

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made this ____ day of _____, 2017, by and between the City of Lawrence, Kansas, a municipal corporation, and Mobilitie, LLC, a Nevada limited liability company.

RECITALS

- A.** The City of Lawrence, Kansas, a municipal corporation ("City"), is duly organized and exists in accordance with the laws of the State of Kansas.
- B.** Pursuant to the laws of the State of Kansas and the ordinances of the City, the authority to use the public rights of way within the City is vested in the reasonable police powers of the City.
- C.** Mobilitie, LLC, a Nevada limited liability company ("Mobilitie"), maintains, operates, and controls, in accordance with regulations promulgated by the Federal Communications Commission ("FCC") and the Kansas Corporation Commission ("KCC"), a network of facilities, composed mainly of small cells or distributed antenna systems (DAS), through which it assists its customers, wireless telecommunications providers, in delivering improved data and wireless connectivity to their customers.
- D.** To provide its small cells or distributed antenna systems (DAS) to its customers, Mobilitie often locates its facilities in the public rights of way.
- E.** In order to serve its customers in the City and to assist them in providing better data and wireless connectivity to residents and visitors of the City, Mobilitie has requested from the City a license to use the public rights of way in order to locate, install, and maintain its Facilities.
- F.** Finding that numerous benefits accrue to the public from improved data and wireless connectivity, the City hereby agrees to license to Mobilitie access to the public rights of way for the purpose of locating, installing, and maintaining its facilities, subject to and contingent upon, *inter alia*, the execution of this License Agreement and compliance with its terms.

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

TERMS

1. **Definitions.** For the purposes of this License Agreement, the following words and phrases shall have the meaning given herein:
- (a) **"Agreement"** shall mean this License Agreement.
 - (b) **"City"** shall mean the City of Lawrence, Kansas. References to the City shall also include, as appropriate, any and all successors and assigns.
 - (c) **"Facilities"** shall mean that equipment, including but not limited to antenna nodes, poles, equipment cabinets, underground and above-ground fiber optic cables, fiber handholes and enclosures, fiber repeaters and related equipment, and other equipment and appurtenances, necessary for Mobilitie to locate, maintain, operate, and control a network of small cells or distributed antenna systems (DAS).
 - (d) **"Gross Revenues"** shall mean any and all compensation, income, and other consideration, of whatever nature, in any manner gained or derived by Mobilitie, directly or indirectly, from or in connection with the operation of its Facilities in the Public Rights of Way, including but not limited to all rent payments, fees, and other amounts actually collected from any third party and received by Mobilitie, pursuant to any lease, sublease, license, or sublicense. The term does not include (i) sales, *ad valorem*, or other types of taxes, levies, or fees calculated by gross receipts or gross revenues, paid to or collected for federal, state or local government; (ii) uncollectable amounts; (iii) refunds, rebates, or reimbursements; and (iv) non-operating revenues, such as interest income or capital gains from the sale of assets.
 - (e) **"Local Exchange Service"** shall mean local switched telecommunications service within any local exchange service area approved by the KCC, regardless of the medium by which the local telecommunications service is provided. The term does not include wireless communication services.
 - (f) **"Mobilitie"** shall mean Mobilitie, LLC, a Nevada limited liability company. References to the Mobilitie shall also include, as appropriate, any and all affiliates, successors, and assigns.
 - (g) **"Public Improvement"** shall mean any existing or contemplated public facility, building, or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewers, water mains, drainage conduits, right of way improvements, and other Public Projects.

- (h) **"Public Project"** shall mean any project planned or undertaken by the City or any other governmental entity for the construction, reconstruction, maintenance, or repair of public facilities or Public Improvements, or for any public purpose.
- (i) **"Public Right of Way"** shall mean only that area of real property in which the City has a dedicated or has acquired a right-of-way interest in the real property. It shall include the area on, below, or above any present and future street, alley, avenue, road, highway, parkway, boulevard, or bridge, dedicated or acquired as a right of way. The term does not include the airwaves above rights of way with regard to wireless telecommunications, other non-wire telecommunications, or broadcast service, easements obtained by utilities, or private easements in platted subdivisions or tracts.
- (j) **"Video Service"** shall mean video programming services provided through wireline facilities, without regard to delivery technology, including internet protocol technology. The term does not include video programming provided by a "commercial mobile service" provider, as that term is defined at 47 U.S.C. § 332(d), as amended.
- (k) **"Telecommunications Services"** shall mean providing the means of transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

2. **Grant of Limited, Non-exclusive License.**

- (a) The City hereby grants to Mobilitie a limited, nonexclusive license to construct, place, replace, repair, maintain, extend, and operate its Facilities along, across, upon, under, or in the Public Rights of Way, for the purpose of operating and maintaining a network of small cells or distributed antenna systems (DAS) to assist wireless telecommunications providers in delivering improved data and wireless connectivity to residents and visitors of the City.
- (b) This Agreement does not convey to Mobilitie title, equitable or legal, in the Public Rights of Way and shall only accede to Mobilitie the right to occupy the Public Rights of Way of the City for the purposes and for the times stated in this Agreement. Additionally, the Agreement does not:
 - (i) Grant Mobilitie the right to use facilities or any other property, owned or controlled by the City or a third party, without the valid written consent of the City or the third party.

- (ii)** Grant Mobilitie the authority to construct, to operate, or to maintain any Facilities and any related appurtenances and improvements thereto on any property owned by the City outside a Public Right of Way, including but not limited to public parks, City Hall, public works facilities, or other public property. The parties agree that the City and Mobilitie shall -- if it becomes necessary -- enter into separate lease agreements for the placement of Facilities and any related appurtenances and improvements thereto on any City-owned property not located in a Public Right of Way.
- (iii)** Excuse Mobilitie from obtaining appropriate access or attachment agreements before locating its Facilities and any related appurtenances and improvements thereto on any property or facilities owned or controlled by the City or by any third party.
- (iv)** Excuse Mobilitie from obtaining any necessary permits, licenses, certifications, grants, registrations, or other authorizations required by any governmental entity having jurisdiction, including but not limited to the City, the FCC, or the KCC.
- (v)** Excuse Mobilitie from complying with all applicable laws, statutes, or City regulations (including but not limited to those relating to construction and uses of the Public Rights of Way).
- (c)** This Agreement does not grant Mobilitie the authority or right to provide Local Exchange Service or Video Service.
- (d)** This Agreement is not a franchise agreement under K.S.A. 12-2001 *et seq.*, nor it is it a Video Service Provider agreement authorized by K.S.A. 2016 Supp. K.S.A. 12-2021 *et seq.* Mobilitie hereby acknowledges its obligation to enter into a contract franchise with the City before using the Public Rights of Way for the provision of Local Exchange Service, or other Telecommunications Services to the City, its inhabitants, or visitors, and to enter into a Video Service Provider Agreement with the City before using the Public Rights of Way for the provision of Video Service to the City, its inhabitants, or visitors.
- (e)** Mobilitie shall not knowingly allow the use of its Facilities by any third party in violation hereof or in violation of any federal, state, or local laws.
- (f)** Nothing in this Agreement shall be construed as giving Mobilitie any exclusive rights or privileges.

3. Compensation; Payment.

- (a) For use of the Public Rights of Way, Mobilitie agrees to pay to the City a License Fee, which shall be paid on a quarterly basis and shall be equal to 5% of Mobilitie's Gross Revenues for that quarter.
- (b) Mobilitie agrees to pay the License Fee to the City without invoice or reminder and within thirty days of the last quarter for which the payment applies. Payment of the License Fee shall be made to the City, either electronically or by mailing said payment to the City Clerk. If payment is not received or postmarked on or before the due date, as a penalty, interest shall accrue thereon, until payment is made, at the statutory rate.
- (c) In conjunction with the payment of the License Fee, Mobilitie agrees to submit to the City a statement, executed by an authorized officer of Mobilitie, certifying the amount of Gross Revenues for that quarter and the manner in which the License Fee was calculated.
- (d) Mobilitie agrees that the City's acceptance of the payment of any License Fee shall not operate nor be construed as an accord that the amount paid is in full satisfaction of the amount owed; nor shall the City's acceptance of the payment of any License Fee operate or be construed as a release of any claim that the City may have.
- (e) The License Fee required hereunder shall be in addition to and not in lieu of all other taxes, charges, assessments, licenses, fees, and impositions otherwise applicable or that may be imposed by the City or other governmental entity in accordance with state law.

4. Term.

- (a) Unless otherwise terminated earlier under Section 12, *infra*, this Agreement shall be effective, commencing the date first written above written, until it expires at 11:59 p.m. on December 31, 2022. Thereafter, this Agreement will automatically renew for three additional five-year terms, unless either party notifies the other in writing of its intent to terminate or renegotiate this Agreement, which notification must be delivered to the other party not less than 180 days before the expiration of the then-current term. Any additional term shall be deemed a continuation hereof and not a new Agreement or an amendment hereto.
- (b) Notwithstanding the foregoing, upon written request of either the City or Mobilitie, the Agreement shall be reopened and renegotiated upon the occurrence of any of the following:

- (i) Any change in federal, state, or local law, regulation, or order that materially affects any rights or obligations of either Mobilitie or the City hereunder;
- (ii) Any change in the structure or operation of the telecommunications industry that materially affects any rights or obligations of either Mobilitie or the City hereunder; or
- (iii) Any other material and unintended change or shift in the economic balance unforeseen by Mobilitie or the City at the time of the effective date of this Agreement or any additional term thereof.

5. Use of Public Rights of Way. In using the Public Rights of Way, Mobilitie shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police powers and shall be subject to all applicable laws, statutes, ordinances, regulations, orders, and rules adopted or promulgated by any governing body now or hereafter having jurisdiction. In addition, Mobilitie shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City relating to the use of the Public Rights of Way, including but not limited to permits, permit fees, sidewalk and pavement cuts, utility location, construction coordination, "Complete Streets" policies, beautification, tree care, and other requirements affecting the use of the Rights of Way. Further, Mobilitie shall also comply with the following:

- (a) Mobilitie's use of the Public Rights of Way shall, in all matters, be subject and subordinate to the City's use of the Public Rights of Way for any public purpose or for any purpose relating to the health, safety, and welfare of the residents of the City. Mobilitie shall coordinate the placement of its Facilities in a manner that minimizes adverse impacts on Public Improvements, as reasonably determined by the City. Where placement is not otherwise regulated by the City, Mobilitie shall locate Facilities with adequate clearance from such Public Improvements so as not to affect or be affected by such Public Improvements.
- (b) To the extent that Mobilitie uses above-ground markers, antennas, or support structures related to its use of the Public Rights of Way for the placement of its Facilities, Mobilitie agrees that it will seek City approval and comply with all City requirements, including those of the Conservation of Historic Resources Code, Chapter XXII of the City Code, before placing any such markers, antennas, or support structures and that said markers, antennas, and support structures shall, if so placed, be unobtrusive.

- (c)** All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind that are injured, damaged, or removed by Mobilitie, while engaging in any activity under this Agreement, shall be fully repaired or replaced to their original condition within a reasonable time by Mobilitie at its sole cost and expense and to the reasonable satisfaction of the City.
- (d)** Mobilitie shall keep and maintain accurate records and as-built drawings depicting the accurate location of all Facilities constructed, reconstructed, located, or relocated in the Public Rights of Way and shall provide that information to the City upon its written request. Where such information is available electronically, upon written request of the City, Mobilitie agrees to provide such information in an electronic format. Such location and identification shall be at the sole cost and expense of Mobilitie, without any such cost or expense to the City.

The City agrees to use any information obtained under this subsection only to locate Facilities in connection with Public Projects and further agrees not to disclose such information to anyone other than City employees and its authorized agents requiring such information to locate Facilities in connection with Public Projects, except as may otherwise be required by law. The City and Mobilitie agree that such information is confidential and proprietary. The City and Mobilitie also agree that such information shall remain the sole property of Mobilitie. The City and Mobilitie further agree that such information shall not constitute an open public record as that term is defined by the Kansas Open Records Act of 1984, codified as amended at K.S.A. 45-215 *et seq.* In the event that the City shall be required to disclose such information, the City shall provide Mobilitie advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with Mobilitie in safeguarding such information.

Mobilitie agrees to indemnify and to hold the City harmless from any and all penalties or costs, including attorneys' fees, arising out of the actions of Mobilitie or of the City at the written request of Mobilitie, in seeking to safeguard the confidentiality of information provided to the City by Mobilitie under this section. In the event that such information is required by law to be publicly disclosed, then Mobilitie shall have no further obligation under this section to provide the City with such information.

- (e)** Except in cases of emergency and routine maintenance, a minimum of 30 days prior to construction, reconstruction, location, or relocation of any Facilities in a Public Right of Way, Mobilitie shall submit to the City Engineer, or his or her designee, an application for a Right of Way Permit, together with the Right of Way Permit Fee, which application shall include plans and specifications for the project. The City shall not unreasonably withhold, delay, or condition approval of said application. The City's review of the plans and specifications shall be confined to matters affecting the interests of the City.
- (f)** Except in cases of emergency, a minimum of 45 days prior to construction, reconstruction, repair, location, or relocation of Facilities that would require any street closure or that would reduce the traffic flow to less than two lanes of moving traffic, Mobilitie shall submit to the City Engineer, or his or her designee, an application for a Right of Way Permit, together with the Right of Way Permit Fee. The City shall follow its policies in the approval or denial of such application, neither of which shall be unreasonably withheld, conditioned, or delayed. Except in cases of emergency, no such closure shall take place without the prior authorization of the City.

In addition, all work performed in the traveled Public Rights of Way that in any way affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work performed in the traveled Rights of Way, Mobilitie shall comply with the Manual for Uniform Traffic Control Devices (MUTCD) and the City's regulations, rules, and orders regarding the placement of signs, barricades, and other safeguards, copies of which shall, upon written request, be made available to Mobilitie, its employees, agents, or contractors.

- (g)** As reasonably necessary, Mobilitie shall relocate or adjust any of its Facilities located in a Public Right of Way for a Public Project with no less than 60 days prior written notice from the City. Such relocation or adjustment shall be performed by Mobilitie, at its sole cost and expense, without any cost or expense to the City and shall be subject specifically to the rules and regulations of the City. However, in those cases where it would take more than 60 days for Mobilitie to relocate or adjust its facilities, the parties may mutually agree to a period of time that exceeds 60 days.

- (h) It shall be the sole responsibility of Mobilitie to take adequate measures to protect and defend its Facilities in the Rights of Way from harm and damage. If Mobilitie fails to accurately or timely locate its Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act of 1993, codified as amended at K.S.A. 66-1801 *et seq.*, then Mobilitie has no claim for costs or damages against the City or its authorized agents and contractors or any other party authorized to be in the Rights of Way, except to the extent that such harm or damage is caused by any such party's reckless or intentional conduct. The City agrees to take reasonable precautionary measures, including but not limited to calling for utility locations and observing markers, when working near Mobilitie's Facilities.
- (i) All technical standards governing construction, reconstruction, installation, operation, testing use, maintenance, and dismantling of the facilities in the Rights of Way shall be in accordance with all applicable federal, state, and local laws and regulations in effect at the time any such work is performed.
- (j) The City shall have the authority to prohibit or regulate Mobilitie's use or occupation of a specific portion of any Public Right of Way that is environmentally sensitive, as defined by federal, state, or local law or regulation, or that lies within a previously designated historic district, as defined by federal, state, or local law.

6. **Street Tree Ordinance.** In connection with the construction, placement, replacement, repair, maintenance, extension or operation of its Facilities in the Public Rights of Way, Mobilitie shall comply with the provisions of the City's Street Tree Ordinance (Chapter 18, Article 1, of the City Code, and amendments thereto) regarding the care, pruning, trimming, and removing of trees located in or on the Public Rights of Way.

7. **Location of Underground Facilities and Equipment.** To the extent possible, Mobilitie shall place its Facilities underground as required by City ordinances, including Chapter 5, Article 19 of the City Code, and amendments thereto. Consistent with Section 5-1904(B)(iii) of the City Code, as may be amended; however, any above-ground markers, antennas, and support structures necessary for the Company's purposes hereunder shall be exempt from those requirements. Where underground construction is made, the Facilities, appurtenances and improvements thereto, and any necessary trenching shall be installed, maintained, or provided by Mobilitie in accordance with City ordinances and at Mobilitie's sole cost and expense.

8. Sharing Space; New Poles; Third-Party Equipment.

- (a) The City encourages the conservation of the Public Rights of Way by the sharing of space among all franchisees and licensees. Accordingly, Mobilitie is encouraged to co-locate its Facilities on existing infrastructure where possible.
- (b) Because co-location is not always possible or practical, Mobilitie shall have the right, where necessary, to construct New Poles in the Public Rights of Way. To construct a New Pole, Mobilitie shall submit all plans and specification to the Department of Public Works for review and approval in accordance with Paragraph 5(e) or (f), *supra*, as applicable. The City shall have final say regarding the location, construction, and dimensions of New Poles. The location and construction of New Poles shall comply with the City's Right of Way Ordinance. In order to protect the health, safety, and welfare of the community, as well as its aesthetics, no New Pole shall, unless otherwise first approved by the City in writing, exceed:

 - (i) Thirty-five feet (35') in height for residential or collector streets; or
 - (ii) Forty-five feet (45') in height for arterial streets.
- (c) The parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain components of the Facilities deployed by Mobilitie in the Public Rights of Way pursuant to this Agreement may be owned and/or operated by Mobilitie's third-party wireless customers ("Carriers") and installed and maintained by Mobilitie pursuant to separate license agreements -- and such agreements shall not be considered sub-licenses hereunder -- between Mobilitie and such Carriers. Mobilitie agrees and acknowledges that any Carrier, to whom it rents or otherwise allows to use its Facilities, shall have an existing valid license agreement or other agreement with the City that permits such Carrier to locate its Facilities in the Public Rights of Way.

9. Access to Information.

- (a) In determining the amount of Gross Revenues subject to the License Fee, Mobilitie agrees to use commercially reasonable efforts to ensure the accuracy of its records and submissions. In the event and to the extent that the accounting submitted to the City is found to be incorrect then payment shall be made on the corrected amount, it being agreed that the terms of Paragraph 3, *supra*, govern the submission and acceptance of the payment of any such License Fee.

- (b) Mobilitie further agrees that its books, records, documents, contracts, and agreements, as may reasonably be necessary for an effective audit under this Agreement, shall, upon reasonable notice being given by the City, be opened to the City, including its duly authorized agents, auditors, and employees, for inspection and examination for the purposes of verifying Mobilitie's accounting. The City shall bear the costs of any such audit, unless, however, the audit discloses that Mobilitie owes the City money and has failed to use commercially reasonable efforts in rendering its accounting. In that case, Mobilitie shall be responsible to the City for the reasonable costs of the audit. Such information shall be afforded the protections provided in Paragraph 5(d), *supra*.

10. Insurance; Performance Bond.

- (a) During the initial term, any subsequent additional term, or any other extension of this Agreement, Mobilitie shall obtain and maintain insurance coverage, at its sole cost and expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Mobilitie elect to use the services of an affiliated captive insurance company for this purpose, Mobilitie shall obtain and possess a certificate of authority from the Kansas Insurance Commissioner. Mobilitie shall provide not less than the following insurance:
 - (i) Worker's compensation, as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed, with an employers' liability limit equal to the amount required by law.
 - (ii) Commercial general liability, including coverage for contractual liability and products-completed operation liability on an occurrence basis and not a claims-made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Mobilitie's operations under this Agreement.
- (b) As an alternative to the requirements of Section 10(a), *supra*, Mobilitie may demonstrate to the satisfaction of the City that it is self-insured and that it has the wherewithal to provide coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate to protect the City from and against all claims by any person for loss or damage from death, personal injury, bodily injury, or property damage occasioned by Mobilitie or so alleged to have been caused or to have occurred.

(c) Mobilitie shall, as a material condition of this Agreement, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Mobilitie shall make available to the City, on request, the policy declarations page and a certified copy of the policy in effect so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

(d) Mobilitie shall, as a material condition of this License Agreement, prior to the commencement of any work hereunder, deliver to the City satisfactory evidence of a performance bond in the amount of Fifty Thousand Dollars (\$50,000) payable to the City. The bond shall be used to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public Rights of Way, without the attachment of any liens, and must be issued by a surety company authorized to transact business in the State of Kansas and shall be satisfactory to the City Attorney in form and substance. The performance bond shall remain in effect the entire term of the Agreement to ensure the ongoing performance of the terms and obligations of the License as well as any future phases of construction or maintenance and repair work. Notwithstanding the foregoing sentence, the City reserves the right to require Mobilitie to provide additional financial assurance for future phases of construction or maintenance and repair work, as reasonably determined by the City.

11. Taxes. Mobilitie agrees that it will be solely responsible for the payment of all applicable taxes, fees, and assessments levied on the ownership, use, and maintenance of its Facilities in the Public Rights of Way as the result of this Agreement. Pursuant to Section 70-5(a)(26) of the Kansas Revenue and Taxation Code, the City hereby advises and Mobilitie recognizes and understands that Mobilitie's use of the Public Rights of Way for the location of its Facilities, including the location of New Poles, or the use of other property outside the Public Rights of Way may create a possessory interest subject to real property taxation and that Mobilitie may be subject to, and responsible for the payment of real property taxes levied on such interest. Mobilitie agrees that it will cooperate with the Douglas County Assessor in providing any information for the Assessor to make a property tax determination. Mobilitie shall have the right to challenge any assessment and the City agrees to cooperate with Mobilitie in connection with any such challenge. Mobilitie clearly recognizes and understands, however, that any such tax that is levied shall be the sole responsibility of Mobilitie and the City shall not be responsible for any such tax.

12. Termination or Forfeiture of Agreement.

- (a)** In case of failure on the part of Mobilitie to comply with any of the provisions of this Agreement, or if Mobilitie should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, then Mobilitie shall forfeit all rights and privileges granted by this Agreement and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall complete the following:

 - (i)** Before the City may proceed to terminate this Agreement, it shall first serve a written Notice to Mobilitie, setting forth, in detail, the conditions of neglect, default, or failure complained of. Mobilitie shall have sixty days after the receipt of such notice in which to comply with the terms of this Agreement. If, at the end of such sixty-day period, the City deems that the terms of this Agreement have not been met and that such Agreement is subject to cancellation therefor, then the City, in order to terminate the Agreement, shall by written Notice, setting forth the grounds for termination, terminate this Agreement. If within thirty (30) days after the effective date of said written Notice, Mobilitie shall not have instituted an action in the District Court of Douglas County, Kansas, to determine whether or not Mobilitie has violated the terms of this Agreement, then this Agreement shall be deemed canceled and terminated at the end of such thirty-day period.
 - (ii)** If, within such thirty-day period, Mobilitie does institute an action as above described, to determine whether or not it has violated the terms of this Agreement and prosecutes such action to final judgment, then, in the event that the court finds that this Agreement is subject to termination by reason of the violation of its terms and conditions, then this Agreement shall terminate thirty (30) days after such final judgment is rendered and all available appeals have been exhausted.
 - (iii)** Nothing in this Section shall prevent the City from invoking any other remedy that may exist at law or in equity.
- (b)** In the event of a final adjudication of bankruptcy of Mobilitie under Title 11 of the United States Code, the City shall have the right, by giving written notice hereunder, to terminate this Agreement.

- (c) Mobilitie may terminate this Agreement at any time, with or without cause, effective at 11:59 p.m. on December 31 of the then-current year by giving notice to the City of its intent to terminate no later than 11:59 p.m. on September 30 of the then-current year.

13. Rights and Duties Upon Termination of Agreement. Upon termination of this License Agreement, whether by lapse of time, agreement of the parties, or by forfeiture, Mobilitie shall remove its Facilities from the Public Rights of Way within a reasonable time after such termination. It shall be the duty of Mobilitie, immediately upon removal of its Facilities, to restore the Public Rights of Way from which said Facilities are removed to as good condition as the same were before said removal was effected without any cost to the City.

14. Indemnification. Mobilitie shall indemnify and save and hold harmless the City, its officers, employees, agents, and authorized contractors, from and against any and all claims, damages, expense, liabilities, and costs, including reasonable attorneys' fees, to the extent occasioned in any manner by Mobilitie's occupancy or use of the Public Rights of Way. In the event a claim shall be made or an action shall be instituted against the City, arising out of Mobilitie's occupancy or use of the Public Rights of Way, then upon notice by the City to Mobilitie, Mobilitie shall assume responsibility for the defense of such claim or action at the cost of Mobilitie, subject to the City's unilateral option to appear and defend itself. Mobilitie's indemnification obligation shall not apply to the extent that any injury or damage is caused by the City's own negligence or willful misconduct. This indemnifying provision shall survive the expiration or termination of this Agreement.

15. Transfer and Assignment.

- (a) Pursuant to the written permission of the City, which shall not unreasonably be withheld, conditioned, or delayed, Mobilitie shall have the right to assign this Agreement and the rights and privileges hereby granted to any person, firm, or corporation. If Mobilitie should seek approval to assign this Agreement, Mobilitie shall give Notice to the City in writing. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Agreement. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Agreement shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.

- (b) Notwithstanding the foregoing subsection, Mobilitie shall, after giving the City thirty (30) days' written Notice of said assignment, have the right to assign this Agreement without the consent of the City to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Mobilitie. Any such assignee shall, by accepting such assignment, be bound by the terms and provisions of this Agreement. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk and the City Attorney. This Agreement shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time of assignment.
- (c) If this Agreement is transferred or assigned, Mobilitie's obligations regarding indemnity, insurance, and bonding shall continue until the transferee or assignee has taken the necessary measures to assume and replace the same, the intent being that there be no lapse in coverage as a result of the transfer or assignment.
- 16. Notices.** All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed given if personally delivered, if sent by certified mail, return receipt requested, or if sent by a recognized overnight delivery service, to the following addresses:

If to City, to:

City of Lawrence, Kansas
Attn: City Clerk
6 East 6th Street
Lawrence, Kansas 66044

With a copy to:

City of Lawrence, Kansas
Attn: City Attorney
6 East 6th Street
Lawrence, Kansas 66044

If to Mobilitie, to:

Mobilitie, LLC
Attn: Asset Management
660 Newport Center Dr.
Suite 200
Newport Beach, California 92660

With a copy to:

Mobilitie, LLC
Attn: Legal Department
660 Newport Center Dr.
Suite 200
Newport Beach, California 92660

Any such Notice shall be deemed effective upon actual receipt or refusal of receipt as shown on any return receipt obtained under this Section.

17. **Entire Agreement; Amendment.** This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the City and Mobilitie with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by all parties.
18. **Non-waiver.** The failure of either the City or Mobilitie to insist in any one or more instances upon the strict performance of one or more of the terms or provisions of this Agreement shall not be construed as a waiver or relinquishment of any right in the future to enforce such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment of any term or provision of this Agreement shall be deemed to have been made by the City or Mobilitie unless said waiver or relinquishment is in writing and signed by both the City and Mobilitie.
19. **Force Majeure.** No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fire, strikes, riots, floods, war, and other disasters or events beyond Mobilitie's or the City's reasonable control.
20. **Binding Effect.** This Agreement shall, at all times, be binding upon the City and Mobilitie and all parties claiming by, through, or under them.
21. **Drafting.** The Parties agree that this Agreement is the product of joint draftsmanship and that, should any term hereof be determined by a court of competent jurisdiction to be vague, ambiguous, or unintelligible, said term shall not be construed against either party as the drafting party.
22. **Authorization.** Each of the persons executing this Agreement, in behalf of their respective parties, represents and warrants that they have the authority to bind the party in behalf of whom they have executed this Agreement, and that all acts requisite to that authorization have been taken and completed.
23. **Severability.** If any section, sentence, clause, or phrase of this Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Agreement.

24. **Governing Law.** This Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the state of Kansas.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this License Agreement to be executed as of the date noted above.

CITY:
CITY OF LAWRENCE, KANSAS, a
municipal corporation

THOMAS M. MARKUS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of _____, 2017, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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

Notary Public

My Appointment Expires:


CHRIS GLASS
SVP, General Counsel

THE STATE OF _____)
)
THE COUNTY OF _____) SS:

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

~~My~~ Appointment Expires:

Please see attachment

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ Orange _____

S.S.

On 11/13/2017 before me, Asuka Itahashi Dickerson, Notary Public

Name of Notary Public, Title

personally appeared Christopher Glass

Name of Signer (1)

Name of Signer (2)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public



Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____.

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-fact
☐ Corporate Officer(s) _____

Title(s)

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____

Name(s) of Person(s) Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

- ☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

- ☐ Additional Signer ☐ Signer(s) Thumbprints(s)

☐ _____