

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** (the “**License**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2010 (the “**Effective date**”) by and between the City of Lawrence, Kansas, a municipal corporation (the “**City**”), and Westar Energy, Inc., (the “**Licensee**”).

### RECITALS

1. The City is the holder of the Right-of-Way along 27<sup>th</sup> and Oregon Streets located in the City of Lawrence, Douglas County, Kansas.
2. Licensee is the owner of certain real estate (the “**Property**”), located at 746 E 27<sup>th</sup> Lawrence, Kansas 66046, adjacent to and along the right-of-way, in the City of Lawrence, Kansas and legally described as: Lots 1, 2 and 8 **in Plat** of Lawrence Industrial Park & Re-Plat of Lots 14 & 15, Learnard Suburban Acres Division.
3. Licensee wishes to install an 85 foot tower and telecommunications equipment in a portion of the Right-of-Way at 27<sup>th</sup> and Oregon Street, in Lawrence, Kansas to enhance the use and enjoyment of the Property. Accordingly, the Licensee has requested permission from the City to install and maintain the tower and telecommunications equipment in the right-of-way as described above and the City has agreed to provide a Licensee Agreement for such purpose, all in accordance with the terms and conditions of this License Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual promises and obligations contained herein, the parties hereby agree as follows:

1. **Grant of License.** Provided Licensee receives all necessary approvals, to install its tower and telecommunications equipment in the manner proposed, the City hereby grants to the Licensee the non-exclusive license, right, privilege, and permission (the “**License**”) to use in common with others an area in the right-of-way described in Exhibit “A”, for the purpose of installing and maintaining, at Licensee’s sole cost and expense, an 85 foot tower and telecommunications equipment. Exhibit A is incorporated by reference herein. A description of the telecommunications equipment authorized hereunder is set forth in Exhibit “B” attached hereto and incorporated by reference herein.
2. **No Representation by the City.** The Licensee represents that the City has made no representations with respect to the right-of-way or its respective condition, and that the Licensee is not relying on any representations of the City

or the City's agents with respect to the use or condition of the right-of-way. This License Agreement grants the Licensee the privilege and permission to use that portion of the right-of-way described in Paragraph 1 of this License Agreement in its present condition "as is" without any warranties subject to the conditions set forth herein.

3. **Covenants of the Licensee.** The Licensee hereby covenants and warrants to the City, as follows:
- a. To install and maintain its tower and telecommunications equipment at the Licensee's sole cost and expense for the duration of the License Agreement.
  - b. To employ persons who are qualified to perform the installation and maintenance work and who are trained in appropriate safety procedures for the installations and maintenance work in the City's right-of-way.
  - c. To cause said persons installing and maintaining Licensee's tower and telecommunications equipment to use "Best Practices" in all work related to the installation and maintenance of the equipment.
  - d. To cause said persons installing and maintaining Licensee's equipment to use bucket trucks to access the tower and to use at all times industry standard safety gear, including fall restraints and other safety equipment for such installation and maintenance work.
  - e. To procure and maintain at all times this License Agreement is in effect, general liability insurance for Licensee's tower and telecommunications equipment and installation and maintenance operations, with the City of Lawrence named as an additional insured party, in the amount of \$1,000,000.00 for each occurrence, \$1,000,000.00 of coverage for personal injury and \$2,000,000.00 general aggregate coverage and \$300,000.00 coverage for damage to City property.
  - f. To allow only authorized representatives of Licensee to access the tower for installation or maintenance work. For the purposes of this provision, "authorized representatives of Licensee" shall mean persons covered by Licensee's general liability insurance policy in effect during the term of this License.
  - g. To notify the City Engineer in person or by telephone at least 24 hours in advance of any installation or maintenance work on the tower.
  - h. To obtain a temporary use of right-of-way permit from the City Clerk's office prior to any installation or maintenance work in the right-of-way.

- i. To refrain from causing any waste, damage, or injury to the right-of-way and any part of the tower and telecommunications equipment.
- j. To refrain from causing any waste, damage, or injury to the luminaries' fixtures.
- k. All earth, materials, sidewalks, paving, crossings, utilities, light poles public improvements or improvements of any kind injured, damaged or removed by the Licensee in its activities under this License Agreement shall be fully repaired or replaced within a reasonable time by the Licensee at its sole expense and to the reasonable satisfaction of the City.
- l. To ensure traffic, the right-of-way and sidewalks are not unreasonably impeded by Licensee's installation or maintenance work; Licensee shall provide a traffic control and right-of-way plan to the City Engineer for approval prior to completing any work in the right-of-way. All traffic control shall be in compliance with the Manual of Uniform Traffic Control Devices (MUTCD). Licensee shall be responsible for all costs for traffic control. Licensee will notify the Lawrence Police Department and the Lawrence-Douglas County Fire and Medical Department of any lane closures within a reasonable time in advance of the lane closure.
- m. To remove, adjust, or relocate Licensee's tower and telecommunications equipment immediately when the City deems it an emergency, or when the City determines the equipment is interfering with or reducing the efficiency of City equipment or operations. Licensee agrees to remove or relocate its equipment when the City determines Licensee's equipment needs to be removed or relocated for the non-emergency installation, repair, maintenance, or expansion of any streets, light poles or utilities located, or to be located in, on, under or through the right-of-way. The Licensee shall bear all costs associated with removing or relocating its equipment and Licensee hereby agrees the City shall have no duty whatsoever to replace the Licensee's equipment. The Licensee may replace, at its sole cost and expense, its communications equipment to its former location as approved in Exhibit A, except as otherwise provided by paragraph 6 of this Agreement.
- n. To comply with all applicable state, federal and local laws, ordinances and regulations relating to its use and occupancy of the right of way and its use of tower and telecommunications equipment.
- o. The Licensee shall not have any right to enlarge the present scope of this License Agreement, without the prior written consent of the City.
- p. It shall be the sole responsibility of the Licensee to take adequate measures to protect and defend its equipment in the right-of-way from

harm and damage. If the Licensee fails to accurately or timely locate or relocate equipment when requested, the Licensee has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way.

- q. Licensee warrants that its use of the Tower and telecommunications equipment will not interfere with any existing radio frequency users as long as the existing radio frequency users operate and continue to operate within the frequencies existing as of the date of this Agreement and in accordance with all applicable laws and regulations. If at any time during the term of this Agreement, Licensee's use of the Tower and telecommunications equipment with any existing radio frequency user's operations, and after the City has notified Licensee of such interference, Licensee shall take all necessary actions to discontinue the interference.
  - r. This agreement is not a franchise agreement pursuant to the provisions of K.S.A. 12-2001 *et seq.*
  - s. Licensee will not use the tower and telecommunications equipment for the purpose of being a wireless telecommunications service provider or for being a "provider" as defined in K.S.A. 17-1902.
4. **Indemnification of the City.** During the time this License Agreement is in effect, the Licensees agree to indemnify, defend, and save the City, and the City's officers, commissioners, agents, employees, grantees, and assigns, harmless from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise from, or are in connection with the Licensee's use or occupancy of the right-of-way, or any portion thereof or the maintenance of same on the right-of-way, on account of any injury to persons or damage to property, excluding therefrom such injury or damage caused by the negligence of the City.
5. **Accommodation.** The permission granted to the Licensees under this License Agreement is given to the Licensees as an accommodation, and shall be without charge to the Licensees. The Licensees hereby acknowledge the City's rights to the right-of-way, and agree to never assail, resist, or deny such rights by virtue of the Licensee's occupancy or use under this License Agreement.
6. **Term and Termination.** The License Agreement shall be for a term of three years commencing on August 31, 2010 and terminating on December 31, 2013. The City reserves the right to terminate the permission granted by this License Agreement immediately without such notice at any time, if (i) the Licensee fails to comply with or abide by each and all of the provisions of this License Agreement, or (ii) if the continued use of the License presents a health or safety hazard.

7. **Binding Effect.** This License Agreement shall, at all times, be binding upon the City and the Licensees and all owners of the Property and all parties claiming by, through, or under them, shall run with the land, and shall be for the benefit of and limitations upon all future owners of the Property; provided, however, that the rights, duties, and obligations, of each owner as set forth herein shall cease with the termination of his or its ownership of the Property, or portion thereof, except for the duties and obligations arising during the period of his or its ownership.
8. **Authorization.** Each of the persons executing this Agreement on behalf of the respective Parties represents and warrants that they have the authority to bind the Party on behalf of whom they sign this Agreement, and that all acts requisite to the authorization to enter into this Agreement have been taken and completed.
9. **Notice.** Notice under this License Agreement, including denials or revocation or alteration of site specific approvals, notice to remove equipment and any other notice shall be provided in writing to the parties hereto as follows:
- |   |   |
|---|---|
| <u>Notice to the City:</u><br>City Manager's Office<br>4 <sup>th</sup> Floor City Hall<br>6 <sup>th</sup> East 6 <sup>th</sup> Street<br>P.O. Box 768<br>Lawrence, Kansas 66044 | <u>Notice to the Licensee:</u><br>Max F. Garcia<br>Westar Energy<br>Electric Distribution Supervisor - Design<br>746 E. 27 <sup>th</sup> Street<br>Lawrence, Kansas 66046 |
|---|---|
10. **Severability.** If any term of this License Agreement is found to be void or invalid, such severability shall not affect the remaining terms of this License Agreement, which shall continue in full force and effect.
11. **Governing Law.** This License Agreement shall be construed and enforced in accordance with, and governed by, the law of the State of Kansas.
12. **Recitals.** The above stated recitals are by reference incorporated herein and shall be as effective as if repeated verbatim.

**IN WITNESS WHEREOF,** the undersigned have caused this License Agreement to be executed as of the Effective Date.

**LICENSEE:**

\_\_\_\_\_  
Westar Energy, Inc.

By: Max F. Garcia

Title: Electric Distribution Supervisor - Design

STATE OF KANSAS       )  
COUNTY OF DOUGLAS   )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, who is personally known to me to be the same person who executed the within and foregoing instrument of writing and duly acknowledged the execution of the same.

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

**Seal:**

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

**CITY OF LAWRENCE, KANSAS a  
Municipal Corporation**

\_\_\_\_\_  
David L. Corliss, City Manager

STATE OF KANSAS       )  
COUNTY OF DOUGLAS   )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came David L. Corliss, City Manager, who is personally known to me to be the same person who executed the within and foregoing instrument of writing and duly acknowledged the execution of the same.

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

**Seal:**

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

# WESTAR ENERGY - COMMUNICATIONS DEVICE

27TH STREET AND OREGON STREET, LAWRENCE, KS 66046

SITE PLAN

**BG**  
CONSULTANTS

1  
Project No. 10-1000  
Drawn: July 15, 2010  
Sheet No.

**OWNER - APPLICANT**  
WESTAR ENERGY, INC.  
1405 WYANDOTA DRIVE  
LAWRENCE, KS 66044

**ENGINEER**  
J. L. PYLE (KS #10093)  
1405 WYANDOTA DRIVE  
LAWRENCE, KS 66044

## LEGAL DESCRIPTION

THE FOLLOWING LEGAL DESCRIPTION IS FOR THE APPROXIMATE LOCATION OF THE POLE. A WOOD POLE LOCATED IN THE RIGHT-OF-WAY OF OREGON STREET, 14 FEET SOUTH AND 8 FEET WEST OF THE NORTHWEST CORNER OF LOT 7 LAWRENCE INDUSTRIAL PARK SUBDIVISION.

## BENCHMARK

BM42 - "C" CUT AT MIDDLE OF CURB INLET ON THE NORTH CURB LINE OF 27TH STREET, ELEV. = 669.71

## FLOODPLAIN DATA

THE SUBJECT PROPERTY IS NOT LOCATED WITHIN THE 100 YEAR FLOODPLAIN. PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY FEDERAL INSURANCE ADMINISTRATION PUBLICATIONS, FLOOD INSURANCE RATE MAP, MAP NUMBER 200-00-0070C, EFFECTIVE DATE NOVEMBER 7, 2001.

## GENERAL NOTES

1. TOPOGRAPHIC INFORMATION SHOWN HEREON WAS DERIVED FROM ACTUAL FIELD TOPOGRAPHIC SURVEY.
2. THIS DOCUMENT IS FOR PLAN APPROVAL NOT FOR CONSTRUCTION.
3. THE PROPOSED POLE SHALL BE REMOVED WITHIN 3 YEARS OF THE DATE OF INSTALLATION.
4. THIS SITE PLAN IS SUBJECT TO APPROVAL OF A LEASE AGREEMENT WITH THE CITY OF LAWRENCE.
5. THE PROPOSED POLE SHALL BE REMOVED WITHIN 3 YEARS OF THE DATE OF INSTALLATION.
6. A STANDARD 35' STREET LIGHT POLE.

## BUILDING INFORMATION

NOT APPLICABLE

## PARKING DATA

NOT APPLICABLE

## INTERIOR PARKING LOT LANDSCAPING

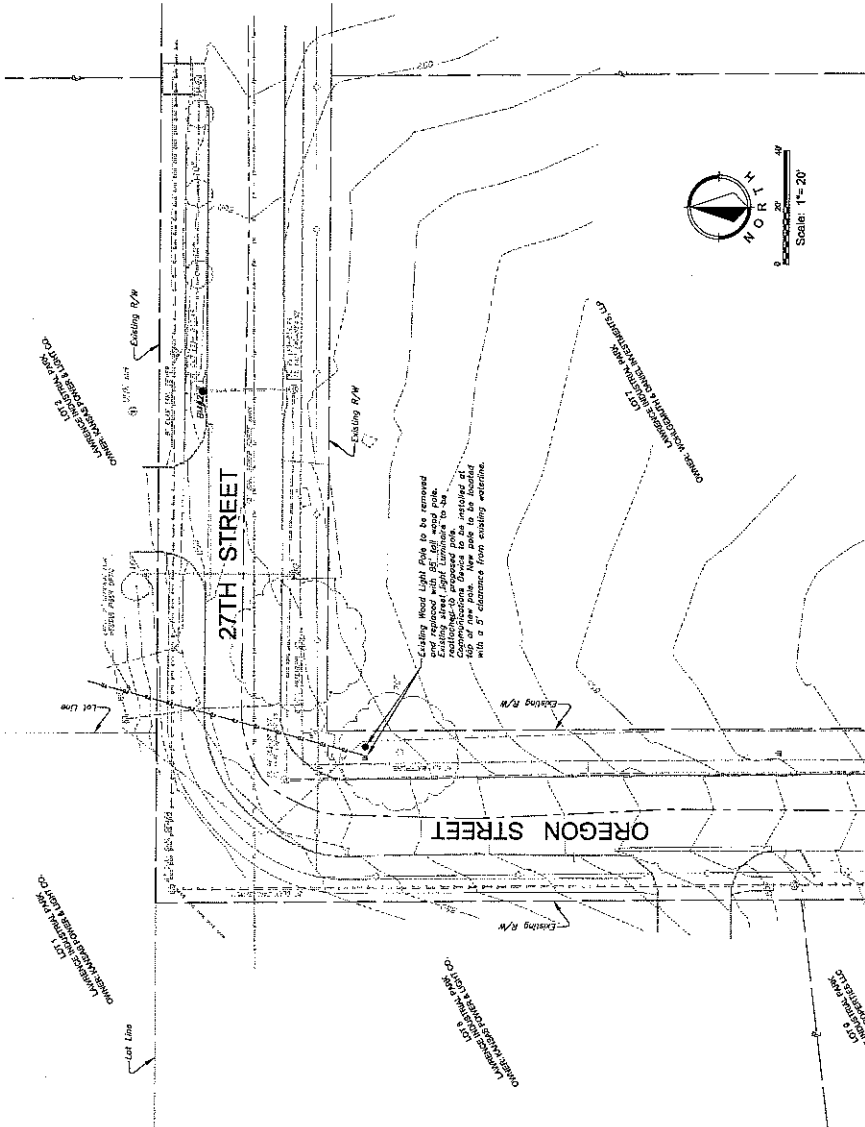
NOT APPLICABLE

## SITE CHARACTERISTICS TABLE:

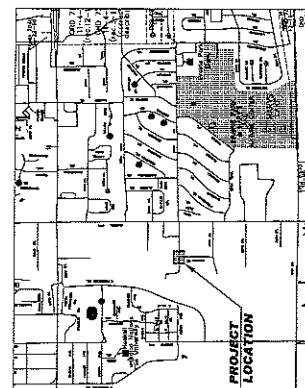
NOT APPLICABLE

## ZONING AND DENSITY

NOT APPLICABLE



## SITE PLAN



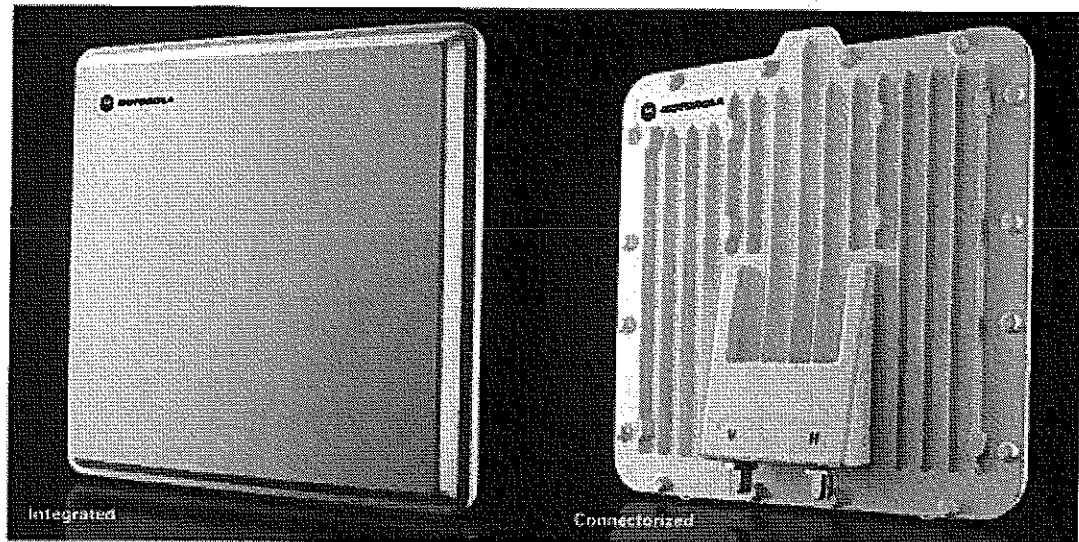
## LOCATION MAP

## SPECIFICATION SHEET

**MOTOROLA WIRELESS BROADBAND**

# PTP 54600 & PTP 58600

## 5.4 and 5.8 GHz Point-to-Point Bridges

**Spectrum-Efficient, High-Availability Wireless Ethernet Bridges**

The Motorola PTP 54600 and PTP 58600 Point-to-Point (PTP) Wireless Ethernet Bridges bring together the speed and reliability of licensed wireless with the flexibility of the unlicensed space. Operating in the 5.4 and 5.8 GHz bands at Ethernet data rates up to 300 Mbps (aggregate), the systems can deliver up to 99.999% link availability in virtually any environment – non-line-of-sight, line-of-sight and high interference. The bridges offer robust connectivity in any locations where high throughput is a major requirement and/or single or dual T1/E1 capability is needed.

Through Motorola's unique combination of technologies, PTP 54600 and 58600 radios enhance link performance in a wide variety of applications, including T1/E1 replacement, Voice-over-IP, video surveillance, distance learning, telemedicine, and high-capacity backhaul.

The small-footprint, lightweight units can be installed quickly with audio and graphical assistance features that help you easily obtain the maximum signal strength and throughput. Plus, Motorola's PTP LINKPlanner tool lets you perform path calculations and project link performance prior to purchase, based on variables specific to your deployment.

**Motorola Wireless Broadband**

PTP 54600 and 58600 bridges are included in Motorola's comprehensive portfolio of reliable and cost-effective wireless broadband solutions that, together with our WLAN solutions, provide and extend coverage both indoors and outdoors. The Motorola Wireless Broadband portfolio offers high-speed Point-to-Point, Point-to-Multipoint, Mesh, Wi-Fi and WiMAX networks that support data, voice and video communications, enabling a broad range of fixed and mobile applications for public and private systems. With Motorola's innovative software solutions, customers can design, deploy and manage a broadband network, maximizing uptime and reliability while lowering installation costs.

**Motorola PTP 54600 Bridges****5.4 GHz Part Numbers**

BP5530BH-2 Full Integrated – Link  
 BP5530BHC-2 Full Connectorized – Link  
 BP5530BH15-2 Lite Integrated – Link  
 BP5530BHC15-2 Lite Connectorized – Link

**Motorola PTP 58600 Bridges****5.8 GHz Part Numbers**

BP5830BH-2 Full Integrated – Link  
 BP5830BHC-2 Full Connectorized – Link  
 BP5830BH15-2 Lite Integrated – Link  
 BP5830BHC15-2 Lite Connectorized – Link