REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
July 23, 2020

Department Administration **Director Approval** Kelly Passauer

AGENDA ITEM Consider an agreement with Kansas #15 Limited Partnership authorizing the installation and maintenance of pole attachments in the City rights-of-way.

SUMMARY RECOMMENDATION Approve the agreement.

BACKGROUND Kansas #15 Limited Partnership has been working with the City Attorney to negotiate an agreement for placement of approximately eleven (11) communication devices on poles in the City rights-of-way to expand the capabilities and speed of the cellular network that serves U.S. Cellular in Independence.

BUDGET IMPACT The agreement provides for the following regarding payments to the City:

- An annual permit and license fee of $270.00 for each C-RAN Facility installed within the Public Right of Way of the Licensor shall be paid to the Licensor by LICENSEE. LICENSEE shall pay the C-RAN Facility Permit Fee annually the 15th day following the month after each C-RAN Facility is installed within the public ROW.

- Upon execution and approval of this Agreement, LICENSEE shall pay to the Licensor a one-time application fee in the sum of $500.00 for replacement pole and $1,000.00 for new poles per pole to recover the Licensor's costs associated with the review and approval of this Agreement. The Licensor certifies that such application fee reimburses the Licensor for its reasonable, actual and verifiable cost of reviewing and approving this Agreement.

SUGGESTED MOTION I move to approve an agreement with Kansas #15 Limited Partnership authorizing the installation and maintenance of pole attachments in the City rights-of-way.

SUPPORTING DOCUMENTS

1. Agreement with US Cellular
2. Proposed locations for communication poles

POLE ATTACHMENT MASTER LICENSE AGREEMENT

This Pole Attachment Agreement ("Agreement") is made and entered into by and between City of Independence Kansas, a municipal corporation, having an address at 811 W. Laurel, Independence, KS 67301, hereinafter referred to as "Licensor," and Kansas # 15 Limited Partnership a Delaware limited partnership, having an address at Attention: Real Estate Department 8410 West Bryn, Mawr Avenue, Chicago, Illinois 60631, hereinafter referred to as "Licensee."

WHEREAS, Licensor is the owner of property located in the City of Independence, County of Montgomery, State of Kansas as described in Exhibit A attached hereto and incorporated by reference (the " Licensor's Public Right of Way ").

WHEREAS, Licensee desires to occupy, and Licensor is willing to provide Licensee such Facilities (as hereinafter defined) on the Licensor's Public Right of Way for Licensee's use, as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises, conditions, and other good and valuable consideration of the parties hereto, it is covenanted and agreed as follows:

1.1 **Permitted Installation.** LICENSEE may at LICENSEE's sole cost and expense and during the term of this Agreement, locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities subject to the terms and conditions of this Agreement. LICENSEE shall undertake and perform any work authorized by this Agreement in a skillful and workmanlike manner.

1.1.1 **Installation Specifications.** The installation of the Facilities shall be made in accordance with plans and specifications as may be approved by the Licensor and after obtaining all necessary permits for all work in the ROW and/or on Licensor property. Such approval review shall be made no later than sixty days (60) days from application date. The Parties understand and agree that Facilities outside of the Public ROW may require additional easements for underground fiber to connect to Network within Public ROW. Such additional easements shall be located so as not to interfere with the Licensor's use of its property. For each installation of Facilities, LICENSEE shall provide to the Licensor plans, specifications, a construction work breakdown, and anticipated construction timeframes for the installation of Facilities no later than ninety (90) days prior to the planned start of the installation. LICENSEE shall, at the written request of the Licensor, attend a planning session regarding any installation proposed by LICENSEE. The location and any other requirements shall be approved in writing by the Licensor prior to construction of the Facilities at that specific location, approval of which shall not be unreasonably withheld, conditioned or delayed. Approval of plans and specifications and the issuance of any permits by the Licensor shall not release LICENSEE from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. LICENSEE shall be responsible for notifying the Licensor and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected Licensor- approved permits as may be necessary. LICENSEE shall be responsible for all costs associated with the permitting process, including, but not limited to, repairs and replacement of Licensor ROW. Such permits and approval requirements detailed in this section shall not be unreasonably withheld, conditions or delayed by

the Licensor and any conditioned or requirements shall be in accordance with federal, state, and local laws.

1.1.2 **Temporary Construction.** The installation of the Facilities shall be performed in accordance with traffic control plans for temporary construction work that are approved by the Licensor, which approval shall not unreasonably be withheld, conditioned or delayed.

1.1.3 **Construction Schedule.** If requested by the Licensor, at least ten (10) days prior to the installation of the Facilities, LICENSEE shall deliver to the Licensor a schedule for the proposed work related to the construction of the Facilities, as well as a list of the names of all agents and contractors of LICENSEE's authorized by LICENSEE to access the Licensor ROW and Licensor owned property on LICENSEE's behalf.

1.1.4 **Coordination of Work.** LICENSEE shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations within the Licensor's ROW. LICENSEE shall be the Licensor's point of contact and all communications shall be through LICENSEE. LICENSEE shall be solely responsible for communicating with Kansas One-Call for necessary utility locates.

1.1.5 **Inspection by Licensor.** The Licensor shall have commercially reasonable access to inspect any work conducted by LICENSEE during the installation, maintenance and/or repairs of the Facilities.

1.1.6 **Other Utility Providers.** When necessary, LICENSEE shall coordinate with other utility providers for other needed utility services. LICENSEE and the Licensor will reasonably cooperate with the other utilities' providers regarding the location of any meter, pole, and other apparatuses required for each Site.

1.1.7 **Existing Utility Poles.** LICENSEE may attach its Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner, provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the Licensor's police powers, and in no instance shall LICENSEE erect a new pole within an existing aerial pole line absent the Licensor's prior authorization.

1.2 **Compliance with Laws.** This Agreement is subject to the terms and conditions of all applicable federal, state and local Laws and the Parties shall comply with any such Laws in the exercise of their rights and performance of their obligations under this Agreement. "Laws" or "Law" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Licensor or other governmental entity or agency having joint or several jurisdictions over the Parties' activities under this Agreement or having jurisdiction that is applicable to any aspect of this Agreement that are in force on the Effective Date and as they may be enacted, issued or amended during the term of this Agreement.

1.2.1 **Zoning Regulations.** Zoning regulations shall not apply to installations within the Licensor ROW.

1.2.2 **Permits.** LICENSEE shall obtain any necessary encroachment permits from the Licensor for the installation of the Network and for any other work within the Licensor's ROW or other real property of the Licensor, as required by the Code or State Law.

1.3 **Compliance with Permits.** All work within the Licensor's ROW or other real property of the Licensor shall be performed in strict compliance with all applicable Permits and all applicable regulatory requirements.

1.3.1 **Fee Increases.** If prior to the second anniversary of the date hereof, the Licensor increases the permitting fees described in the Sections above, and if with respect to all similarly situated franchisee license agreements executed by the Licensor in such 2-year period the franchisee or licensee is subject to a similar fee provision, then LICENSEE will pay to the Licensor the increased fees as if the increased fee schedule had been in effect as of the date hereof upon being billed therefor by the Licensor.

1.4 **Placement of LICENSEE Facilities.** LICENSEE shall coordinate the placement of its Facilities in the Public ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the Licensor Engineer.

1.4.1 **Placement of Licensor Facilities.** Should the Licensor decide that it is in its interest to include capacity in addition to the Facilities planned by LICENSEE during the installation, it will communicate this decision to LICENSEE in writing prior to the start of any construction and LICENSEE shall, if technically feasible, include this additional capacity in its installation. The additional capacity will be defined during the planning process outlined in 1.1.1 and may include, but is not limited to, conduit, handholes, enclosures, and cable lines. The additional capacity shall be determined no later than thirty (30) days prior to the planned start of the installation. The Licensor shall reimburse LICENSEE for the cost of the additional capacity. The Licensor's cost will be limited to the actual material and direct labor of the additional facilities only. The additional facilities shall be inspected by the Licensor along with the LICENSEE Facilities and shall not interfere with the operation and maintenance of LICENSEE Facilities. The additional facilities shall remain the exclusive property of the Licensor. Licensor may not resell the additional facilities to any third party.

1.5 **New Poles and Existing Poles.** It is understood that LICENSEE may build new poles, or other such facilities required for the installation of the Facilities which would comply with all encroachment and building permits, applicable Licensor, state and federal specifications, and Laws ("New Poles").

1.5.1 **Licensor Use of New Poles.** The Parties understand and agree that the Licensor may use any New Poles for Licensor purposes, including but not limited to streetlights and other lighting so long as such use does not interfere LICENSEE's use of its Network or Facilities. LICENSEE shall reasonably cooperate with the Licensor when using the New Poles.

1.5.2 **Licensor-Owned Lights.** Except for the installation of the lights and ancillary equipment on or in the New Poles and/or as set forth in section 1.5.3 below, LICENSEE shall not be responsible for maintenance, repair, or replacement of Licensor-owned lights, light bulbs and equipment or equipment owned by third parties authorized by the Licensor on the New Poles.

1.5.3 **Damage to New Poles.** If a new Pole falls or is damaged such that there is an imminent threat of harm to persons or property, then the Licensor may cause the New Pole to be removed to the side of the street or a location that Licensor believes reasonably eliminates the right of such imminent threat or harm to persons or property. LICENSEE shall, after written notice from the Licensor that any New Pole has been damaged or removed, cause the New Pole to be repaired or replaced within thirty (30) days after the Licensor's written notice. The cost to repair and/or replace any New Pole, including the replacement Licensor streetlight, bulb and ancillary equipment shall be paid by LICENSEE; provided, however, that if the new Pole is damaged or destroyed by the Licensor or a third party user that the Licensor has given

the right to use the New Pole, then the Licensor and/or its third party user shall pay the cost to repair and/or replace the New Pole. To the extent that LICENSEE seeks reimbursement from a third party either directly or through applicable insurance, the Licensor shall assign LICENSEE any rights the Licensor may have against such thirty party for such claims.

1.6 **Permit Fees.** LICENSEE is solely responsible for the payment of all lawful permit fees in connection with LICENSEE's performance under this Agreement.

1.6.1 **C-RAN Facility Permit Fee.** An annual permit and license fee of $270.00 for each C-RAN Facility installed within the Public Right of Way of the Licensor shall be paid to the Licensor by LICENSEE. LICENSEE shall pay the C-RAN Facility Permit Fee annually the 15th day following the month after each C-RAN Facility is installed within the public ROW.

1.6.2 **Ministerial Application Fees.** Upon execution and approval of this Agreement, LICENSEE shall pay to the Licensor a one-time application fee in the sum of $500.00 for replacement pole and $1,000.00 for new poles per pole to recover the Licensor's costs associated with the review and approval of this Agreement. The Licensor certifies that such application fee reimburses the Licensor for its reasonable, actual and verifiable cost of reviewing and approving this Agreement.

1.7 **Access to the Facilities.**

1.7.1 **LICENSEE Access to Facilities for Repair.** LICENSEE will be given reasonable access to each of the Facilities in the Licensor ROW or Licensor owned property for the purposes of routine installation, repair, maintenance or removal of Facilities. If any such maintenance activities have the potential to result in an interruption of any Licensor services at the Facility, LICENSEE shall provide the Licensor with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to Licensor services.

1.7.2 **Licensor Observation.** LICENSEE shall allow a representative of the Licensor to observe any repair, maintenance or removal work performed at the Facilities.

SECTION 2 TERM AND TERMINATION

2.1 **Term.** This License shall be effective for an initial term of Five (5) years from the effective date of this ordinance. Thereafter, this license will automatically renew for an additional Three (3) Five-year terms, unless terminated as follows: (a) mutual consent, or (b) Licensee notifies Licensor of its intent not to renew at least one hundred and twenty (120) days prior to the end of the then current Term, or (c) by a party if the other party (i) terminates or suspends its business, (ii) becomes subject to any bankruptcy or insolvency proceeding under federal or state law, or (iii) becomes insolvent or subject to direct control by a trustee, receiver or similar authority.The additional (term(s) shall be deemed a continuation of this License ordinance and not as a new License ordinance or amendment. Under no circumstances shall this License ordinance exceed twenty (20) years from the effective date of the License ordinance. At the conclusion of the twenty (20) year period the parties hereto agree to negotiate a new License

in good faith in the event LICENSEE is still providing services hereunder.

2.1.1 **90 Day Remedy Period.** If the Agreement is breached by LICENSEE, then the provisions of Section 7 (Default) shall govern the parties hereto.

2.2 **Termination of Use.** Notwithstanding Section 2.1 above, LICENSEE may terminate its use of any or all of the Network by providing the Licensor with ninety (90) days prior written notice. In the event of any such termination, LICENSEE payment obligations to the Licensor shall terminate simultaneously with the termination of use; provided LICENSEE removes its equipment and restores the Facilities, as set forth in Section 3, below, prior to the termination date.

SECTION 3 REMOVAL AND RELOCATION

3.1 **Removal due to Public Project.** Upon receipt of a written demand from the Licensor pursuant to this Section 3, LICENSEE, at its sole cost and expense, shall remove and relocate any part of the Network, constructed, installed, used and/or maintained by LICENSEE under this Agreement, whenever the Licensor reasonably determines that the removal and/or relocation of any part of the Network is needed for any of the following purposes: (a) due to any work proposed to be done by or on behalf of the Licensor or any other governmental agency, including, but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities used as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines and tracks; (b) because any part of the Network is interfering with or adversely affecting the proper operation of Licensor-owned light poles, traffic signals, or other Licensor facilities or operations; or (c) to protect or preserve the public health and safety. The Licensor shall cooperate with LICENSEE in relocating any portion of the Network removed pursuant to this Section 3.1 in a manner that allows LICENSEE to continue providing service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of that portion of the Network relocated under this Section. 3.1. No permitting or other fees may be charged by the Licensor for a removal occurring under this Section.

3.2 **Removal Due to Termination.** No later than 160 days after termination of this Agreement pursuant to the provisions of this Agreement, LICENSEE shall, at its sole cost and expense, remove the Network or the terminated portion thereof and, if such removal disturbs the locations or adjacent property (including Licensor ROW, Licensor facilities added under Section 1.4.1, or Licensor real property), restore each Facility and its adjacent property to its original conditions, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by LICENSEE to the Facility or adjacent property, or as otherwise required by the Licensor. For New Poles, LICENSEE shall install a new streetlight or facility as directed by Licensor's Public Works Director, or his or her designee. Alternatively, LICENSEE shall abandon the Network, or any part thereof, in place and convey it to the Licensor if either the Licensor or LICENSEE elects to do so.

3.3 **Abandonment.** In the event LICENSEE ceases to operate and abandons the Network, or any part thereof, for a period of ninety (90) days or more, LICENSEE shall, at its sole cost and expense and within the time period specified in Section 3.2, vacate and remove the Network or the abandoned part thereof. If such removal disturbs the Facility or adjacent property (including Licensor ROW, Licensor facilities added under Section 1.4.1or Licensor real property), LICENSEE shall also, at its sole cost and expense, restore the Facility or adjacent property to its original conditions, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by LICENSEE to the Facility or adjacent property. Alternatively, the Licensor may allow LICENSEE, in the Licensor's sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the Licensor.

3.4 **No Relocation Compensation.** The parties understand and agree that neither the Licensor nor LICENSEE are entitled to compensation for any relocation of its Network that may be required under Section 3.1 LICENSEE is not entitled to relocation assistance or any other compensation or benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this Agreement.

SECTION 4 MAINTENANCE AND REPAIR

4.1 **Electrical Use.** LICENSEE shall pay for the electrical and other utilities services it consumes in its operations at the rate charged by the servicing utility company.

4.2 **Maintenance and Repair.** LICENSEE shall, at LICENSEE's sole cost and expense, perform all maintenance and repairs reasonable needed to maintain the Network in good condition and neat and orderly appearance, and in compliance with all applicable Laws. In the event any part of the Network requires replacement because such part cannot be repaired, LICENSEE shall, at LICENSEE's sole cost and expense, replace the irreparable part of the Network. LICENSEE shall not cause rubbish, garbage or debris on or around its Network or the Facilities and shall not permit rubbish, garage or debris to accumulate on or around in any enclosed areas around the Facilities. If the Licensor gives LICENSEE written notice of a failure by LICENSEE to maintain the Facilities, LICENSEE shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

4.3 **Appearance.** LICENSEE shall cooperate with the Licensor on all issues of aesthetics and appearance. LICENSEE shall follow all legally binding Licensor policies, state and local ordinances with respect to aesthetics. This includes, but is not limited to, historic site and/or locations of significant importance. All locations of C-RAN systems must be aesthetically approved by the Licensor Engineering Department, in a manner consistent with other approvals within these Restrictions.

4.4 **Repair of ROW.** LICENSEE shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by LICENSEE's construction, installation,

maintenance, access, use, repair, replacement, relocation, or removal of the Network in the Licensor's ROW. LICENSEE shall promptly repair such damage and return the Licensor's ROW and any affected adjacent property to a safe and satisfactory condition to the Licensor in accordance with the Licensor's applicable street restoration standards or to the property owner if not the Licensor. LICENSEE's obligations under this Section 4.4 shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the Licensor's ROW by LICENSEE to the Licensor.

SECTION 5 INDEMNIFICATION

5.1 **Indemnity.** LICENSEE shall indemnify, defend, and hold harmless the Licensor, its council members, officers and employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by LICENSEE pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the Licensor, its councilmembers, officers, employees, agents or contractors. The Licensor shall promptly notify LICENSEE of any claim, action or proceeding covered by this Section 5.1.

5.2 **Waiver of Claims**. LICENSEE waives all claims, demands, causes of action, and rights it may assert against the Licensor on account of any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from any event or occurrence except for any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from the negligence or willful misconduct of the Licensor.

5.3 **Limitation of Licensor's Liability.** The Licensor, its agents, officers, employees, or contractors, shall not be liable for damage to the Facilities, s, except to the extent such damage is caused by the negligence or willful misconduct of Licensor, its agents, officers, employees or contractors. The Licensor will in no event be liable for indirect or consequential damages.

5.4 **Limitation of LICENSEE's Liability.** In no event shall LICENSEE be liable for indirect or consequential damages in connection with or arising from this Agreement, or its use of the Network, New Poles, and ROW or other Licensor real property.

SECTION 6 INSURANCE

6.1 **Minimum Insurance Requirements.** LICENSEE shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Section.

(a) **Minimum Insurance.** LICENSEE shall at all times during the term of this Agreement, carry, maintain, and keep in full force and effect, insurance as follows:

(i) General Liability: A policy or policies of Comprehensive General Liability Insurance, with minimum limits of $2,000,000 combined single-limit per- occurrence for bodily injury, personal injury, death, loss and property damage resulting from wrongful or negligent acts by LICENSEE. If Commercial General Liability Insurance or other form with a general aggregate limit is

used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(ii) Automobile Liability: A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of $1,000,000 combined single-limit per accident for bodily injury and property damage covering any vehicle utilized by LICENSEE in performing the work covered by this Agreement.

(iii) Workers' compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of $1,000.000 per accident.

(b) **Other Insurance Provisions.** The policies shall contain, or be endorsed to contain, the following provisions:

(i) General Liability and Automobile Liability Coverage.

a) The Licensor, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be named as additional insureds on all required insurance policies, except for Workers' Compensation and Employer's Liability policies.

b) LICENSEE's insurance coverage shall be primary insurance as respects the Insureds with respect to the indemnity obligation of Licensee under this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of LICENSEE's insurance and shall not contribute with it with respect to the indemnity obligation of Licensee under this Agreement.

c) LICENSEE's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insured is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.

(ii) Workers' Compensation and Employer's Liability Coverage.

Ccoverage shall not be cancelled except after thirty (30) days' prior written notice has been given to the Licensor.

(c) **Acceptance of Insurers.** Insurance shall be placed with insurers with an A.M. Best rating of no less than A-: VII.

(d) **Verification of Coverage.** LICENSEE shall furnish the Licensor with certificates of insurance required by this Section 7. The certificates for each insurance policy are to be signed by a person, either manually or electronically, authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the Licensor before work commences.

(e) **Secondary Parties.** In the event LICENSEE hires any subcontractors, independent contractors or agents ("Secondary Parties") to locate, place, attach, install, operate, use, control, replace,

repair or maintain the Network, LICENSEE shall require the Secondary Parties to obtain and maintain insurance commensurate to the work such Secondary Parties perform.

SECTION 7 DEFAULT

7.1 **Default.**

7.1.1 **Defined.** A "Default" shall be deemed to have occurred under this Agreement if a party fails to cure a breach of this Agreement within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

7.1.2 **Remedies.** Upon the failure of a party to timely cure any breach after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of Section 6.3 (Limitation of Liability), terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

7.2 **Licensor Termination Right.** In addition to the remedies set forth in Section 7.1.2, the Licensor shall have the right to terminate this Agreement if (i) the Licensor is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the public right of way: or (ii) if LICENSEE's licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights shall be subject to LICENSEE's rights to just compensation, if any, for any taking of a protected property right.

7.3 **No waiver.** A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matters subsequently occurring.

7.4 **Interest.** If LICENSEE fails to make any payment under this Agreement when due, such amounts shall accrue interest from the date such payment is due until paid, including accrued interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

SECTION 8 INTERFERENCE

8.1 **Non-Interference with Non-Public Safety Communications Systems.** LICENSEE shall operate the Network in a manner that will not cause interference with Licensor non-public safety communications systems and to the services and facilities of other licensees or lessees of Licensor property located at or near the Facilities that were in operation prior to the installation of the Network or that are in operation prior to any modifications LICENSEE may make to the Network.

8.2 **Non-Interference with Public Safety Communications Systems.** LICENSEE's Network and Facilities shall not cause interference with public safety communications systems operated by Licensor or any other public agency, regardless of the date such systems or any Facilities cause interference with the Licensor's use of the New Poles for their intended purpose as streetlights, traffic lights, and/or stand-alone light poles.

8.3 **Correction of Interference.** If such interference with the Facilities described in Sections

8.1 and 8.2 occur, LICENSEE shall, upon receipt of written notice thereof from Licensor, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by LICENSEE to the reasonable satisfaction of Licensor within the cure period set forth for in the Licensor's notice, which notice shall not be less than 90 days, such interference shall be deemed a material breach under this Agreement and Licensor may terminate this Agreement. Interference caused by actions of LICENSEE's Customer(s) remains the responsibility of LICENSEE. If the interference is an emergency or a danger to public health and safety, the Licensor shall be entitled to require correction in a time period necessary to avoid the emergency or public health and safety issue.

SECTION 9 MISCELLANEOUS PROVISIONS

9.1 **Nonexclusive Use.** LICENSEE acknowledges that this Agreement does not provide LICENSEE with exclusive use of the Licensor's ROW or any municipal facility and that Licensor retains the right to permit other providers of communications services to install equipment or devices in the Licensor's ROW and on municipal facilities. The parties hereto specifically agree that all such franchises issued to telecommunications providers shall be competitively neutral and not unreasonable or discriminatory in nature.

9.3 **Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and served by (1) electronic mail; and (2) personally served or transmitted through first class United States mail, or by express mail providing for overnight delivery, postage prepaid, to the following address or such other address of which a party may give written notice:

LICENSOR:

City of Independence, Kansas
Attention: City Manager
City Hall
811 W. Laurel
Independence, KS 67301
Phone: 620-332-2506

LICENSEE:

Kansas # 15 Limited Partnership
Attention: Real Estate Department
8410 West Bryn Mawr Avenue
Chicago, Illinois 60631
Phone: 1-866-573-4544

Such notice shall be deemed made when personally delivered; of mailed via first class

U.S. Mail, such notice shall be deemed made three (3) calendar days after the date of deposit in the U.S. Mail, if mailed via express/overnight mail, such notice shall be deemed made two (2) calendar days after the date of deposit in a designated overnight delivery mailbox or other like facility. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

9.4 **Sublease/Assignment.** If LICENSEE assigns, sublets, enters into a License or concession agreement, changes ownership of the Network or voting control of LICENSEE, mortgage, encumber, pledge, hypothecate or other transfer (including any transfer by operation of law this Agreement or any interest therein) LICENSEE will provide notice of a transfer within a reasonable time.

9.5 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successor, assigns and transferees.

9.6 **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Agreement. Any modification of amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any provisions, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

9.7 **Severability.** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

9.8 **Governing Law.** This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by, the domestic law of the State of Kansas or applicable federal law, without regard to laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement shall occur in the state courts located in Kansas.

9.9 **Survival of Terms.** All of the terms and conditions in this Agreement related to payment, removal due to termination or abandonment, indemnification, limits of Licensor's and Licensee’s liability, attorneys' fees and waiver shall survive termination of this agreement.

9.10 **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

9.11 **Drafting.** The parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party.

9.12 .

9.13 **Authority to Execute This Agreement.** Each person or persons executing this Agreement on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

9.14 **No Warranty by the Licensor.** The Licensor makes no representations or warranties regarding the suitability, condition or fitness of the locations for the installation, maintenance or use of the New Poles or the Facilities.

9.15 **Agreement Applicable Only to the Facilities.** This Agreement shall not be construed to permit construction, installation, maintenance or use of Facilities on any property other than the Facilities legally described in this Agreement or Site License Agreement.

9.16 **No Abrogation of Legal Responsibilities.** The Licensor's execution of this Agreement shall not abrogate, in any way, LICENSEE's responsibility to comply with all permitting requirements or to comply with all Laws with respect to its performance of the activities permitted under this Agreement.

9.17 **Contractual Interpretation.** In the interpretation and application of its rights under this License Agreement, the Licensor will act in a reasonable, non- discriminatory, and competitively neutral manner in compliance with all applicable federal, state, and local laws and regulations.

[Remainder of this page intentionally left blank]

ACCEPTED & AGREED TO

LICENSOR: City of Independence Kansas

By:_____

Name: _____

Title: _____

Date: _____

LICENSSEE: Kansas # 15 Limited Partnership
By: USCOC Nebraska/Kansas Inc.
Its: General Partner

By:_____

Name: _____

Title: _____

Date: _____

LICENSOR:

STATE OF KANSAS)
)
COUNTY OF MONTGOMERY)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that , known to me to be the same person whose name is subscribed to the foregoing Pole Attachment Agreement, appeared before me this day in person acknowledged that he signed the said Lease as their free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this ____ day of _____, 20___.

_____
Notary Public

My commission expires_____

LICENSEE:

STATE OF _____)
)
COUNTY OF _____)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that , known to me to be the same person whose name is subscribed to the foregoing Pole Attachment Agreement, appeared before me this day in person acknowledged that he signed the said Lease as their free and voluntary act for the uses and purposes therein stated

Given under my hand and seal this ____ day of _____, 20___.

_____
Notary Public

My commission expires_____

Exhibit A

Site Plan / Elevation

CRAN CANDIDATE NEW AND REPLACEMENT POLE APPROVAL

Primary candidate information accompanying, enclosed, has been reviewed. After review of CRAN candidates presented, we provide approval to proceed with next steps in development process. Our approval of proposed locations is not the same as authorization to install.

BY: _____
Printed name
Signature: _____

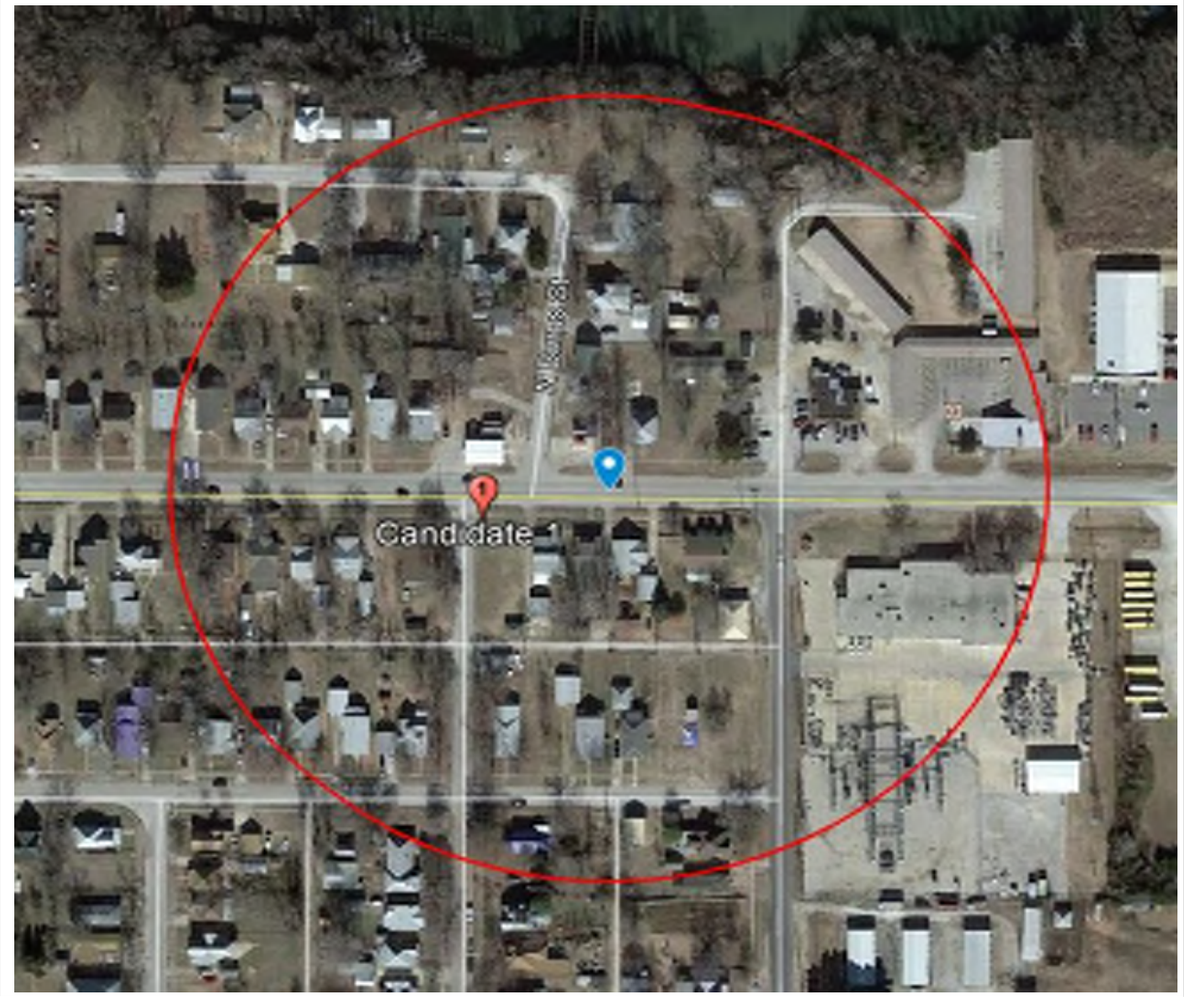
Title: _____

Date: _____

SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 5	1	37.215015	-95.701495	New Pole	INDEPENDENCE	ROW	Courner of E Cedar St & S Park Blvd	

SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 6	1	37.217082	-95.696826	New Pole	INDEPENDENCE	ROW	813 E Hill St, Independence, KS 67301	

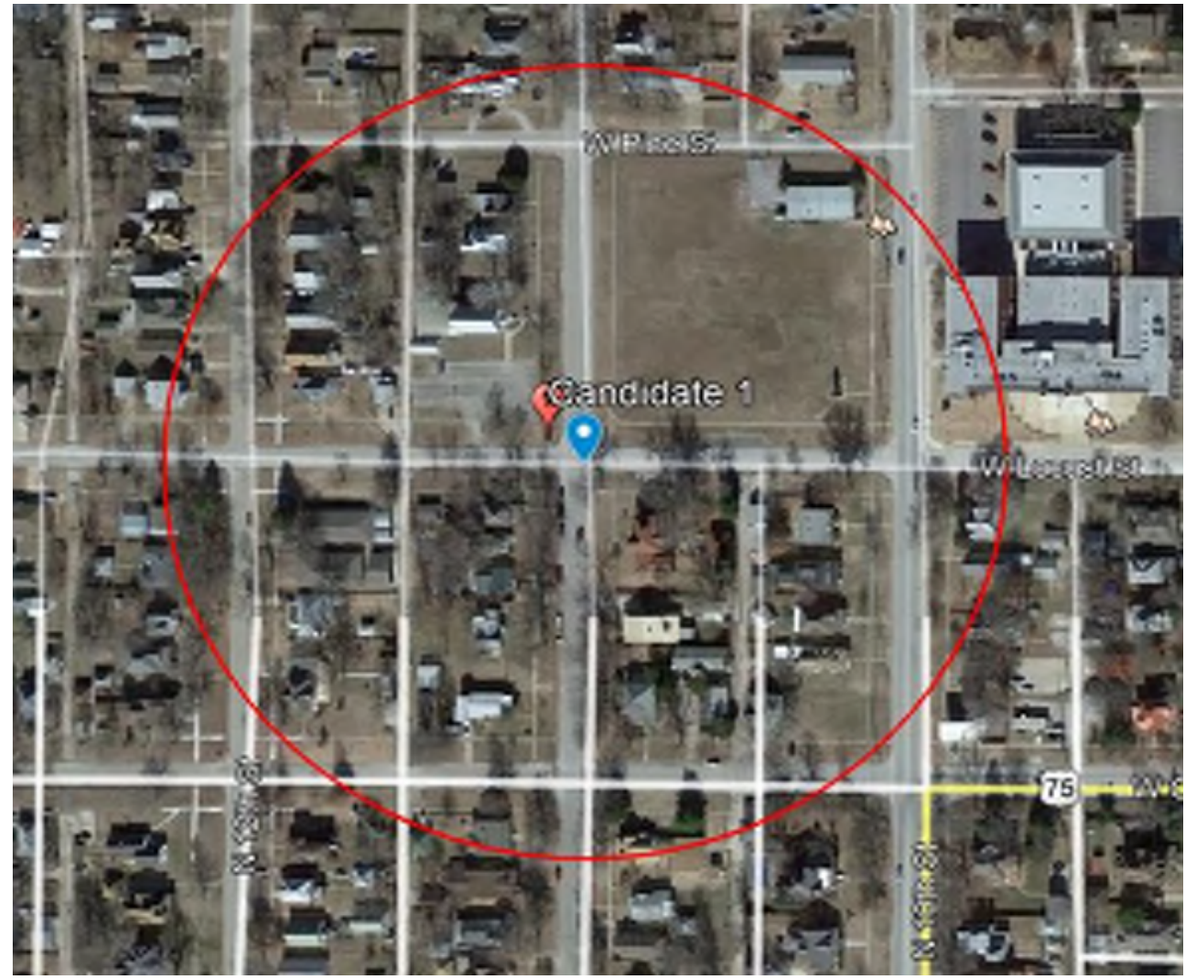
SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 7	1	37.223077	-95.69407	New Pole	INDEPENDENCE	ROW	S Burns St, Independence, KS 67301	



SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 8	2	37.222091	-95.703835	New Pole	INDEPENDENCE	ROW	216 S 5th St, Independence, KS 67301	

SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 9	1	37.229046	-95.706484	New Pole	INDEPENDENCE	ROW	Independence, KS 67301	

SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 10	1	37.227785	-95.712236	New Pole	INDEPENDENCE	ROW	549-501 W Locust St, Independence, KS 67301	



SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 11	1	37.230109	-95.71681	New Pole	INDEPENDENCE	ROW	N 15th St, Independence, KS 67301	

SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 12	1	37.223051	-95.718671	New Pole	INDEPENDENCE	ROW	148-100 S 16th St, Independence, KS 67301	

SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 13	2	37.22102	-95.710959	New Pole	INDEPENDENCE	ROW	449-303 W Magnolia St, Independence, KS 67301	

SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 14	1	37.222776	-95.731364	New Pole	INDEPENDENCE	ROW	2007 New St, Independence, KS 67301	There are high voltage lines near, but they might be far enough away

SARF Name	Node	Candidate	Latitude NAD 83	Longitude NAD 83	Structure Type	Permitting Jurisdiction	Location (ROW or Private)	Approximate Location Description (Street Address)	Comments
INDEPENDENCE	CRAN 15	2	37.235658	-95.722568	New Pole	INDEPENDENCE	ROW	1219-1201 N 19th Pl, Independence, KS 67301	