MASTER LICENSE AGREEMENT FOR USE OF CITY FACILITIES

This Master License Agreement for Attachments to City Facilities ("Agreement") dated _____, 2020 (the "Effective Date") is made by and between the City of Olathe, Kansas (the "City"), and Kansas Fiber Network, LLC, a Kansas Limited Liability Company authorized to conduct business in the State of Kansas ("Licensee") (collectively referred to as the "Parties").

RECITALS

WHEREAS, the City owns, operates and maintains certain Facilities located in the City; and

WHEREAS, Licensee obtained a Contract Franchise from the City by the City's adoption and Licensee's acceptance of Ordinance No. 20-15 to install and maintain certain facilities within the City's right-of-way and to pay applicable fees for such privilege; and

WHEREAS, in accordance with the Contract Franchise, Licensee proposes to install and maintain Licensee's Attachments within City Facilities to provide Communications Services.

NOW, THEREFORE, in consideration of the above recitals and the following mutual covenants, agreements, and obligations of the Parties, which constitute good and valuable consideration, the sufficiency of which is acknowledged, and with the intention to be legally bound hereby, the City and Licensee agree as follows:

1. DEFINITIONS

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific Paragraph or Subparagraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, 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 equipment and the performance of all work in or around 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 the 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, who, pursuant to a valid authorization with the City, places an Attachment within City Facilities to provide Communications Service.

1.4 Attachment(s): means Licensee's Communications Equipment that is placed directly within approved City Facilities.

1.5 Capacity: means the ability of a City Facility to accommodate an additional Attachment based on Applicable Standards, including, but not limited to, capacity considerations.

1.6 City Facilities or **Facilities:** means City-owned or dedicated public right-of-way, public easements, or Conduits, and associated property that is capable of accommodating Communications Equipment in accordance with Applicable Standards. Provided, however, no Attachments will be allowed on any City Facilities without City approval.

1.7 Communications Equipment: means wireline or wireless equipment including but not limited to fiber optic, copper and/or coaxial cables, receivers or transceivers, mounting hardware, power supplies, grounding or bonding wires, and other equipment utilized to provide Communications Service including any and all associated equipment.

1.8 Communications Service: means the transmission or receipt of data, broadband Internet or other forms of digital or analog signals over Communications Equipment.

1.9 Conduit System: means the City's conduits, innerduct, manholes, handholes, vaults, pull-boxes and trenches.

1.10 Contract Franchise or Franchise: means Ordinance No. 20-15 and any amending ordinances related thereto.

1.11 Innerduct: means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.

1.12 Licensee: means Kansas Fiber Network, LLC, a Kansas Limited Liability Company authorized to conduct business in Kansas and licensed by the Kansas Corporation Commission as a public telecommunications utility who can provide services in urban areas, its authorized agents, successors, designees, assigns, and any Affiliate of Licensee.

1.13 Make-Ready Work: means all work, as reasonably determined by the City, required to accommodate Licensee's Attachment and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement of City Facilities or existing attachments, inspections, engineering work, permitting work, design, planning, construction, materials, cost of removal (less any salvage value), cost of expanding existing Conduit, cost of a (City-approved) substitution of Conduit, Facility construction, or Conduit System clearing, but does not include routine maintenance.

1.14 Permit: means written or electronic authorization of the City for Licensee to make or maintain Attachments to specific City Facilities pursuant to the requirements of this Agreement and any applicable city code or regulation.

1.15 Permit Application: means the application for a Permit pursuant to the applicable requirements of this Agreement and any applicable city code or regulation.

1.16 Post-Construction Inspection: means the inspection by the City to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

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

1.18 Reserved Capacity: means capacity or space within a Facility that the City has identified and reserved for City or other governmental requirements, including, but not limited to, Johnson County, other municipalities and any local school districts.

1.19 Site: Each place where City Facilities for which Licensee obtains a Permit from the City pursuant to this Agreement for purposes of installing its Attachment.

1.20 Tag: means to place distinct markers on wires and cables, coded by color or other means specified by the City and/or applicable federal, State or local regulations that will readily identify the type of Attachment and its owner.

2. SCOPE OF AGREEMENT

2.1 Grant of License. Subject to the provisions of this Agreement, the City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain permitted Attachments within specified City Facilities and the right-of-way, as agreed to after consultation with and application to the City. Placement of Licensee's Attachments within any specific City Facility and the right-of-way shall be agreed to by the City and Licensee, and Licensee shall be treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third parties.

2.2 Conflicting Provisions. In the event of any conflict between this Agreement and any Permit hereto, the terms and conditions of this Agreement, as amended from time to time, shall control.

2.3 Permit Issuance Conditions. The City will issue a Permit(s) to Licensee only when the 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. City reserves the right to deny or modify Licensee access to any Facilities, on a competitively-neutral and non-discriminatory basis, where City determines that Licensee's proposed attachment will (a) jeopardize the public health, safety or welfare, or (b) unreasonably limit or harm the capacity, functionality, reliability, governmental interests or aesthetics of City's Facilities, or (c) violate applicable zoning restrictions or other laws and regulations, or (d) exceed the capacity of the Facilities to include taking into consideration the reserved capacity of the Facilities, or (e) interfere with the City's intended use of the Facilities, and (f) interfere with any other reasonable governmental interest.

2.4 In-Kind Compensation. The Parties may by mutual agreement adjust the fees and charges specified in Paragraph 3 to account for in-kind contributions from Licensee in the form of service to the City as is reasonably determined by the City to be valued as at least roughly comparable to the Attachment fees and charges.

2.5 Reserved Capacity. Access to space on City Facilities will be made available to Licensee with the understanding that City Facilities may be subject to Reserved Capacity for future governmental use. In such case the City may refuse to permit Attachments upon such Facilities or may within its discretion permit Attachments, subject to reclaiming its Reserved Capacity in the future. Upon giving Licensee at least one hundred and eighty (180) calendar days prior notice, the City may reclaim such Reserved Capacity if required for future governmental use. The City may within its reasonable discretion give Licensee the option to remove its Attachment(s) from the affected Facilities and install in the right-of-way facilities to replace the removed Attachments, or the Licensee may pay for the cost of any Make-Ready Work needed to expand Capacity to accommodate the governmental needs while at the same time maintaining the Licensee's Attachments on the affected Facilities.

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 Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the 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 Paragraph 6, shall be construed as granting Licensee any right to attach Licensee's Attachment(s) within any specific City Facility or portion of Facilities.

2.8 City's Rights over Facilities. The Parties agree that this Agreement does not in any way limit the City's right to locate, operate, maintain or remove its Facilities in the manner that will best enable it to fulfill any governmental requirements.

2.9 Expansion of Capacity. The City may take steps as reasonably appropriate, in a competitively neutral manner, to expand Facilities to accommodate Licensee's request for Attachment. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the City to install, retain, extend or maintain any Facility or portion of City Facilities for use when such Facilities are not needed for the City's or any other governmental service requirements.

2.10 Other Agreements. Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding Facilities into which the City has previously entered, or may enter in the future, with others not party to this Agreement, provided that any such future attachments shall not interfere with Licensee's Attachments.

2.11 No Use After Termination. Nothing in this Agreement shall be construed to require the City to allow Licensee to use Facilities after the termination of this Agreement.

2.12 Enclosures. Nothing in this Agreement shall authorize Licensee to place above-ground pedestals, enclosures or cabinets at the base of any City Facilities upon which Licensee has made authorized Attachments and any such use shall be subject to the Permit and applicable City Code provisions.

3. FEES AND CHARGES

3.1 Payment of Fees and Charges. For authorized Attachments covered under this Agreement, Licensee shall pay to the City the fees and charges as set forth in **Exhibit A**, attached hereto and incorporated herein by reference.

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

3.3 Intentionally Omitted.

3.4 Refunds. No fees and charges shall be refunded on account of any surrender of a Permit granted hereunder.

3.5 Inventory. The City shall have the right to require an inventory of all Attachments no more frequently than once every three (3) years by the Licensee, unless both parties agree to a new inventory schedule. The cost of the inventory shall be borne by Licensee, subject to the terms of any agreement with said Attaching Entities.

3.6 Late Charge. If the City does not receive payment for any fee, charges or other amount owed within thirty (30) calendar days after it becomes due, Licensee shall pay interest to the City, at the rate of one and one half percent (1.5%) per month, on the amount due. Interest under this Agreement shall not exceed the interest allowable under applicable law.

3.7 Payment for Work. Licensee will be responsible for payment to the City for all work the City or the City's contractors perform pursuant to this Agreement to accommodate Licensee's Attachments.

3.8 Advance Payment. The Permit Application Fee shall be due upon submission of the Permit Application. At the discretion of the City, Licensee may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections and Make-Ready Work Estimate, in connection with the initial installation or rearrangement of Licensee's Attachment pursuant to the procedures set forth in Paragraphs 6 and 7 below. If the City does not exercise this option, the Make-Ready Work Estimate will be paid as set forth in Subparagraph 7.2.

3.9 True Up. Wherever the City, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee shall pay the City for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, the City shall refund to Licensee the difference in cost.

3.10 Determination of Fees and Charges. Wherever this Agreement requires Licensee to pay for work done or contracted by the City, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. The City shall bill its services based upon actual costs, and such costs will be determined in accordance with the 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 materials used and cost of materials. If Licensee was required to perform work and fails to perform such work necessitating its completion by the City, the City may either charge an additional ten percent (10%) to its costs or, if applicable, assess the Failure to Timely Transfer, Abandon or Removal Facilities Penalty Fee.

3.11 Work Performed by City. Wherever this Agreement requires the City to perform any work Licensee acknowledges and agrees that the City, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work, or to permit the Licensee to perform the work.

3.12 Default for Nonpayment. Nonpayment of any undisputed amount due under this Agreement beyond ninety (90) days shall constitute a material default of this Agreement. If an amount is disputed in good faith by either Party, it shall not form the basis for a declaration of material default until the disputed is resolved.

3.13 Incremental Property Taxes. If the property or ad valorem taxes payable by the City with respect to City Facilities or lands at a Site(s) are located or the basis on which such taxes are calculated, increase following installation of the Attachment, Licensee shall reimburse the City for the portion of such increase or change attributable to any construction, installation or improvements provided pursuant to this Agreement. Licensee shall be solely responsible for, and shall pay in a timely manner, any property or ad valorem taxes or other taxes or fees levied upon or with respect to the Attachment and other Licensee property located on the Site(s) that are billed directly to Licensee by the taxing authorities.

4. SPECIFICATIONS

4.1 Installation/Maintenance of Attachment. When a Permit is issued pursuant to this Agreement, Licensee's Attachment(s) shall be installed and maintained in accordance with all applicable federal, State and local laws, rules, and regulations, including, but not limited to, the City's applicable permit application and construction requirements for attachments to City Facilities, the City's adopted building and electrical codes, the City's adopted Technical Specifications for installations within the public right-of-way, O.M.C. Chapter 12.14 and the City's Unified Development Ordinance (collectively, the "Codes"). All of Licensee's Attachments must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Attachments. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards; and Licensee shall replace, remove, reinforce or repair any defective Attachments (unless otherwise agreed to by the City in writing).

4.2 Authorized Attachment(s) and Installation Methods.

4.2.1 The City must approve the Attachment(s) that Licensee is authorized to place on City Facilities. Except as authorized by the City in writing, only the Attachments depicted and described in the approved Permit Application may be attached to any City Facility; provided, however, that different internal components may be substituted as part of an upgrade of the Communications Equipment; provided the external appearance remains the same and further provided, different Attachments of similar or smaller size may be substituted upon the filing of a description and design of the new devices at least fifteen (15) days in advance of such change and upon approval by the City. Provided, any said upgrade or substitution must maintain the structural integrity of the City's Facility, and Licensee will provide all necessary supporting documentation.

4.2.2 In no event may Licensee or any of its subcontractors install or construct new City Facilities or modify or repair existing City Facilities except as may be expressly authorized by this Agreement or by an approved Permit, or as is otherwise authorized in writing by the City.

4.2.3 Nothing in this Agreement shall be construed as a guaranty of the condition of any City Facility in connection with Licensee's Attachments or impose any obligation upon the City to repair or replace an existing City Facility in order to accommodate a request by Licensee to install an Attachment, provided that the City maintain its Facility in condition to allow Licensee to utilize the Facility.

4.3 Tagging. Licensee shall Tag all of its Communications Equipment in accordance with any applicable federal, State and local regulations upon installation of such Attachment(s).

4.4 Interference. Licensee shall not allow its Attachment(s) to impair the ability of the City or any third party to use City Facilities, nor shall Licensee allow its Attachment(s) to interfere with the operation of any City or other governmental Facilities.

4.4.1 Licensee shall comply with all Federal Communications Commission ("FCC") and other federal, state and local laws, rules, orders and regulations and all directives of the relevant regulatory agencies that are applicable in connection with the installation and operation of Licensee's Attachments.

4.4.2 In the event that the installation, operation or maintenance of the Attachment(s), whether or not such operation is in compliance with the terms of Licensee's applicable FCC licenses, creates any interference with the operation of the City's or any other governmental entity's communication or other equipment, Licensee shall within ninety (90) days of receipt of notice of such interference, at Licensee's sole cost and expense, take such reasonable steps as may be necessary or recommended by the City or regulatory agencies to eliminate such interference. In the event that the installation, operation or maintenance of the Attachment(s) creates any interference with the operation of the pre-existing equipment of third parties using the Site pursuant to an agreement with the City or any other pre-existing uses of electronic equipment, Licensee shall within ninety (90) days of receipt of notice of such interference, at Licensee's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements. If Licensee is unable or refuses to eliminate such interference, the City may terminate Licensee's use of or right to use the Facility upon which such interfering Attachment is located, and Licensee shall promptly remove the Attachment from the Facility.

4.4.3 Notwithstanding the foregoing, if equipment installed on a Facility by any third party using the Facility pursuant to an agreement with the City subsequent to the installation of the Licensee's Attachment on the Site causes interference,

either electronically or physically, with Licensee's previously installed Attachments, Licensee may, at its option, take action to eliminate the interference, or upon thirty (30) days written notice to the City, Licensee shall have the right to terminate the affected Permit.

4.5 Protective Equipment. Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

4.6 Violation of Specifications. If Licensee's Attachment(s), or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within ninety (90) calendar days from receipt of written notice of the violation(s) from the City, the City at its option, may unilaterally correct such conditions. The City will attempt to notify Licensee in writing prior to performing such work whenever practicable. When the City believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the City's service obligations or pose an immediate threat to the physical integrity of City Facilities, the 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 thereafter, the City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and reasonable costs incurred by the City in taking action pursuant to this Paragraph, and shall indemnify the City from liability for all such work. An "Emergency" is conditions that in the discretion of City (i) pose an immediate threat to the safety of utility workers or the public; (ii) materially and adversely interfere with the performance of City's or other attachers' service obligations; or (iii) pose an immediate threat to the integrity of City's or other attachers' equipment or Structures.

4.7 Restoration of City Service. The City's service restoration requirements shall take precedence over any and all work operations of Licensee on City Facilities.

4.8 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 thereof, the City may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. For purposes of this Subparagraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.

5. PRIVATE AND REGULATORY COMPLIANCE

5.1 Necessary Authorizations. Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Equipment on public and/or private property before it occupies any portion of City Facilities. The City retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Paragraph 5

include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way, including, but not limited to, a franchise, any applicable FCC or KCC authorization, any Right-of-Way Permit, or any applicable zoning or land use approval, and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse the City for all loss and expense, including reasonable attorney's fees that the City may incur as a result of claims by owners of private property, or other persons that Licensee does not have sufficient rights or authority to attach Licensee's Communications Equipment within City Facilities or to provide particular Communications Services.

5.2 Lawful Purpose and Use. Licensee's Attachments must at all times serve a lawful purpose, and the use of such Facilities must comply with the Codes. This Agreement is not a waiver of any City regulatory power or Licensee's obligation to meet any applicable City Codes or other law and/or regulation.

5.3 Forfeiture of City's Rights. No Permit granted under this Agreement shall extend to any Facilities or portions thereof on/in which the attachment of Licensee's Attachment(s) would result in a forfeiture of the City's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of the City's rights, is invalid. Further, if any of Licensee's existing Attachments, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall, at its expense, promptly remove its Attachments upon receipt of written notice from the City. If the Attachments in question are not removed within ninety (90) days of receipt of the City's written notice, the City may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated under the Agreement provided that Licensee shall indemnify the City for any actual damages that may result during Licensee's challenge.

5.4 Effect of Consent to Construction/Maintenance. Consent by the City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

6. PERMIT APPLICATION PROCEDURES

6.1 Permit Required. Licensee shall not install any Attachments within any City Facilities without first applying for and obtaining a Permit pursuant to the applicable provisions of the Codes and other applicable laws, ordinances and regulatory requirements. Attachments to or rights to occupy or utilize City property not covered by this Agreement, such as the lease and use of City-owned fiber optic capacity or any other City property must be separately negotiated.

6.1.1 Unless otherwise agreeable to the parties, the Licensee shall submit a Permit Application for every proposed above-ground Site of Attachment that shall be accompanied by:

(i) equipment specifications;
(ii) an installation diagram that depicts the proposed installation specifications such as attachment location and attachment methods on the subject City Facility(ies);
(iii) a traffic control plan for all work that includes temporary lane reduction or closures; and
(iv) additional information which may be required by the City as necessary.

6.1.2 Permits are valid for one-hundred-twenty (120) days, after which they automatically become void and must be updated and re-approved by the City before any Attachments will be permitted.

6.1.3 The Contractor shall have one (1) copy of the approved Permit, the approved Attachment plans, and the approved traffic control plan (if required) at the job site at all times.

6.1.4 For unscheduled emergency maintenance repairs no notification to the City will be required until service is resumed. Coordination with City of Olathe Traffic staff is required if the emergency repair work will cause temporary lane reductions or closures. Contact Traffic staff at 913-971-5170. On the first working day subsequent to such repairs, the Licensee shall notify the City. At that time, the Licensee shall make application for the required Permit following normal procedures.

6.2 Professional Certification. Unless otherwise waived in writing by the 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 the City, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Attachments can be and were installed within the identified Facilities in compliance with the standards in Subparagraph 4.1 and in accordance with the Permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work.

6.3 City Review of Permit Application. Upon receipt of a properly executed Permit Application, which shall include the Pre-Construction Survey, certified per Subparagraph 6.2 above, and detailed plans for the proposed Attachments in a form acceptable to City staff, the City will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. The City 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 the Permit Application process shall be consistent with the following timeline.

6.3.1 Review Period. The City shall review and respond to properly executed and complete Permit Applications within thirty (30) days of receipt; provided, the Parties agree and acknowledge that the grant or denial of Licensee's request may take longer than 30 days if the Parties are communicating and mutually proceeding diligently with the Permit Application in good faith. The City's response will either provide a written explanation as to why the Permit Application is being denied, either in whole or in part, or provide an approval and estimate of the costs of all necessary Make-Ready Work. With respect to the December Application, the City agrees use its best efforts to review and respond to that Permit Application on an expedited basis.

6.3.2 Make-Ready work and access to Conduits shall be provided on a mutually agreeable, reasonable, and timely basis.

6.3.3 City may toll the time period for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters or other emergency situations.

6.4 Permit as Authorization to Attach. Upon completion of any necessary Make-Ready Work and receipt of payment for such work, the City will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

7. MAKE-READY WORK/INSTALLATION

7.1 Make-Ready Survey. When the City receives an attachment or placement Permit Application from Licensee, a Pre-Construction Survey may be necessary, at Licensee's cost, to determine the adequacy or the capacity of the City Facilities to accommodate Licensee's Communications Equipment without jeopardizing the safety of the City Facilities or placing the City in violation of generally applicable zoning or other restrictions. Licensee shall be responsible for performing and paying all costs associated with the Pre-Construction Survey. The City may perform a field inspection and structural analysis as part of the Pre-Construction Survey. The City shall provide reasonable advance notice of such a field inspection and a representative of Licensee has the right to be present for the inspection.

7.2 Make-Ready Work.

7.2.1 Except where the City denies the application, whenever any City Facility to which Licensee seeks attachment or occupancy requires modification or replacement to accommodate both Licensee's Attachment and the existing attachments or equipment of the City and other Attaching Entities, the City, at Licensee's cost, will provide Licensee with a detailed, good faith estimate of

Make-Ready Work (the "Make-Ready Estimate") the City believes to be necessary to prepare the City Facilities for Licensee's Attachment. The Make Ready Estimate may be provided by Licensee to the City if approved by the City. All Make-Ready Work will be performed at the sole cost and expense of Licensee. The City will use its best efforts to provide Licensee with the Make-Ready Estimate (or review Licensee's Make-Ready Estimate if prepared by Licensee) within thirty (30) days of Licensee's application. The Make-Ready Estimate shall include itemized estimates of the cost of each component of the Make-Ready Work. (See Subparagraph 1.13 for defined components of Make-Ready Work.) Any reference to costs or expenses borne by Licensee within Subparagraphs 7.1 and 7.2 shall include all third-party out of pocket expenses incurred by the City and may also include administrative time incurred by the City or expenses that third-party Attaching Entities are obligated to bear under pre-existing agreements.

7.2.2 After receiving the Make-Ready Estimate, if Licensee still desires to make the Attachment, Licensee may within ninety (90) days of receiving the Make-Ready Estimate elect by written notice to the City any of the following alternatives:

(i) Offer the City the option to perform such Make-Ready Work as called for in the Make-Ready Estimate (the "Option"), and if the City, in its sole and absolute discretion, agrees to perform such Make-Ready Work pursuant to the Option, Licensee will pay to the City fifty percent (50%) of the fees for Make-Ready Work specified by the Make-Ready Estimate (the "Down Payment"). Licensee shall pay an additional twenty-five percent (25%) of the Make-Ready Estimate when the City has completed one-half of the Make-Ready Work (the "Progress Payment"). Licensee shall pay the remaining twenty-five percent (25%) of the Make-Ready Estimate upon the City's completion of the Make-Ready Work. Notwithstanding this Subparagraph, the City, at its option, may require advanced payment of the entire Make-Ready Estimate per Subparagraph 3.8.

(ii) Licensee or Licensee's contractors may perform all the Make-Ready Work. The contractors shall be approved by the City to work within City Facilities. Approval shall be based upon reasonable and customary criteria employed by the City in the selection of its own contract labor.

(iii) Licensee may retain its own contractors to perform part of the Make-Ready Work and utilize the City to perform part of the Make-Ready Work, but only where the City has, in its sole and absolute discretion, agreed to such Option described in Subparagraph 7.2.2 (i). The parties shall reasonably agree what portion of the Make-Ready Work each party will perform through this joint-build option. In the event Licensee retains contractors to perform part of the Make-Ready Work and

utilizes the City to perform part of the Make-Ready Work, Licensee shall adjust the payments described in Subparagraph 7.2.2 (i) to include only the costs of the itemized components of the Make-Ready Estimate to be performed by the City.

7.2.3 If the City, in its sole and absolute discretion, exercises its Option to perform any Make-Ready Work as described in Subparagraph 7.2.2 (i), the City shall use its best efforts to make sure that necessary Make-Ready Work, including the work necessary to rearrange the Attachments and equipment of other Attaching Entities, is completed within sixty (60) days from Licensee's remittal of the Down Payment. If Make-Ready Work is not completed by the City within the sixty (60) day period, and the City is unable to demonstrate reasonable extenuating circumstances which prevent completion within such period, any fees payable by Licensee for Make-Ready Work shall be waived and any Down Payment or Progress Payment in connection with such Make-Ready Work shall be refunded promptly to Licensee, and Licensee may retain its own contractors to perform the Make-Ready Work.

If Licensee submits an application that affects existing Attaching Entities, the City will use commercially reasonable efforts to notify the existing Attaching Entities and coordinate the rearrangements of their Attachments. To the extent third-party equipment is affected by Licensee's application, the City will follow the procedure as described in Subparagraphs 7.2.1, 7.2.2 and 7.2.3, but only to the extent such existing Attaching Entities do not elect to perform the rearrangement or are not already obligated to rearrange Attachments and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.

7.3 Scheduling of Make-Ready Work. In performing all Make-Ready Work to accommodate Licensee's Attachment, the City will endeavor to include such work in its normal work schedule. In the event Licensee requests the Make-Ready Work be performed on a priority basis or outside of the City's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or City service restoration.

7.4 Licensee's Installation/Removal/Maintenance Work.

7.4.1 All of Licensee's installation, removal and maintenance work 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 Facilities or other property or equipment, or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Paragraph 18.

7.4.2 All of Licensee's installation, removal and maintenance work performed within City Facilities or in the vicinity of other City property, either by its employees or contractors, shall be in compliance with all applicable regulations

specified in Subparagraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Attachment(s) is fully qualified and familiar with all Applicable Standards, the provisions of Paragraph 17, and the Specifications required by Paragraph 4.

8. TRANSFERS

8.1 Required Transfers of Licensee's Attachments. If the City reasonably determines that a transfer of Licensee's Attachments is necessary, Licensee agrees to allow such transfer or remove the affected Attachment pursuant to Subparagraph 12.2. In such instances, the City shall require Licensee to perform such transfer or removal at its own expense within ninety (90) calendar days after receipt of notice from the City. If Licensee fails to transfer its Equipment within ninety (90) calendar days after receiving such notice from the City, the City shall have the right to transfer Licensee's Equipment using its personnel and/or contractors. The costs of such transfers shall be paid by licensee. The City shall not be liable for damage to Licensee's Equipment except to the extent provided in Subparagraph 16.1. The written advance notification requirement of this Subparagraph 8.1 shall not apply to emergency situations, in which case the City shall provide such advance notice as is practical given the urgency of the particular emergency situation. The City shall then provide written notice of any such actions taken within five (5) business days of the occurrence.

The provisions of this Subparagraph 8.1 shall be subject to and limited by the terms of the Codes.

9. MODIFICATIONS AND/OR REPLACEMENTS

9.1 Licensee's Action Requiring Modification/Replacement. In the event that any City Facility to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional Equipment in accordance with all Applicable Standards, the City will notify Licensee. If the City is willing to allow a modification or replacement of the City Facility to accommodate Licensee's Attachment, the City will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Facility, including but not limited to replacement of the Facility and rearrangement or transfer of the City's equipment, as well as the equipment of other Attaching Entities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities' existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to the City the actual cost of any Make-Ready Work, performed by the City, per Subparagraphs 3.9 and 7.2; provided, the City, at its discretion, may require advance payment of the entire cost. Licensee shall also be responsible for obtaining, and furnishing to the City before the commencement of any Make-Ready Work, agreements between Licensee and the other Attaching Entities concerning the relocation or rearrangement of their Attachments and the costs involved.

9.2 Treatment of Multiple Requests for Same Facility. The rights of any third parties to whom City confers Facilities access after the Licensee shall be subject to the rights of the Licensee as set forth herein. The City shall not license any Facilities occupied by Licensee, or for which an application for occupancy or attachment from Licensee has been received by City and is pending, for use by any other person or entity where it is determined that such third-party use would unreasonably interfere with Licensee's Communication Equipment pursuant to the Applicable Standards, unless access for such other person or entity is otherwise required by applicable state or federal law. If access is granted to a third-party pursuant to state or federal law, then City shall give Licensee ninety (90) days' prior written notice of any such grant of third-party access and give Licensee reasonable time to remove and relocate equipment to another City Facility or in the right-of-way, prior to that time any third party is able to access any Facilities previously occupied by or attached to by Licensee.

If City grants Facilities access to any third-party prior to Licensee applying for or being granted such rights, Licensee shall be subject to the rights of said third-party attacher, unless it is determined that Licensee access would not unreasonably interfere with such third-party's equipment pursuant to the Applicable Standards or if such access is required by state or federal law. This paragraph 9.2 shall not be deemed to otherwise limit the City from using any Facilities in connection with providing its own services or from licensing any Facilities to another person or entity if no application from Licensee is pending or such Facilities is not occupied by Licensee.

9.3 Allocation of Costs. The costs for any rearrangement or transfer of Licensee's Attachment or the replacement of a City Facility (including any related costs for tree cutting or trimming or Conduit clearing) shall be allocated to the City and/or Licensee and/or other Attaching Entity on the following basis:

9.3.1 If the City intends to modify or replace a City Facility solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the City Facility. Licensee shall be responsible for all costs associated with any necessary modification or relocation of Licensee's Attachment. Prior to making any such modification or replacement of the City Facility the City shall provide Licensee ninety (90) days' written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify, relocate or add to its existing Attachment. Should Licensee so elect, it must seek the City's written permission per this Agreement. The notification requirement of this Paragraph shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Attachment, Licensee shall bear the total incremental costs incurred by the City in making the space within the Facilities accessible to Licensee.

9.3.2 If the modification or replacement of a Facility is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Facilities and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications

Equipment as well as those of the City. Licensee shall submit to the City evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to transfer or rearrange such Entities' Equipment prior to the commencement of any Make-Ready Work. The City shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Equipment pursuant to this Paragraph.

9.3.3 If the modification or the replacement of a Facility is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than the City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Attachment. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's Equipment.

9.4 City Not Required to Relocate. No provision of this Agreement shall be construed to require City to relocate its Attachments or modify/replace its Facilities for the benefit of Licensee, provided, however, any denial by the City for modification of the Facility is based on nondiscriminatory standards of general applicability.

10. ABANDONMENT OR REMOVAL OF CITY FACILITIES

10.1 Notice of Abandonment or Removal of City Facilities. If the City desires at any time to abandon, remove or underground any City Facilities in which Licensee's Attachments are located, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such City Facilities. Notice may be limited to thirty (30) calendar days if the City is required to remove or abandon its City Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether the City is offering Licensee an option to purchase the Facilities. If, following the expiration of the applicable notice period, Licensee has not yet removed and/or transferred all of its Attachments therefrom and has not entered into an agreement to purchase City Facilities pursuant to Subparagraph 10.2, the City shall have the right, subject to any applicable laws and regulations, to have Licensee's Attachment removed and/or transferred from the Facility at Licensee's expense. The City shall give Licensee thirty (30) days' prior written notice of any such removal or transfer of Licensee's Equipment.

10.2 Option to Purchase Abandoned City Facilities. Should the City desire to abandon any Facility, the City, in its sole discretion, may grant Licensee the option of purchasing such Facility at a rate negotiated with the City. Licensee must notify the City in writing within thirty (30) calendar days of the date of the City's notice of abandonment that Licensee desires to purchase the abandoned Facility. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Facility within forty-five (45)

calendar days. Should Licensee fail to secure the necessary governmental approvals, or should the City and Licensee fail to enter into an agreement for Licensee to purchase the Facility prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Subparagraph 10.1. The City is under no obligation to sell Licensee the City Facilities that it intends to remove or abandon.

11. REMOVAL OF LICENSEE'S ATTACHMENTS

11.1 Removal on Expiration/Termination. At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Attachment(s) from the affected Facilities at its own expense. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear. If Licensee fails to remove such Equipment within sixty (60) calendar days of expiration or termination or some greater period as allowed by the City, the City shall have the right to have such Equipment removed at Licensee's expense.

11.2 Licensee Removal. Licensee may, at any time, remove its Attachment(s) from any City Facility, provided it gives the City at least fourteen (14) days prior written notice. Provided, the City may require Licensee to leave in place any conduit, innerduct or similar Communications Equipment within a City Conduit in order to prevent damage to City Facilities. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear.

11.3 Emergency Removal. In the event of any emergency that threatens persons or property, the City may, in its sole discretion, without prior notice, remove any of Licensee's Attachments. Such removal shall be at Licensee's sole cost and expense, unless the removal was the result of gross negligence or willful misconduct by the City. The City will give notice to Licensee subsequent to the City's removal of Licensee's Attachment(s) as soon as practicable under the circumstances.

12. TERMINATION OF PERMIT

12.1 Automatic Termination of Permit. Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Attachment on public or private property at the Site of the particular Facility covered by the Permit.

12.2 Surrender of Permit. Licensee may at any time surrender any Permit for Attachment and remove its Communications Equipment from the affected Facilities, provided, however, that before commencing any such removal Licensee must obtain the City's written approval of Licensee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Paragraph 18. No refund of any fees or charges will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Paragraph 12, but fails to remove its

Attachments from City Facilities within sixty (60) calendar days thereafter, the City shall have the right to remove Licensee's Attachments at Licensee's expense.

13. INSPECTION OF LICENSEE'S ATTACHMENTS

13.1 Inspections. The City may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with Applicable Standards within thirty (30) calendar days of notification. If it is found that Licensee has made an Attachment without a Permit, Licensee shall pay an Unauthorized Access Penalty Fee as specified in Paragraph 3 in addition to applicable Permit and Make-Ready Costs. If it is found that five percent (5%) or more of Licensee's Attachments are either in non-compliance or not permitted, Licensee shall pay its *pro-rata* share of the costs of the inspection.

13.2 Notice. The City will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.

13.3 No Liability. Inspections performed under this Paragraph 13, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

13.4 Attachment Records. Notwithstanding the above inspection provisions, Licensee is obligated to furnish the City on an annual basis an up-to-date map depicting the locations of its Attachments in an electronic format specified by the City.

14. UNAUTHORIZED OCCUPANCY OR ACCESS

14.1 Penalty Fee. If any of Licensee's Attachments are found occupying any Facility for which no Permit has been issued, the City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Penalty Fee as specified in Paragraph 3. In the event Licensee fails to pay such Fee within sixty (60) calendar days of receiving notification thereof, the City has the right to remove such Attachment at Licensee's expense and without liability.

14.2 No Ratification of Unlicensed Use. No act or failure to act by the City with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by the City of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

15. REPORTING REQUIREMENTS

Licensee shall annually report any Attachment Licensee has removed from City Facilities during the relevant reporting period. The report shall identify the Facility from which the Attachment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit pursuant to Subparagraph 12.2.

16. LIABILITY AND INDEMNIFICATION

16.1 Liability. The City reserves to itself the right to maintain and operate its Facilities in such manner as will best enable it to fulfill its governmental service requirements. Licensee agrees to use City's Facilities at Licensee's sole risk. Notwithstanding the foregoing, the City shall exercise reasonable precaution to avoid damaging Licensee's Attachment(s) and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors.

16.2 Indemnification. Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless the City and its officials, officers, 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 the City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of the 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 Attachments, except to the extent of the City's gross negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

16.2.1 Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;

16.2.2 Cost of work performed by the 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 Attachment(s) in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes the City to perform on Licensee's behalf;

16.2.3 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;

16.2.4 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, State of Kansas, the City, or any other governmental entity or administrative agency.

16.3 Procedure for Indemnification.

16.3.1 The City shall give prompt 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 the City, the City shall give the notice to Licensee no later than thirty (30) calendar days after the City receives written notice of the action, suit or proceeding.

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

16.4 Environmental Hazards. Licensee represents and warrants that its use of City Facilities will not generate any Hazardous Substances, that it will not store or dispose on or about City Facilities or transport to City Facilities any hazardous substances and that Licensee's Attachment(s) 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 Attachment(s) would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the 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, 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 Facilities attributable to Licensee's use of City Facilities.

16.5 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable State limits on municipal liability or governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies the City shall be construed in any way to limit any other indemnification provision contained in this Agreement. Nothing herein shall be construed to waive or limit the City's immunities, limitation of liability, or defenses under the Kansas Tort Claims Act, or any other law.

16.6 Liens. Licensee shall pay all taxes and assessments lawfully levied on Licensee's Attachments and any personal, real property or other taxes, assessments, fees, or charges levied on City Structures and Conduits solely because of their use by Licensee. In no event shall Licensee permit any lien to be filed or to exist upon any of City's Structures or Conduits, or other City property as a result of any claim against Licensee. Licensee shall promptly pay upon receipt of written notice from City all such liens, together with all fees and costs necessary to discharge same, or shall bond around such liens in the manner provided by law.

17. DUTIES, RESPONSIBILITIES, AND EXCULPATION

17.1 Duty to Inspect. Licensee acknowledges and agrees that the City does not warrant the condition or safety of City Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect City Facilities and/or premises surrounding the Facilities, prior to commencing any work on City Facilities or entering the premises surrounding such Facilities, and City agrees to afford Licensee reasonable access to its Facilities and premises to allow such inspection.

17.2 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.

17.3 DISCLAIMER. THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE CITY'S FACILITIES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17.4 Duty of Competent Supervision and Performance. 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, employees of the 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 subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.

18. INSURANCE

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

18.1.1 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 Kansas 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 the City. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

18.1.2 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 $1,000,000 general aggregate, $1,000,000 products/completed operations aggregate, $1,000,000 personal injury, $1,000,000 each occurrence.

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

18.1.4 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.

18.1.5 Property Insurance. Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

18.2 Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the State of Kansas and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Paragraph 18 with the same limits.

18.3 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 the 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. The City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. The 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. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. Licensee shall defend, indemnify and hold harmless the City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Paragraph 18. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the City upon request.

18.4 Limits. The limits of liability set out in this Paragraph 18 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 which would materially increase or decrease Licensee's exposure to risk.

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

18.6 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.

19. AUTHORIZATION NOT EXCLUSIVE

The City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use City Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

20. ASSIGNMENT

20.1 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 the City. Notwithstanding, Licensee may, upon written notice to the City, assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any affiliate of Licensee; (ii) any successor in interest to Licensee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of the Licensee's assets used to provide Communications Services to residents and businesses located in the City. An "affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

20.2 Obligations of Assignee/Transferee and Licensee. No assignment or transfer under this Paragraph 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish the City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the express written consent to the release of Licensee by the City.

20.3 Sub-licensing. Without the City's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to allowing third parties to place Attachments within City Facilities. Any such action shall constitute a material breach of this Agreement. Notwithstanding the foregoing, and subject to the reasonable approval of the City, the installation and use of internal space within Licensee's Attachments for third party wireless providers utilizing Licensee's Communications Services is not subject to this Subparagraph 20.3. Furthermore, the use of Licensee's Attachments by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or overlashing is not subject to this Subparagraph 20.3.

21. FAILURE TO ENFORCE

Failure of the 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.

22. ISSUE RESOLUTION PROCESS

22.1 Dispute Resolution. Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then all disputes relating to this Agreement, or the breach thereof, the parties shall be entitled to pursue all available remedies at law or equity. Each party will bear its own costs for dispute resolution activity.

22.2 Confidential Settlement. Unless the parties otherwise agree in writing, communication between the parties under this Paragraph 22 will be treated as confidential information developed for settlement purposes, exempt from discovery, and inadmissible in litigation.

22.3 Business As Usual. Unless an emergency condition exists, during any dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement.

23. TERMINATION OF AGREEMENT

23.1 Notwithstanding the City's rights under Paragraph 12, the City shall have the right, pursuant to the procedure set out in this Paragraph 23, to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any material term or condition of this Agreement, including but not limited to the following circumstances:

23.1.1 Construction, operation or maintenance of Licensee's Attachment(s) in violation of law or in aid of any unlawful act or undertaking; or

23.1.2 Construction, operation or maintenance of Licensee's Attachment(s) after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority or violation of any other agreement with the City; or

23.1.3 Construction, operation or maintenance of Licensee's Attachment(s) without the insurance coverage required under Paragraph 18.

23.1.4 The expiration, termination or revocation of Licensee's franchise or any other required regulatory authorization (as required by Paragraph 5); provided, Licensee shall have a reasonable period of time to obtain the reinstatement of any such authorization.

23.2 The City will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Subparagraph 23.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within sixty (60) calendar days, or such longer period mutually agreed to by the parties, and

shall confirm in writing to the City that the cited condition(s) has (have) ceased or been corrected, or are in the process of being corrected.

23.3 If the parties are unable to resolve the dispute and Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, the City may terminate this Agreement or any Permit(s) granted hereunder on thirty (30) days' written notice. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, the City may seek removal of Licensee's Attachments pursuant to the terms of Paragraph 11, with respect to specific Facilities or from the City's entire system. In such instance, Licensee shall remain liable for and pay all fees and charges accrued pursuant to the terms of this Agreement to the City until Licensee's Attachments are actually removed.

24. TERM OF AGREEMENT

24.1 This Agreement shall be effective for a term beginning on the Effective Date and ending the earlier of i) ten (10) years after the Effective Date, or ii) the expiration date of Licensee's Contract Franchise (as defined in the Contract Franchise). Thereafter, this Agreement will automatically renew for up to two (2) additional four (4) year terms, unless either party notifies the other party of its intent to terminate or renegotiate the Contract franchise at least one hundred and eighty (180) days before the expiration of the then current term, or unless Licensee's Contract Franchise is no longer in effect. The additional terms shall be deemed a continuation of this Agreement and not as a new agreement or amendment.

24.2 Upon written request of either party, this Agreement shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either party, including but not limited to the scope of the Agreement granted to Licensee or the compensation to be received by the City hereunder.

24.3 In the event the parties are actively negotiating in good faith a new Agreement or an amendment to this Agreement upon the termination date of this Agreement, the parties by written mutual agreement may extend the termination date of this Agreement to allow for further negotiations. Such extension period shall be deemed a continuation of this Agreement and not as a new Agreement.

24.4 For two (2) years after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Attachments as provided for in Paragraph 16.

25. AMENDING AGREEMENT

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

26. NOTICES

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

To the City:	To Licensee:
City of Olathe, Kansas	Kansas Fiber Network, LLC
100 East Santa Fe	8201 East 34th Street North Bldg. 1500
P.O. Box 768	Wichita, KS 67226
Olathe, Kansas 66051-0768	Attn: President
Attn: City Clerk	contracts@ksfiber.net
(913) 971-8525 fax	(316) 712-6030

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

26.2 The above notwithstanding the parties may agree to utilize electronic communications such as email for notifications related to the Permit Application and approval process and necessary transfer or Facility modifications.

26.3 Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where the City can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the City's concerns and requests. Failure to maintain an emergency contact shall eliminate the City's liability to Licensee for any actions that the City deems reasonably necessary given the specific circumstances.

27. ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, whether written or oral, between the City and Licensee for placement and maintenance of Licensee's Attachments within City Facilities within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

28. 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 but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

29. GOVERNING LAW

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Kansas.

30. INCORPORATION OF RECITALS

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

31. PERFORMANCE BOND

On execution of this Agreement, Licensee shall provide to the City a performance bond or letter of credit in an amount of Fifty Thousand Dollars ($50,000.00). The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties, fees and charges due to the City which arise by reason of the construction, operation, maintenance or removal of Licensee's Attachments from City Facilities.

32. FORCE MAJEURE

32.1 In the event that either the 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 (other than the City) 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 any such party shall endeavor to remove or overcome such inability as soon as reasonably possible.

32.2 The City shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay as described in Subparagraph 32.1, provided that Licensee present the City with a written description of such *force majeure* within a reasonable time after occurrence of the event or cause relied on.

33. RELATIONSHIP OF PARTIES;

Nothing in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

34. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

35. SURVIVAL

Any termination of this Agreement shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF OLATHE, KANSAS

By: _____
Michael E. Copeland
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Kansas Fiber Network, LLC

Michael L. Brigman
Name

By: DocuSigned by: Michael L. Brigman
Authorized Signatory

President
Title

EXHIBIT A

The following Right-of-Way Attachment and Conduit Access fees (and other charges set fort herein) are established based on the descriptions listed below. These fees/charges shall be administered in a competitively neutral and non-discriminatory manner. All fees/charges will be rounded to the nearest dollar.

A. Right-of-Way Attachment Fee and Conduit Access Fee:

1. One-Time Attachment Fee: $1.87 per linear foot (multiplied by the number of linear feet of Communications Equipment installed under a single City Right-of-Way Permit within City Facilities which are not installed within the Conduit System).

2. One-Time Conduit Access Fee: $5.00 per linear foot (multiplied by the number of linear feet of Communications Equipment installed under a single City Right-of-Way Permit within the Conduit System in City Facilities).

Commencing January 1, 2021, The Attachment Fee and Conduit Access Fee will be adjusted annually by any change in the Index know known as the "United States Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, base period 1982-84=100 (CPI-U) (hereafter the "CPI Index"); provided, however, in no event shall the amount of the Annual Attachment Fee decrease from the previous year. The Annual Attachment Fee does not include the use of the City's electricity. The entity is responsible for obtaining its own meter and electricity supply.

3. Non-Recurring Fees/Charges:

a. Permit Application Fee: An amount equal to the fee for a Right-of-way Permit, as set forth by a Resolution of the Governing Body. *(The Permit Application Fee is intended to reimburse the City for costs incurred for review of the permit application and site design approval.)*

b. Make Ready Work Charges: Permittee shall reimburse the City for all actual work done or contracted by the City for any make ready or other work done to accommodate Permittee's antennae and other equipment. The charge for such work shall include all reasonable material, labor engineering and administrative costs and applicable overhead costs.

c. Inspection and Line Location Fees: Permittee shall reimburse the City for all actual work done or contracted by the City for any necessary inspections and line locations. The charge for such work shall include all reasonable material, labor engineering and administrative costs and applicable overhead costs.

4. Unauthorized Attachment Penalty Fee: 3x Annual Attachment Fee, per occurrence.

5. Failure to Timely Transfer, Abandon or Remove Facilities Penalty: 1/5 Attachment Fee per day, per line, first 30 days; The Attachment Fee per day, per line, second 30 days and thereafter.

B. In Lieu Payments:

In lieu of payment of some or all of the above-established Right-of-Way Attachment or Conduit Access Fees and other charges, the City may agree to accept in-kind consideration to be valued as at least roughly comparable to said fees/charges.

C. Approvals:

Nothing in this Agreement shall obligate the City to allow the use of any specific City Facility or Conduit System by any entity. Each attachment and/or conduit installation must be approved in writing by, and meet all design, installation, and maintenance criteria established by, the City's Public Works Director, or designee. Payment of the above-cited fees/charges shall not exempt any entity from any applicable federal, state or local franchise, zoning, building code, permit or other requirements, ordinances or regulations, including, but not limited to, the City's applicable permit application and construction requirements for attachments to City Facilities and the Codes.