Pole Attachment License Agreement

This Pole Attachment License Agreement (the "Agreement") dated_____, 2018 is made by and between City of Columbia, Missouri ("City"), a municipal corporation, and ExteNet Systems, Inc. ("Licensee"), a Delaware corporation.

Recitals

City is a municipal utility performing the essential public service of distributing electric power; and

City is responsible for safeguarding the integrity of its electric system, obtaining fair compensation for the use of its infrastructure through collection of fees and other charges, ensuring compliance with all applicable federal, state and local laws, rules and regulations, ordinances and standards and policies, and permitting fair and reasonable access to available capacity on City's infrastructure; and

Licensee proposes to install and maintain its Communications Facilities distributed antenna systems and associated wireless equipment, Licensee's Attachments, on City's Poles to provide Communications Services; and

City is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on City's Poles, provided that City may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standard; and

Therefore, in consideration of the mutual covenants, terms and conditions set out below the parties agree as follows:

Article 1. Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, 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 and past tense, 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 facilities and the performance of all work in or around electric 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 City or other federal, state, or local authority with jurisdiction over City Facilities.

1.3 **Attaching Entity:** means any public or private entity, including Licensee, that pursuant to a license agreement with City, places an Attachment on City's Pole(s).

1.4 **Attachment(s):** means Licensee's Communications Facilities that are placed directly on City's Poles, are Overlashed onto an existing Attachment, but does not include either a Riser or a Service Drop attached to a single Pole where Licensee has an existing Attachment on such Pole.

1.5 **Capacity:** means the ability of a Pole or Conduit System segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

1.6 **City Facilities:** means all personal property and real property owned or controlled by City, including Poles, Conduit System, and related facilities.

1.7 **Climbing Space:** means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access, and work on City Facilities and equipment.

1.8 **Communications Facilities:** means distributed antenna systems, wireless attachments, and all associated equipment or Attachments, utilized to provide Communications Service.

1.9 **Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet, or other forms of digital or analog signals over Communications Facilities.

1.10 **Conduit System:** means City owned system of conduit, innerduct, manholes and hand holes.

1.11 **Correct:** means to perform work to bring an Attachment into compliance with Applicable Standards.

1.12 **Emergency:** means a situation exists which, in the reasonable discretion of Licensee

or City, if not remedied immediately, poses an imminent threat to public to public health, life, or safety, damage to property or a service outage.

1.13 **Licensee**: means ExteNet Systems, Inc., its authorized successors and assignees.

1.14 **Make-Ready or Make-Ready Work**: means all work that City reasonably determines to be required to accommodate Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of City Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, but does not include Licensee's routine maintenance.

1.15 **Occupancy**: means the use or reservation of space for Attachments on a City Pole or portion of City's Conduit System.

1.16 **Overlash**: means to place an additional wire or cable Communications Facility onto an existing attached Communications Facility.

1.17 **Pedestals/Vaults/Enclosures**: means above- or below-ground housings that are not attached to City Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point.

1.18 **Permit**: means written or electronic authorization by City for Licensee to make or maintain Attachments to specific City Poles pursuant to the requirements of this Agreement. Licensee's Attachments made prior to the Effective Date and authorized by City ("Existing Attachments") shall be deemed Permitted Attachments hereunder.

1.19 **Pole**: means a pole owned or controlled by City that is used for the distribution of electricity, lighting and/or Communications Service and is capable of supporting Attachments for Communications Facilities.

1.20 **Post-Construction Inspection**: means the inspection by City or Licensee or some combination of both to verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

1.21 **Pre-Construction Survey**: means all work or operations required by Applicable Standards and/or City to determine the Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection and administrative processing.

1.22 **Reserved Capacity:** means capacity or space on a Pole that City has identified and reserved for its own future utility requirements at the time of the Permit grant, including the installation of communications circuits for operation of City's electric system or lighting system.

1.23 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.

1.24 **Service Drop:** means the collection of overhead electrical wire(s) running from a Pole to the point of connection at a premises on other building.

1.25 **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by City and/or applicable federal, state or local regulations that will readily identify the type of Attachment (*e.g.,* cable TV, telephone, high-speed broadband data, public safety) and its owner.

1.26 **Unauthorized Attachment:** means any Attachment placed on City's Pole(s) without such authorization as is required by this Agreement, provided the Licensee's previously authorized Attachments made pursuant to a prior agreement between the parties shall not be considered Unauthorized Attachments.

Article 2. Scope of Agreement

2.1 **Grant of License.** Subject to the provisions of this Agreement, City grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments to City's Poles as designated by City.

2.2 Unless otherwise agreed this Agreement does not authorize the use of City transmission structures (other than those with distribution underbuild).

2.3 **Parties Bound by Agreement.** Licensee and City agree to be bound by all provisions of this Agreement.

2.4 **Permit Issuance Conditions.** City will issue one or more Permit(s) to Licensee only when 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.

2.5 **Reserved Capacity.** Access to space on City Poles will be made available to Licensee with the understanding that certain Poles may be subject to Reserve Capacity for future City use. At the time of Permit issuance, City shall notify Licensee if capacity on particular poles is being reserved for reasonably foreseeable future electric use or any other required City use. For Attachments made with notice of such a Reservation of Capacity, on giving Licensee at least sixty (60) calendar days prior notice, City may reclaim such Reserved Capacity at any time following the installation of Licensee's Attachment if required for City's future utility service. If reclaimed for City's use, City may at such time also install associated facilities, including the attachment of communications lines for internal City operational or governmental communications requirements. City shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity for core utility service requirements, so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 8. Licensee shall not be required to bear any of the costs or rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity.

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 Communications Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of 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 7, shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole.

2.8 **City's Rights over Poles.** The parties agree that this Agreement does not in any way limit City's right to locate, operate, maintain, or remove its Poles in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state, or local legal requirement.

2.9 **Other Agreements.** Except as expressly provided in this Agreement, nothing in this Agreement shall limit, restrict, or prohibit City from fulfilling any agreement or

arrangement regarding its Poles into which City has previously entered, or may enter in the future, with others not party to this Agreement.

2.10 **Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals set forth above and no other use shall be allowed without City's express written consent to such use. Nothing in this Agreement shall be construed to require City to allow Licensee to use City's Poles after the termination of this Agreement.

2.11 **Overlashing.** The following provisions apply to Overlashing:

2.11.1 Licensee shall obtain a Permit for each Overlashing, in accordance with the requirements of Article 7. Absent such authorization, Overlashing constitutes an Unauthorized Attachment under Article 18.

2.11.2 Authorized Overlashing to accommodate Attachments of Licensee or its Affiliate(s) shall not increase the Annual Attachment Fee paid by Licensee. Licensee or Licensee's Affiliate shall, however, be responsible for all Make-Ready Work and other charges associated with the Overlashing. Licensee shall not have to pay a separate Annual Attachment Fee for such Overlashed Attachment.

2.11.3 At Licensee's request, City may allow Overlashing to accommodate facilities of a third party, not affiliated with Licensee. In such circumstances, the third party must enter into a License Agreement with City, obtain Permit(s), and pay a separate Attachment Fee as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. City shall not grant such Permit(s) to third parties allowing Overlashing of Licensee's Communications Facilities without Licensee's consent. Authorized Overlashing shall not increase the fees and charges paid by Licensee. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.

2.11.4 Make-Ready Work procedures set forth in Article 8 shall apply, as necessary, to all Overlashing.

2.12 **Enclosures.** Licensee shall not place Pedestals, Vaults, and/or other Enclosures on or within four (4) feet of any Pole or other City Facilities without City's prior written permission. If permission is granted, all such installations shall be per the

Applicable Standards. Such permission shall not be unreasonably withheld. Further, Licensee agrees to move any such above-ground enclosures in order to provide sufficient space for City to set a replacement Pole.

Article 3. Term

The term of this Agreement shall remain in effect for a term of five (5) years from the date of execution by the City and Licensee unless terminated by other terms of this Agreement. Thereafter, the Agreement shall automatically renew for two (2) additional five (5) year terms (the "Renewal Terms") unless the Agreement is allowed to end by one party giving the other written notice of its intent to end the Agreement at least six (6) months prior to the expiration of the current five (5) year Renewal Term.

Article 4. Fees and Charges

4.1 Payment of Fees and Charges. Licensee shall pay to City the fees and charges specified below and shall comply with the terms and conditions specified below:

4.1.1 Street pole annual attachment fee five hundred forty dollars ($540.00) annually per City pole, for the first five (5) year term. The annual rent shall increase by twenty percent (20%) upon the commencement of each Renewal Term.

4.1.2 Permit application fee for attachment permit to reimburse City for costs incurred for project management services review of permit application site description approval and pole evaluation in an amount of one hundred dollars ($100.00) per pole.

4.1.3 Unauthorized Attachment Penalty Fee: Three times the annual attachment fee per occurrence for attachments made without prior City approval. Payment of this fee does no guarantee the attachment may remain on the particular pole.

4.1.4 Failure to Timely Remove or Transfer. Abandon or non-removal holdover fee of one hundred dollars ($100.00) per day per pole attachment shall be assessed.

4.1.5 In addition to the fees set forth above, Licensee shall pay City for all electric power necessary to operate its equipment. City and Licensee agree that metering service to each and every Attachment is both uneconomical and impractical and parties agree the rate charged shall be based on the metering of one pole of each type of Attachment arrangement pursuant to Permits issued by City, and multiplied by the number of Poles with a similar Attachment arrangement. This rate amount shall be divided by the number of other entities or users utilizing

electric power and each Pole that Licensee has placed Attachments on. Electric use shall be paid on a monthly basis

4.2 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from City pursuant to this Agreement within thirty (30) calendar days of receipt of invoice.

4.3 **Billing of Attachment Fee.** Licensee shall pay the per-pole Attachment Fee annually, not later than January 30 of each year. The invoice shall set forth the total number of City's Poles on which Licensee was issued Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits.

4.4 **Refunds.** No fees and charges shall be refunded on account of any surrender of a Permit granted under this Agreement.

4.5 **Late Charge.** If City does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee shall pay interest to City at the rate of two percent (2%) per month, or the maximum interest allowed by law, whichever is greater, on the amount due. In addition to assessing interest on any unpaid fees or charges, if any fees or charges remain unpaid for a period exceeding ninety (90) days City may, at its option, discontinue the processing of applications for new Attachments until such fees or charges are paid.

4.6 **Charges and Expenses.** Licensee shall reimburse City and any other Attaching Entity for those actual and documented costs for facilitating Licensee's Attachments or for which Licensee is otherwise s responsible under this Agreement.

Such costs and reimbursements shall include, but not necessarily be limited to, all design, engineering, administration, supervision, payments, labor, overhead, materials, equipment and applicable transportation used for work on, or in relation to License's Attachments as set out in this Agreement or as requested by Licensee in writing.

4.7 **Advance Payment.** City in its sole discretion will determine the extent to which Licensee will be required to pay in advance estimated costs, including, but not limited to, administrative, construction, inspections, and Make-Ready Work costs, in connection with the initial installation or rearrangement of Licensee's Attachments pursuant to the procedures set forth in Articles 6 and 7 below.

4.8 **True-Up.** Whenever City, in its discretion, requires advance payment of estimated

expenses prior to undertaking an activity on behalf of Licensee and the actual cost of the activity exceeds the advance payment of estimated expenses, Licensee agrees to pay City for the difference in cost, provided that City documents such costs with sufficient detail to enable Licensee to verify the charges and provides such documentation upon Licensee's request. To the extent that City's actual cost of the activity is less than the estimated cost, City shall refund to Licensee the difference in cost.

4.9 **Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by City, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable overhead costs. City shall bill its services based upon actual costs, and such costs will be determined in accordance with 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 costs of materials used. Labor costs shall be the greater of the fully loaded costs of municipal labor or the current "union scale" for comparable work in the region.

4.10 **Work Performed by City.** Wherever this Agreement requires City to perform any work, City, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.

4.11 **Charges for Incomplete Work.** In the event that an Application is submitted by Licensee and then steps are taken by City to carry out the review of the Application by performing necessary engineering and administrative work and the Application is subsequently canceled, Licensee shall reimburse City for all of the actual and documented costs incurred by City through the date of cancellation, including engineering, clerical and administrative and Make-Ready construction costs.

Article 5. Specifications

5.1 **Installation.** When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements and specifications of City and must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities.

5.2 **Maintenance of Licensee's Communication Facilities.** Licensee shall, at its own expense, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Agreement to the contrary, Licensee shall not be required to update or upgrade its

Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards.

5.3 **Tagging.** Licensee shall Tag all of its Communications Facilities as specified in applicable federal, state, and local regulations upon installation of such Facilities. Failure to provide proper tagging will be considered a violation of the Applicable Standards.

5.4 **Interference.** Licensee shall not allow its Communications Facilities to impair the ability of City or any third party to use City's Poles, nor shall Licensee allow its Communications Facilities to interfere with the operation of any City Facilities or third-party facilities. City currently has existing banner agreements that may require the entire pole.

5.5 **Protective Equipment.** Licensee and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall, at its own expense, install protective devices designed to handle the electric voltage and current carried by City's Facilities in the event of a contact with such facilities. City shall not be liable for any actual or consequential damages to Licensee's Communications Facilities, Licensee's customers' facilities, or to any of Licensee's employees, contractors, customers, or other persons.

5.6 **Violation of Specifications.** If Licensee's Attachments, or any part of them, are installed, used, or maintained in violation of this Agreement, and Licensee has not Corrected the violation(s) within thirty (30) days from receipt of written notice of the violation(s) from City, the provisions of Article 26 shall apply. When City believes, however, that such violation(s) pose an imminent threat to the safety of any person, interfere with the performance of City's service obligations, or present an imminent threat to the physical integrity of City Poles or City Facilities, 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 afterward, City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and documented costs incurred by City in taking action pursuant to this Article 5.6. Licensee shall indemnify City for any such work.

5.7 **Restoration of City Service.** City's service restoration requirements shall take precedence over any and all work operations of Licensee on City's Poles or within City's Conduit System.

5.8 **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 to such Permit(s), City may, but shall have no obligation to, use the space scheduled for Licensee's Attachment(s) for its own needs or make the space available to other Attaching Entities. In such instances, City shall endeavor to make other space available to Licensee, upon written application under Article 7, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. If City uses the space for its own needs or makes it available to other parties, then from the date that City or a third party begins to use such space, Licensee may obtain a refund on the portion of any Attachment Fees that it has paid in advance for that space. For purposes of this paragraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.

5.9 **Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment") as provided in this Paragraph 5.9.

Article 6. Private and Regulatory Compliance

6.1 **Necessary Authorizations.** To the extent that City cannot provide the necessary authorizations, before Licensee occupies any of City's Poles or City Facilities, Licensee shall obtain from the appropriate public or private authority, or from any property owner or other appropriate person, any required authorization to construct, operate, or maintain its Communications Facilities on public or private property. City retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations include, but are not limited to, its obligation to obtain and pay for all necessary approvals to occupy public/private rights-of-way and easements and all necessary licenses and authorizations to provide the services that it provides over its Communications Facilities.

6.2 **Lawful Purpose and Use.** Licensee's Communications Facilities and the use of such Facilities must comply with all applicable federal, state and local laws.

Article 7. Permit Application Procedures

7.1 **Permit Required.** Before making any Attachments to any Poles, Licensee shall submit an Application and receive a Permit therefor, with respect to each Pole.

7.1.1 Overlashing is subject to a streamlined Permit process. As part of an Application of Overlashing Licensee shall conduct a loading analysis. City shall review the Application and identify any necessary make-ready to accommodate the Overlashing. City shall review Applications for routine Overlashing installations as promptly as is reasonable. Licensee shall not install any new Overlash until it receives a Permit. Licensee shall be responsible for the costs of all make-ready necessary to accommodate the Overlash.

7.1.2 It is Licensee's responsibility to verify that the Pole and strand to which it proposes to Overlash meets all Applicable Standards before Overlashing.

7.1.3 Licensee shall notify City of an Overlash within thirty (30) days of completion.

7.1.4 Any Overlash attachment that City discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to provisions of Article 18.

7.2 **Professional Certification.** Unless otherwise waived in writing by 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 City, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection, and certify that Licensee's Communications Facilities can be and were installed on the identified Poles in compliance with the Applicable Standards and in accordance with the Permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems. The City may require the Licensee's professional engineer to conduct a post-construction inspection that the City will verify by means that it deems to be reasonable.

7.3 **Submission and Review of Permit Application.** Licensee shall submit a properly executed Pole Attachment Permit Application, which shall at City's option, include a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make- Ready Work to accommodate the Attachments, certified by a licensed professional engineer. Licensee shall use the City's Pole Attachment Permit Application form, which form has been provided to Licensee. City may amend the Pole Attachment Permit Application form from time to time, provided that any such changes are not inconsistent with the terms of this Agreement, and are applied to all Attaching Entities on a non-discriminatory basis. City's 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, under

normal circumstances, the Permit Application process shall be as follows:

7.3.1 **Application With Pre-Construction Survey**. If Licensee's Application includes a Pre- Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make-Ready to accommodate the Attachments, certified by a licensed professional engineer, City shall review and respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable. City may utilize contractors to perform such analysis, the costs of which shall be borne by Licensee.

7.3.2 **Application With Pre-Construction Survey.** If Licensee's Application does not include a Pre-Construction Survey (including a description of necessary Make-Ready), City or its contractor shall review the Application and perform a Pre-Construction Survey, and, if the Attachment can be accommodated consistent with Applicable Standards, prepare a description of any necessary Make-Ready to accommodate the proposed Pole Attachment. Under normal circumstances, City will respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable. City may utilize contractors to perform such analysis, the costs of which shall be borne by Licensee.

7.3.2.1 For Permit Applications seeking Attachments to 50 or more Poles, the City may require additional time to review.

7.3.2.2 City's response will either: (i) provide a description of Make-Ready identified by City and a cost estimate for the City's portion of that Make-Ready; or (ii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.

7.3.3 **Response to Estimate**. Upon receipt of City's response, Licensee shall have fourteen (14) days to approve the estimate of any proposed Make-Ready Work and provide payment in accordance with this Agreement and the specifications of the estimate.

7.4 **Permit as Authorization to Attach.** Upon completion and inspection of any necessary Make- Ready Work and receipt of payment for such work, City will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s) within thirty (30) days following Licensee's submission of such Application if one (1) pole is noted on the Application. Sixty (60) days following Licensee's submission of the Application if two (2) to nine (9) pole requests are

included on the Application and within one hundred twenty (120) days following Licensees' submission of such Application if ten (10) or more poles are noted on the Application.

7.5 **Notification to City.** Within thirty (30) days of completing the installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops) Licensee shall provide written notice to City.

Article 8. Make-Ready Work/Installation

8.1 **Estimate for Make-Ready Work.** If City determines that it can accommodate Licensee's request for Attachment(s), it will, upon request, advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

8.2 **Who May Perform Make-Ready.** Make-Ready Work in the electric supply space may be performed only by City and/or a qualified contractor authorized by City to perform such work. Estimated costs of the make ready work shall be paid in advance by Licensee.

8.3 **Payment for Make-Ready Work.** Upon completion of the Make-Ready Work performed by City, City shall invoice Licensee for City's actual and documented cost of such Make-Ready Work. The costs of the work shall be itemized and if City received advance payment, the costs shall be advised and credited accordingly. Licensee shall be responsible for entering into an agreement with existing other Attaching Entities to reimburse them for any costs that they incur in rearranging or transferring their facilities to accommodate Licensee's Attachments.

8.3.1 In instances where Licensee is performing Make-Ready, where an existing Attaching Entity has not relocated or otherwise undertaken work required to complete Make-Ready (such as repairing existing Attachments not in compliance with Applicable Standards) within thirty (30) days of notice by City or Licensee to such other Attaching Entity, Licensee is authorized, to the extent that City has such authority, and the legal ability to delegate such authority, to relocate or repair the other Attaching Entity's Attachments on behalf of City. Licensee shall pay the costs to relocate the other Attaching Entity's Attachments as part of Licensee's Make Ready.

8.4 **Operator 's Installation/Removal/Maintenance Work.**

8.4.1 All of Licensee's installation, removal, and maintenance work, by either Licensee's employees or authorized contractors, 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's Poles or other Facilities or other Attaching Entity's facilities or equipment. All such work is subject to the insurance requirements of Article 22.

8.4.2 All of Licensee's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards and the Minimum Design Specifications.

Article 9. Post Installation Inspections.

9.1 Within thirty (30) days of written notice to City that the Licensee has completed installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops), City or its contractors may perform a post-installation inspection for each Attachment made to City's Poles. If such post-installation inspections are performed, Licensee shall pay the actual and documented costs for the post-installation inspection.

9.2 If City elects to not perform any post-installation inspection, such non-inspection shall not be grounds for any liability being imposed on City or a waiver of any liability of Licensee.

9.3 If the post-installation inspection reveals that Licensee's facilities have been installed in violation of Applicable Standards or the approved design described in the Application, City will notify Licensee in writing and Licensee shall have thirty (30) days from the date of receipt of such notice to correct such violation(s), or such other period as the parties may agree upon in writing, unless such violation creates an Emergency in which case Licensee shall make all reasonable efforts to correct such violation immediately. City may perform subsequent post-installation inspections within thirty (30) days of receiving notice that the correction has been made as necessary to ensure Licensee's Attachments have been brought into compliance.

9.4 If Licensee's Attachments remain out of compliance with Applicable Standards or approved design after any subsequent inspection, City will provide notice of the continuing violation and Licensee will have thirty (30) days from receipt of such notice to correct the violation, otherwise the Licensee will be in default of this Agreement and City may take appropriate steps to remedy such default..

Article 10. Effect of Failure to Exercise Access Rights.

If Licensee does not exercise any access right granted pursuant an applicable Permit(s) within one hundred twenty (120) calendar days of the effective date of such right (unless such time period is extended), City may, but shall have no obligation to, use the space scheduled for Licensee's Attachment(s) for its own needs or make the space available to other Attaching Entities. Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed and a Permit has been issued.

Article 11. Rearrangements and Transfers

11.1 **Required Transfers of Licensee's Communications Facilities.** City shall only require relocation or removal of Licensee's attachments in instances required for public safety/welfare or as a result of a City project developed to the benefit of the public. Prior to relocation, the parties will identify a mutually agreeable, alternative location that technologically and functionally meets Licensee's Attachment needs. If Licensee fails to rearrange or transfer its Attachment within thirty (30) days after the parties identify a mutually agreeable, alternative location(s) for the Attachment(s), City has the right to rearrange or transfer Licensee's Attachments to such location(s). The actual and documented costs of such rearrangements or transfers shall be apportioned accordingly by and between the City and Licensee. City shall not be liable for damage to Licensee's Communication Facilities unless such damage was due to City or its contractor's negligence misconduct. In emergency situations, City may rearrange or transfer Licensee's Attachments as it determines to be necessary in its reasonable judgment. In emergency situations, City shall provide such advance notice as is practical, given the urgency of the particular situation. City shall then provide written notice of any such actions taken within ten (10) days following the occurrence.

11.2 **City Not Required to Replace.** Nothing in this Agreement shall be construed to require City to replace its Poles for the benefit of Licensee, regardless of cause.

Article 12. Treatment of Multiple Requests for Same Pole.

If City receives Permit applications for the same Pole from two (2) or more prospective Attaching Entities within one hundred twenty (120) calendar days of the initial request, and has not yet completed the Permitting of the initial applicant, and accommodating their respective requests would require modification of the Pole or replacement of the Pole, City will make reasonable and good faith efforts to allocate among such Attaching Entities the applicable costs associated with such modification or replacement.

Article 13. Equipment Attachments.

13.1 Licensee shall compensate City for the actual and documented cost, including engineering and administrative cost, for rearranging, transferring, and/or relocating City's Poles to accommodate Licensee's Equipment Attachments.

13.2 Licensee shall reimburse the owner or owners of other facilities attached to City Poles for any actual and documented cost incurred by them for rearranging or transferring such facilities to accommodate Licensee's Equipment Attachments.

Article 14. Guys and Anchor Attachments and Grounds. Licensee shall at its own cost in accordance with construction standards of City place guys and anchors to sustain any unbalanced loads caused by Licensee's Attachments and install all necessary grounds.

Article 15. Abandonment of Poles.

15.1 Notice of Abandonment or Removal of City Facilities. If City desires at any time to abandon, remove, or underground any City Facilities to which Licensee's Communications Facilities 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's Facilities. If, following the expiration of the notice period, Licensee has not yet removed and/or transferred all of its Communications Facilities, City shall have the right, but not the obligation, to remove or transfer Licensee's Communications Facilities at Licensee's expense. City shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

15.2 Underground Relocation. If City moves any portion of its pole system underground, Licensee shall remove its Communications Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from City or such extended period of time which the parties mutually agree. The City agrees to provide to Licensee as much advance written notice of any requirement for Licensee to remove its Communications Facilities from the City's Poles. If Licensee does not remove its Attachments within the time period specified in the City's written notice, City shall have the right to remove or transfer Licensee's Communications Facilities at Licensee's expense. Regardless of such removal or transfer by the City, Licensee's Attachments shall remain the property of Licensee.

Article 16. Inspection.

16.1 General Inspections. City reserves the right to make periodic inspections, as conditions may warrant, of the entire System of Licensee. Such inspections, or the failure to make such inspections, shall not operate to relieve Licensee of any responsibility or obligation or liability assumed under this Agreement.

16.2 Corrections. In the event any of Licensee's facilities are found to be in violation of the Applicable Standards and such violation poses a potential Emergency situation, Licensee shall use all reasonable efforts to correct such violation immediately. Should Licensee fail or be unable to correct such Emergency situation immediately, City may correct the Emergency and bill Licensee for the actual and documented costs incurred. If any of Licensee's facilities are found to be in violation of the Applicable Standards and such violations do not pose potential emergency conditions, City shall, give Licensee notice, whereupon Licensee shall have thirty (30) days from receipt of notice to correct any such violation, or within a longer, mutually agreed-to time frame if correction of the violation is not possible within thirty (30) days, such extended time to be not more than an additional sixty (60) days, unless otherwise agreed. Notwithstanding the foregoing grace periods, in the event City or another Attaching Entity prevents Licensee from correcting a Non-Emergency violation, the timeframe for correcting such violation shall be extended to

account for the time during which Licensee was unable to correct the violation due to action (or failure to act) by City or other User. Licensee will not be responsible for the costs associated with violations caused by others that are not affiliated or acting under the direction of Licensee. In all circumstances, all of the Attaching Entities on the Pole and City will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Licensee shall be responsible for the actual and documented cost of any necessary or appropriate corrective measures associated with violations caused by Licensee, including removal and replacement of the Pole and all transfers or other work incident thereto. If Licensee fails to Correct a non-Emergency violation within the specified timely period, including any agreed upon extensions, the provisions of Article 19 shall apply.

16.2.1 If any City Facilities are found to be in violation of the Applicable Standards and specifications and City has caused the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, but City shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the Pole, provided, however, that City shall not be responsible for Licensee's own costs.

16.2.2 If one or more other Attaching Entity's attachment caused the violation, then such Attaching Entities shall pay the Corrective costs incurred by all who have Attachments on the Pole, including the Licensee, and City will make reasonable effort to cause the Attaching Entity to make such payment.

16.2.3 If there exists a violation of Applicable Standards and it cannot be determined which Attaching Entity on the Pole caused such violation or there is a mixture of the Attaching Entities causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, and all Attaching Entities who may have caused such violation will share equally in such costs, provided that Licensee shall not be required to pay more than its proportionate share of such costs.

Article 17. Failure to Rearrange, Transfer or Correct.

17.1 Until such work is complete and City receives written notice of the completion of such work, Licensee shall be subject to a daily penalty as specified per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Licensee needs to rearrange, transfer, remove or correct violations.

17.2 Licensee shall provide written notification to City upon completion of any of the required work.

Article 18. Unauthorized Attachments.

If during the term of this Agreement, City discovers Unauthorized Attachments (including

Overlashing, Riser Attachments or Service Drops for which timely notification was not provided) placed on its Poles, the following fees may be assessed, and procedures will be followed:

18.1 City shall provide specific written notice of each violation within thirty (30) days of discovering such violation and Licensee shall be given thirty (30) days from receipt of notice to contest an allegation that an Attachment is unauthorized (or that Licensee failed to timely provide notice).

18.2 Licensee shall pay back rent for all Unauthorized Attachments (except Overlash Attachments and/or Riser Attachments where an existing licensed Pole Attachment exists) for a period of one (1) year, or since the date of the last inventory of Licensee's Attachments (whichever period is shortest), at the rental rates in effect during such periods.

18.3 In addition to the back rent, Licensee shall be subject to the Unauthorized Attachment Penalty as specified for each Unauthorized Attachment, including Service Drops, Riser Attachments where an existing licensed Pole Attachment exists and Overlash Attachments, where no Permit was obtained and/or required post-installation notification was not provided. Licensee shall submit a Permit Application in accordance with this Agreement within thirty (30) days of receipt of notice from City of any Unauthorized Attachment, or such longer time as mutually agreed to by the parties after an inventory.

18.3.1 No additional notification is required for Service Drops or Riser Attachments where an existing licensed Pole Attachment exists.

18.3.2 In the case of Overlash requiring a separate Permit application Licensee shall be required to submit an application within thirty (30) days of receipt of notice of Unauthorized Attachment.

Article 19 Reporting Requirements.

At the time that Licensee pays its annual Attachment Fee, Licensee shall also provide the following information to City, using the reporting form provide by the City:

19.1 The Poles on which Licensee has installed, during the relevant reporting period, Risers and Service drops, for which no Permit was required.

19.2 All Attachments that have become nonfunctional during the relevant reporting period. The report shall identify the Pole on which the nonfunctional Attachment is located, describe the nonfunctional equipment, and indicate the approximate date the Attachment became nonfunctional.

19.3 Any equipment Licensee has removed from Poles during the relevant reporting period. The report shall identify the Pole from which the equipment was removed,

describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit.

Article 20. Liability and Indemnification.

20.1 **Liability.** City reserves to itself the right to maintain and operate its Poles in the manner that will best enable it to fulfill its service requirements. Licensee agrees that its use of City's Poles is at Licensee's sole risk. Notwithstanding the foregoing, City shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. City agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of Licensee's Communication Facilities damaged by the gross negligence or willful misconduct of City; provided, however, that the aggregate liability of City to Licensee, in any fiscal year, for any fines, penalties, claims, damages, or costs, arising out of or relating in any way to Licensee's service or interference with the operation of Licensee's Communications Facilities shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to City for that year, as calculated based on the number of Attachments under Permit at the time of the occurrence.

20.2 **Indemnification.** Licensee, and any agent, contractor, or subcontractor of Licensee, shall to the full extent permitted by law defend, indemnify, and hold harmless City and its 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, payments (including payments made by City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of 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 Communications Facilities, except to the extent of City's gross negligence or willful misconduct solely giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

20.2.1 Cost of work performed by 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 Communications Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement

authorizes City to perform on Licensee's behalf;

20.2.2 Damage to 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;

20.2.3 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, any state, or any other governmental entity or administrative agency.

20.3 Procedure for Indemnification.

20.3.1 City shall give prompt written 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 City, City shall give the notice to Licensee no later than fifteen (15) calendar days after City receives written notice of the action, suit, or proceeding.

20.3.2 City's failure to give the required notice will not relieve Licensee from its obligation to indemnify City unless, and only to the extent, that Licensee is materially prejudiced by such failure.

20.3.3 Even after the termination of this Agreement, Licensee's indemnity obligations shall continue with respect to any claims or demand related to Licensee's Communications Facilities.

20.4 Environmental Hazards. Licensee represents and warrants that its use of City's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about City's Poles or transport to City's Poles any hazardous substances and that Licensee's Communications Facilities 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 Communications Facilities would not release any Hazardous Substances. Licensee and its agents,

contractors, and subcontractors shall defend, indemnify, and hold harmless 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, or 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's Poles/Conduit System attributable to Licensee's use of City's Poles.

20.5 **No Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS TO ANY PERSON ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

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

Article 21. Duties, Responsibilities, and Exculpation

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

21.2 **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.

21.3 **DISCLAIMER. CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO CITY'S POLES OR CONDUIT SYSTEM, ALL OF WHICH ARE HEREBY DISCLAIMED, AND CITY MAKES NO OTHER**

EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

21.4 **Duty of Competent Supervision and Performance.** The parties further understand and agree that, in the performance of work under this Agreement, Licensee and its agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other City Facilities. The parties understand and intend that energy generated, stored, or transported by City Facilities will not be interrupted during the continuance of this Agreement, except in emergencies endangering life or threatening grave personal injury or property. 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, agents, contractors, and subcontractors; employees, agents, contractors, and subcontractors of 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 subcontractor's competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of City's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

21.5 **Requests to De-energize.** If City de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse City, for all costs and expenses that City incurs in complying with Licensee's request. Before City de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request.

21.6 **Interruption of Service.** If Licensee causes an interruption of service by damaging or interfering with any equipment of City, Licensee shall, at its own expense, immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify City immediately.

21.7 **Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on City's Poles by Licensee's employees, agents, contractors, or subcontractors, and Licensee accepts the duty and sole responsibility to notify and inform Licensee's employees, agents, contractors, or

subcontractors of such dangers, and to keep them informed regarding same.

Article 22. Insurance

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

22.1.1 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 City. Licensee shall require contractors and others not protected under its insurance to obtain and maintain such insurance.

22.1.2 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.

22.1.3 Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than $1,000,000 each occurrence, $1,000,000 aggregate.

22.1.4 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.

22.2 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 who perform work on behalf of Licensee shall carry, in full force and effect, worker's compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverages of the type that Licensee is required to obtain under this Agreement. Licensee shall ensure that each of its contractors and/or subcontractors adhere to the same insurance requirements set forth in this Section 22.2 (the "Insurance Requirements"); provided, however, this provision may be satisfied by contractors'

insurance policies which meet the Insurance Requirements and insure the activities of their subcontractors in lieu of separate subcontractor insurance policies.

22.3 **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 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. City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. 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. Licensee shall defend, indemnify and hold harmless 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 City upon request.

22.4 **Limits.** The limits of liability set out in this Agreement 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 that would materially increase or decrease Licensee's exposure to risk.

22.5 **Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with City except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to City's employees or agents, or (4) 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.

22.6 **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.

Article 23. Assignment

23.1 **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 City, which consent shall not be unreasonably withheld. Notwithstanding anything contained in this section, this Agreement and each Permit under it may be sold or assigned by Licensee without any approval or consent of the City to Licensee's affiliates or to any entity which acquires all or substantially all of licensee's assets that are the subject of this Agreement by reason of a merger, acquisition or other business reorganization provided that such acquiring entity is bound by all of the terms and conditions of this Agreement.

23.2 **Sub-licensing.** City and Licensee agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Communication Facilities deployed by Licensee pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Communication Facilities shall be treated as Licensee's Communication Facilities for all purposes under this Agreement provided that (i) License remains responsible and liable for all performance obligations under the Agreement with respect to such Communication Facilities; (ii) City's sole point of contact regarding such Communication Facilities shall be Licensee; and (iii) Licensee shall have the right to remove and relocate the Communication Facilities.

Article 24. Failure to Enforce

Failure of 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.

Article 25. Jurisdiction and Venue

The jurisdiction and venue for any litigation arising out of this Agreement shall be in Boone County Circuit Court, Missouri or the United States Western District Court of Missouri.

25.1 **Unresolved Dispute.** If after sixty (60) days from the first executive-level, in-person meeting, the parties have not resolved the dispute to their mutual satisfaction; either party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in herein.

25.2 **Confidential Settlement**. Unless the parties otherwise agree in writing, communication between the parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.

Article 26. Default

26.1 An Event of Default (each of the following being an "Event of Default") shall be deemed to have occurred hereunder by Licensee if:

26.1.1 Licensee breaches any material term or condition of this Agreement or Permit granted hereunder; or

26.1.2 Licensee makes a material misrepresentation of fact in this Agreement or Permit granted hereunder; or

26.1.3 Licensee fails to complete work by the date and in accordance with the terms specified in this Agreement or Permit granted hereunder, unless an extension is obtained or unless the failure to complete the work is beyond the Licensee's control or the result of a *Force Majeure Event*; or

26.1.4 Licensee fails to timely correct violations of Applicable Standards.

26.2 Upon the occurrence of any one or more of the Events of Default, City, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity and, in addition, at its option, may terminate this Agreement upon providing notice to Licensee, provided, however, City may take such action or actions only after first giving Licensee written notice of the Event of Default and a reasonable time in which Licensee may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than thirty (30) calendar days. If the nature of the breach reasonably required more than thirty (30) days to cure, Licensee will not be in default hereunder if it promptly commences such cure and is diligently pursuing the same.

26.3 Without limiting the rights granted to City, the parties hereto agree to conduct themselves reasonably and in good faith and to use a good faith effort to meet and to resolve outstanding issues.

26.4 In the event that City fails to perform, observe or meet any material covenant or condition made in this Agreement or shall breach any material term of condition of this Agreement, then City shall be in default of this Agreement. Upon being provided notice from Licensee of said default, City shall have thirty (30) days to cure same and if such default is not cured, then Licensee shall have any and all remedies at law or in equity available to it, including termination of this Agreement without any liability therefor. Licensee may terminate specific Permits at any time and remove the attachments subject to such Permits. Following the effective date of the termination of a Permit and removal of the Attachments subject to such Permits, Licensee shall not be

subject to any additional annual Attachment Fees or other fees related to the terminated Permit and Attachment.

26.5

26.5.1 The above notwithstanding, Licensee's sole remedy if City is unable to perform a survey or complete Make-Ready Work within the prescribed timeframes is the authority to perform such survey or Make-Ready itself at Licensee's expense.

26.5.2 Under no circumstances will a failure of City to meet the survey or Make-Ready time periods subject City to damages.

26.6 Upon Termination for Default, Licensee shall remove its Attachments from all City Poles within six (6) months of receiving notice. If not so removed within that time period, City shall have the right to remove Licensee's Attachments, and Licensee agrees to pay the actual and documented cost thereof within forty-five (45) days after it has received an invoice from City.

Article 27. Receivership, Foreclosure or Act of Bankruptcy

27.1 The Pole use granted hereunder to Licensee shall, at the option of City, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all Defaults under this Agreement.

27.2 In the case of foreclosure or other judicial sale of the plant, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, City may serve notice of termination upon Licensee and the successful bidder at such sale, in which event this Agreement herein granted and all rights and privileges of this Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

27.2.1 City shall have approved the transfer of this Agreement to the successful bidder, as and in the manner in this Agreement provided; and

27.2.2 Such successful bidder shall have covenanted and agreed with City to assume and be bound by all the terms and conditions to this Agreement.

Article 28. Removal of Attachments

Licensee may at any time remove its Attachments from any facility of City, but shall promptly give City written notice of such removals. No refund of any rental fee will be

due on account of such removal.

Article 29. Amending Agreement

This Agreement shall not be amended, changed, or altered except in writing and with approval by authorized representatives of both parties.

Article 30. Notices

30.1 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 with return receipt requested, with postage prepaid, and except where specifically provided for elsewhere, properly addressed as follows:

If to City, at: Director of Water and Light
701 E. Broadway
Columbia, Missouri 65201

and

Law Dept.
701 E. Broadway
Columbia, Missouri 65201

If to Licensee, at:

ExteNet Systems, Inc.
3030 Warrenville Rd., Suite 340
Lisle, Illinois 60532
Attn: Executive V-P and CFO

With a copy sent to the same address, Attn: Legal

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

30.2 Licensee shall maintain a staffed 24-hour emergency telephone number, and provide same to City, where City can contact Licensee to report damage to Licensee's Communication Facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to City's concerns and requests.

Article 31. Entire Agreement

This Agreement constitutes the entire agreement between the parties concerning attachments of Licensee's Communications Facilities on City's Poles within the geographical service area covered by this Agreement. Unless otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between City and Licensee are superseded and of no further effect.

Article 32. 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. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

Article 33. 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.

Article 34. Incorporation of Recitals

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

Article 35. *Force Majeure*

If either 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 the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have been duly authorized to execute this contract as of the day and year first above written.

CITY:

CITY OF COLUMBIA, MISSOURI BY:

_____
Mike Matthes, City Manager

ATTEST:

_____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

_____
Nancy Thompson, City Counselor

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this_____day of_____, 2018, before me appeared Mike Matthes, 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:

EXTENET SYSTEMS, INC., A DELAWARE CORPORATION

By: _____

Name: Oliver Valente

Title: EVP-COO

ATTEST:

By: _____

Name: ADELA REYNOSO

Title: LEGAL COORINATOR

STATE OF Illinois)
) ss
COUNTY OF ~~Cook~~ DuPage)

On this 22nd day of January, 2018, before me, a Notary Public in and for said state, personally appeared, Oliver Valente, to me personally known, who being by me duly sworn did say that he/she is EVP-COO of ExteNet Systems, Inc, a Delaware corporation, and that this instrument was signed on behalf of said limited liability 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 limited liability 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.

_____
Notary Public

My commission expires: 9/27/20.

OFFICIAL SEAL
MARY C ARENA
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/27/20