provided for herein, but in no event shall such automatic renewal continue the term of this Agreement beyond December 31, 2027.

**Section 2. Termination.** Termination of this Agreement acts as a termination of the license issued hereunder. Either party may terminate this Agreement, at any time by providing written notice to the other party one hundred and eighty days (180) in advance of termination, or at least thirty (30) days written notice if due to a denial of access to Facilities pursuant to Article II. LICENSEE shall continue to pay fees to CITY pursuant to the terms of this Agreement until the effective date of the termination, until all Attachments are removed. LICENSEE shall remove all Attachments within one hundred eighty (180) days of the effective date of the termination at its sole cost and expense. If LICENSEE fails to remove such attachments and the System within the time allotted, the CITY may remove the Attachments and the System at LICENSEE's sole cost.

Termination of this Agreement and the license issued hereunder shall not affect liabilities and obligations of either party incurred hereunder prior to the effective date of such termination.

**ARTICLE XV  
AMENDMENTS**

**Section 1. Amendment.** This Agreement may be amended from time to time by mutual written Agreement between the parties.

**ARTICLE XVI  
MISCELLANEOUS**

**Section 1. No Third Party Beneficiaries.** This Agreement shall create no third-party beneficiary rights.

**Section 2. Relationship of the Parties.** Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the parties.

**Section 3. Compliance With Laws.** In performing activities and exercising its rights and obligations under this Agreement, the LICENSEE shall comply with all applicable federal, state, and local laws, ordinances, regulations, and policies, including, but not limited to, all laws, ordinances, regulations, and policies relating to construction, bonding, insurance, and use of public property.

**Section 4. Enforcement.** The CITY shall be entitled to enforce this Agreement through all remedies lawfully available, and LICENSEE shall pay CITY its costs of enforcement, including reasonable attorneys' fees in the event that LICENSEE violates the terms of this Agreement. The rights and remedies of the parties shall be cumulative and in addition to any other rights and remedies provided by law or equity.

**Section 5. Entire Agreement; Severability.** This Agreement constitute the entire Agreement between the parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect. The parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily, and have full authority to sig this Agreement

If any clause or provision of this License is invalid or unenforceable under present or future laws, then the remainder of this License shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this License a clause or provision as similar in terms to such invalid or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

**Section 6. Governing Law.** All matters relating to this Agreement shall be governed by the laws of the State of Missouri and venue shall be in the Circuit Court of Boone County, Missouri or the Western District of Missouri Federal Court.

**Section 7. Bankruptcy Safe Harbor.** This Agreement shall be deemed to meet the commercial lease safe harbor of the U.S. Bankruptcy Code. In the event LICENSEE files for bankruptcy relief, LICENSEE shall within thirty (30) days of filing for relief, either affirm the Agreement and bring all payments current or reject the Agreement and remove its equipment within sixty (60) days.

IN WITNESS WHEREOF, the hands and seals of the parties hereto have been affixed to three (3) copies each to be considered original, executed by their respective officers, duly authorized on the day and year written below.

**CITY:**  
**CITY OF COLUMBIA, MISSOURI**

By: \_\_\_\_\_  
John Glascock, City Manager *JAS*

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nancy Thompson, City Counselor *NT*

STATE OF MISSOURI        )  
) ss  
COUNTY OF BOONE        )

On this        day of        , 2021, before me appeared John Glascock, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:



LICENSEE:

UNION ELECTRIC COMPANY D/B/A  
AMEREN MISSOURI

By: [Signature]  
Name: Jeffrey Esserman  
Title: Director, Smart Meter

ATTEST: [Signature]  
By: [Signature]  
Name: CRAIG W. SPANGLER  
Title: ASSISTANT SECRETARY

STATE OF Missouri )  
 ) ss  
COUNTY OF St. Louis )

On this 22 day of March, 2021, before me, a Notary Public in and for said state, personally appeared, Jeffrey Esserman, to me personally known, who being by me duly sworn did say that he/she is Director, Smart Meter of Union Electric Company, d/b/a Ameren Missouri, a corporation of the State of Missouri, and that this instrument was signed on behalf of said corporation and further acknowledged that he/she executed the same as his/her free act and deed for the purpose therein stated and has been duly granted the authority by said corporation to execute the same.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal the day and year first above written.

Clint Wesley Woods  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: April 29, 2022  
Commission # 18124352

Clint Wesley Woods  
Notary Public

My commission expires: