

Introduced by McDavid
First Reading 7-7-14 Second Reading 7-21-14
Ordinance No. 022138 Council Bill No. B 200-14

AN ORDINANCE

authorizing a pole attachment agreement for telecommunications equipment with Socket Telecom, LLC; and fixing the time when this ordinance shall become effective.


BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a pole attachment agreement for telecommunications equipment with Socket Telecom, LLC. The form and content of the agreement shall be substantially in the same form as set forth in "Attachment A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

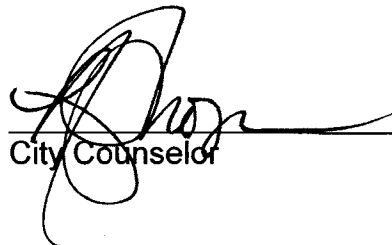
PASSED this 21st day of July, 2014.

ATTEST:


City Clerk


Mayor and Presiding Officer

APPROVED AS TO FORM:


City Counselor

POLE ATTACHMENT AGREEMENT

THIS AGREEMENT, made on this 24th day of June, 2014, by and between the City of Columbia, Missouri, a municipal corporation (hereinafter referred to as the "City"), and Socket Telecom, LLC, a limited liability corporation organized under the laws of the State of Missouri, and with authority to transact business within the State of Missouri (hereinafter referred to as the "Company"). City and Company are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Company has been formed and is regulated by the Missouri Public Service Commission to provide dedicated, point to point, non-switched telecommunication services in the state of Missouri; and

WHEREAS, City is willing to permit, to the extent it may lawfully do so, the attachment of Company's equipment to the communications space on poles owned by the City for the purposes proposed by Company, wherein the judgment of City such attachments will not interfere with service requirements of City's Electric System, including considerations of economy and safety.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties covenant and agree as follows:

1. Application required.
 - a. Whenever Company shall desire to place Company's equipment upon any of said poles, Company shall make written application to City in the form of Exhibit "A" attached hereto and made a part hereof.
 - b. Application fee. Each application shall be accompanied by Company's check, payable to City in an amount computed at the rate of five dollars (\$5.00) for each pole covered by such application, with a minimum cost of Twenty-five Dollars (\$25.00). Said amount shall be retained by the City, regardless of approval or disapproval of such application, as reimbursement for City's field engineering and other expenses relating to its consideration of the application.
 - c. Pursuant to Section 67.5104 RSMo, City will notify Company if the application is approved or denied.
2. Requests for electrical service.
 - a. Such applications, if possible, shall also specify location of power sources when electric power is required from City's electric system. In the event such

locations may not be specified at the time the applications are filed, they shall be submitted to the City as soon as possible thereafter.

- b. Fees and Expenses. Company agrees to reimburse City for the labor and materials cost of making any such power source attachments permitted by City's electric system and to pay for the electricity used at standard rates therefor, as same may be in effect from time to time.
3. Company shall, at its own expense, install and maintain said attachments in safe condition and in good repair, and in a manner suitable to City and so as not to conflict with the use of said poles by the City or by other companies or agencies using said poles. Company shall, at its own expense, upon notice from City, relocate, replace or renew Company's equipment placed on said poles or within said conduit and transfer said equipment to substituted poles or within other conduit as specified by the City, or perform any other work in connection with said equipment that may be required by City; provided, however, that in case of emergency, City may relocate, replace or renew said equipment placed on said poles or within said conduit by Company, transfer said equipment to substituted poles or conduit, or perform any other work in connection with said equipment that may be required by service needs of City. Company shall, on demand, reimburse City for such expenses incurred in any such emergency. Where other companies or agencies are using said poles or conduit, Company shall reimburse said companies or agencies for the labor required to transfer or accommodate the attachments of the companies or agencies to accord with any relocation, replacement or renewal of Company's equipment required by this Section 2.
4. Company's equipment shall be erected and maintained in accordance with the requirements and specifications of the latest edition of the National Electric Safety Code. All installations shall comply with the requirements of local, state, and federal law.
5. If, on account of requirements of Company, it becomes necessary in the judgment of City to substitute for any pole a pole of greater height or strength, City shall provide and install an adequate pole and Company shall reimburse City for the entire cost less the salvage value of the old pole, if any, of the new pole (including handling costs) and the labor required to replace the old pole and to transfer the attachments of City to the new pole, including ten percent (10%) of the cost of all labor and material for supervision. If, on account of additional pole space requirements of City as well as Company, it becomes necessary in the judgment of the City to substitute for any pole a pole of greater height or strength, the City shall provide and install an adequate pole and Company shall reimburse the City for one-half the entire cost less the salvage value of the old pole, if any, or the new pole (including handling costs) and the labor required to replace the old pole, and shall bear the cost of transferring its own attachments to the new pole.

Whenever the City shall require the space occupied by Company, or whenever a joint user shall require the space occupied by Company, on any pole jointly used by two or more companies under a joint use agreement, Company shall reimburse City for all costs incurred by City, including handling costs, and including ten percent (10%) of the cost of all labor and material for supervision for replacement of such pole less the salvage value of the old pole, if any, and/or for transferring City's attachments and facilities to a new and taller pole. Company shall have the option of removing its attachments within thirty (30) days, upon receipt of written notice from the City requiring the space occupied by Company on any poles jointly used by the City and others.

In the event of specific and unusual situations of pole replacements being caused by requirements of any of the Parties hereto or other Parties, other arrangements for an equitable division of costs may be agreed to by the Parties hereto.

Whenever rearrangement of the City's facilities, or replacement of any poles is required to accommodate or continue Company's attachments as specified herein, City shall notify Company of such conditions and of the estimated cost, by completing the appropriate section on the application form (Exhibit "A") and returning same to Company for acceptance. Company's acceptance shall be accompanied with a deposit equal to the amount of the estimate, and must be received by City prior to doing any actual work. Upon completion of the work, City will render a statement to Company, as herein provided, with full credit being given for the amount deposited.

6. City reserves the right to maintain its poles and its conduit and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements. City shall not be liable to Company for any interruption to service of Company for interference with the operation of Company's equipment arising in any manner out of the use of City's poles or conduit hereunder.

Company agrees that it will not erect any new poles in the City of Columbia, Missouri, for attachment of its equipment without the written approval of the City.

7. If Company is at any time prevented from placing or maintaining its equipment on the poles of City, either by governmental authority or by third parties over whose land said equipment may be located, no liability therefor shall be attached to City, and Company shall indemnify City against any damages that may be recovered by third parties against City by reason of Company having made attachments to the poles of City without having secured any required authority from governmental bodies or private land owners.

The Parties hereto shall cooperate insofar as may be practicable in obtaining right-of-way privileges or easements for any of the parties attaching its equipment to poles involved.

8. City reserves the right to inspect each new installation of Company on or in the vicinity of its poles and to make periodic inspections thereof, as conditions may warrant. Such inspection, or lack of inspection, shall not operate to relieve Company of any responsibility, obligation or liability assumed under this Agreement.
9. Company shall pay to City for attachment made to poles owned by it, a rental at the rate of Fifteen Dollars and Fifty Cents (\$15.50) per pole per year attached by Company. The total amount of such rental shall be payable annually in advance with the first such payment to be made on the first day such system is initially placed in service. Thereafter, rental shall be payable in advance on the anniversary of such first day in an amount equal to the number of poles attached to by Company on such day times Fifteen Dollars and Fifty Cents (\$15.50).

The annual rental payable by Company under this Agreement may be adjusted at any time after two (2) years from the date of this Agreement upon the written request of any Party hereto or at any time if necessary to comply with the requirements of law. Unless necessary to comply with the requirements of law, in case of adjustment any new rental agreed upon shall continue in effect for three (3) years thereafter, at which time such rental shall again be subject to review and readjustment upon the written request of any party thereto.

10. Company shall exercise special precautions to avoid damage to facilities of City's electric system and of others supported on said poles; and Company hereby assumes all responsibility for any and all such damage caused by Company. Company shall make an immediate report to City of the occurrence of any such damage and hereby agrees to reimburse City for the expense incurred in making any necessary repairs.
11. Indemnification. Company shall indemnify and save harmless City from and against any and all claims and demands for damages to property and injury or death to persons, including payments made under and Workmen's Compensation law or under any plan for employee's disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, use or removal of Company's equipment, or by the proximity of Company's equipment to the facilities of City or by an act or omission of Company on or in the vicinity of City's electric system poles, provided that such damage, injury or death shall not have been the sole and proximate result of any act or omission of City's electric system.
12. Company may at any time remove its equipment from any pole or poles of City's electric system, but shall immediately give City written notice of such removal in the form of Exhibit "B" attached hereto and made a part hereof. No refund of any rental paid will be due on account of any such removal.

13. Upon notice from City to Company that the use of any pole or poles is forbidden by law or by municipal authorities or by property owners, the permit covering the use of such pole or poles shall immediately terminate and Company's equipment shall be removed at once from the affected pole or poles.
14. Company shall not assign, transfer, sublease or resell the rights of attachment hereby granted to it, or the right to use the equipment so attached to the poles of the City, without prior approval in writing of City.
15. If Company shall fail to pay any rental or other charges agreed to be paid under this Agreement, or if Company shall fail to comply with any of the other provisions of this Agreement, or default in any of its other obligations in this Agreement, and shall fail within thirty (30) days after written notice from City to correct such failure, default or noncompliance, City may, at its option, forthwith terminate this Agreement or the permit covering the poles as to which such default or noncompliance shall have occurred. In the event that City terminates this Agreement in whole or in part, Company shall, within thirty (30) days thereafter commence removal of all attachments from City's poles involved and in the event that Company does not complete removal of its attachments within a reasonable time as determined by the City, City may do so, the removal costs to be borne, in any event, by Company.
16. Bills for rental and expenses and other charges payable to City under this Agreement shall be payable within thirty (30) days after presentation.
17. Failure of City 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 term or condition, but the same shall be and remain at all times thereafter in full force and effect.
18. Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by City, by contract or otherwise, to others not parties to this Agreement, to use any poles or place any attachments on any poles covered by this Agreement; and City shall have the right to continue and extend such rights or privileges.
19. No use, however extended, of the poles or conduit of City under this Agreement shall create or vest in Company any ownership or property rights in said poles or conduit, but Company's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel City to maintain any of said poles or conduit for a period longer than demanded by its own service requirements.
20. This Agreement shall be in effect from the date of its execution and, if not terminated in accordance with the provisions of Sections 13 and 15, shall continue in effect for a term of five (5) years.

21. Subject to the provisions of Section 13 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each Party hereto.
22. The Parties agree that the pole attachment and conduit rental fees set forth herein are nondiscriminatory, just and reasonable; and that the fees set forth herein are in compliance with the requirements set forth in Section 67.5104 RSMo.
23. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
24. Governing law and venue. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
25. General laws. Company shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
26. No waiver of immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.
27. Insurance. During the term of this Agreement, Company shall obtain and maintain and shall require all of its permitted contractors or subcontractors to obtain and maintain not less than the following insurance:

COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial general liability insurance including coverage for operations, independent contractors, products-completed operations, property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, broad form property damage on an "occurrence" basis insuring Company and any other interests, including, but not limited to, any associated or subsidiary companies involved in the operation. The liability insurance shall include contractual liability insurance applicable to Company's obligations under this Agreement.

The liability insurance shall name the City as an additional insured.

The limits of liability shall be no less than \$2,000,000 for injury or death to any one person and no less than \$10,000,000 for injury or death to two or more persons as a result of any one occurrence and no less than \$2,000,000 for property damage as a result of one occurrence, or in lieu thereof, a combined single limit for bodily injury and property damage of no less than \$10,000,000. The liability insurance shall include contractual liability insurance applicable to Company's obligations hereunder.

COMPENSATION INSURANCE

Company shall take out and maintain during the life of this Agreement, Employee's Liability and Workers' Compensation Insurance for all of their employees employed at the site of the work, and Company shall require all subcontractors similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Company. In case any class of employees engaged in hazardous work under this contract at the site of the work is not protected under Missouri's Workers' Compensation Statute, Company shall provide and shall cause each subcontractor to provide Employee's Liability Insurance for the protection of their employees not otherwise protected.

AUTOMOBILE PUBLIC LIABILITY AND PROPERTY

Company shall maintain during the life of this Agreement, automobile public liability insurance in the amount of not less than \$2,000,000.00 combined single limit for any one occurrence and not less than \$150,000.00 per individual, covering bodily injury, including accidental death, and property damage, to protect themselves from any and all claims arising from the use of the Company's own automobiles, teams and trucks; hired automobiles both on and off the site of the work.

PROOF OF INSURANCE

Company shall furnish the City with certificates of insurance which name the City as additional insured in the amounts required by the permit and which require a thirty (30) day mandatory cancellation notice to the City.

SELF-INSURANCE

During the term of the Agreement and any renewal, the Company may self-insure any or all of the insurance required herein after furnishing documentation satisfactory to the City that the Company has \$25,000,000.00 in net assets and does not violate or default the terms of the Right of Use Permit and this Agreement. Any insurance coverage required over its self-insured retention amount shall be maintained through an excess liability carrier satisfactory to the City which must carry an A-6 or better rating as listed in the A.M. Best or equivalent guide.

28. Notices. All notices, requests, demands and other communications required under this Agreement shall be in writing and delivered to the Parties to the address set forth below or as otherwise provided by law. The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

If to City of Columbia:

City of Columbia
ATTN: Deputy City Manager
City Manager's Office
P.O. Box 6015
Columbia, MO 65205-6015

If to Socket Telecom, LLC:

Socket Telecom, LLC
Attn: Matt Kohly
2703 Clark Lane
Columbia Missouri 65201

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be duly executed on the day and year first above written.

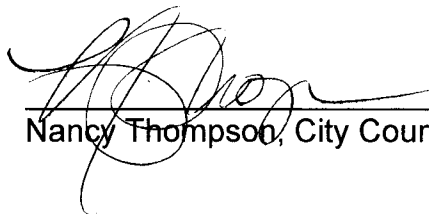
CITY OF COLUMBIA, MISSOURI

By: 
Mike Matthes, City Manager

ATTEST:

 7/23/14
Sheela Amin, City Clerk

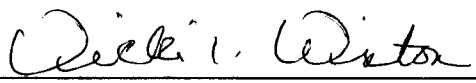
APPROVED AS TO FORM:


Nancy Thompson, City Counselor

SOCKET TELECOM, LLC

By: 
President

ATTEST:


Secretary

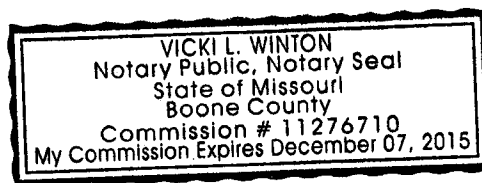


EXHIBIT A

Permit No.

APPLICATION AND CONDITIONS TO MAKE ATTACHMENTS OF
FIBER OPTIC CABLE AND NECESSARY APPURENANT FACILITIES

APPLICATION

Columbia Water and Light Department of Columbia, Missouri

Gentlemen:

In accordance with the terms and conditions of Separate Agreements between Socket and the City of Columbia, Missouri, Water and Light Department, , application is hereby made by the Socket Company for permission to make attachment of Socket facilities to the communications space, on _____ poles, all in Columbia, Missouri, at locations shown on the attached sketch.

(Company)

By _____

Date: _____

CONDITIONS AND ACCEPTANCE FOR FIBER ATTACHMENTS

It has been determined that _____ is the owner
(Name of Company)
of _____ poles covered by the above application as indicated on the attached sketch. In order to provide space for Socket attachments and on poles covered by the above application it will be necessary for
_____ to make changes to its distribution system as noted on the
(Name of Company)
attached sketch. These changes are estimated to cost \$ _____. If this meets with your approval please indicate your acceptance in the space provided and return this form to us along with a deposit in the amount of the estimate for making the changes. After receipt of your acceptance, we will proceed to make such changes, billing you for the cost thereof upon completion of the work, with full credit given for the amount deposited.

ACCEPTED:

(Company)

By _____

Date: _____

(Water & Light Dept.)

By _____

Date: _____

(Submit three copies, with sketches, of the above to City of Columbia, Water and Light Department, Attn: Tony Cunningham, 1514 Bus Loop 70 E, Columbia, MO 65201)

Removal Notice # _____

EXHIBIT B

NOTICE OF REMOVAL OF POLE ATTACHMENTS
FROM POLES OWNED BY THE COLUMBIA WATER AND LIGHT DEPARTMENT

Date: _____

The Columbia Water and Light Department

Gentlemen:

In accordance with the terms and conditions of the Agreement between Socket Telecom LLC and the City of Columbia, Missouri, you are hereby notified of our desire to remove our attachments from the communications space and power sources on your poles in Columbia, Missouri, as shown on the attached sketch identified as _____.

Socket Telecom LLC

By: _____

Date: _____

Inventory of Poles and Power Sources Recognized as Used by Socket Telecom LLC

	Previous Balance	Removed by this Notice	New Balance
Poles:	_____	_____	_____
Power Sources:	_____	_____	_____

RECEIPT OF NOTICE ACKNOWLEDGED
COLUMBIA WATER AND LIGHT
DEPARTMENT

By: _____

Date: _____

(This notice of removal must be made in quadruplicate)