

(Published in the Topeka Metro News on December 26, 2016)

ORDINANCE NO. 20044

AN ORDINANCE introduced by Interim City Manager Douglas Gerber, granting a nonexclusive franchise agreement to Mobilitie LLC to construct, operate and maintain wireless telecommunications facilities within the public right-of-way.

1 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA,
2 KANSAS:

3
4 WHEREAS, Mobilitie LLC ("Grantee") owns, maintains, operates and/or
5 controls, in accordance with regulations promulgated by the Federal Communications
6 Commission and the Kansas Corporation Commission (hereinafter "KCC"),
7 telecommunications networks serving Grantee's wireless carrier customers through
8 small cell and wireless backhaul and fiber-fed antenna system facilities. Such facilities
9 are in public rights-of-way (hereinafter "PROW") throughout the State of Kansas; and

10 WHEREAS, Grantee seeks to enter the City's PROW to install, maintain and
11 operate a network of such facilities (the "Network"), so that Grantee and/or its
12 underlying customers (the "Customers") may provide data and telecommunications
13 services to the residents and visitors of the City (the "Services"); and

14 WHEREAS, some features of the Network include, without limitation, antenna
15 nodes, poles, equipment cabinets, underground and above ground fiber optic cable,
16 fiber handholes and enclosures, fiber repeaters and related equipment, and will
17 include other equipment as technology evolves, in a configuration and at locations to
18 be filed and identified through the City permit process ("Facility" or "Facilities"); and

19 WHEREAS, certain advanced wireless antenna systems ("Advanced Wireless
20 Facility" or "Advanced Wireless Facilities") which are specific part or type of the
21 Facilities may be located on streetlights, stand-alone poles, third party utility poles,

and other structures located on or within the PROW as permitted under this Agreement; and

WHEREAS, Grantee desires to obtain from City as permitted by law, and City is willing to grant to Grantee as required by law, the right to access the PROW to locate, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities and the Advanced Wireless Facilities in a manner consistent with this Agreement.

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the City and Grantee agree as follows:

Section 1. Definitions.

For the purposes of this Agreement the following words and phrases shall have the meaning given herein.

"Gross Revenue" means and includes any and all income and other consideration of whatever nature in any manner gained or derived by Grantee from or in connection with the operation of the Facilities in the Rights of Way, including, but not limited to all rents, payments, fees and other amounts actually collected from any third party and received by Grantee and allocable to the period within the Term or any Renewal Term pursuant to any sublease, sublicense or other agreement for services provided with respect to the Facilities, but exclusive of:

(a) any payments, reimbursements or pass-throughs from the third party to Grantee: (i) for utility charges, taxes and other pass-through expenses, or (ii) in connection with maintenance work performed or equipment installed by Grantee;

(b) site acquisition, construction management or supervision fees related to

the installation of the Facilities; and

(c) contributions of capital by any third party to reimburse Grantee in whole or in part for the installation of the Facilities. Gross Revenue shall also not include: (i) sales, ad valorem, or other types of "add-on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government (ii) non-collectable amounts due Grantee; (iii) refunds or rebates; and (iv) non- operating revenues such as interest income or gain from the sale of an asset.

"Public right-of-way" or "PROW" means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include easements obtained by utilities or private easements in platted subdivisions or tracts. The term does not include infrastructure located within the Public right-of-way owned by the City or other third-parties, such as poles, ducts or conduits.

"Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of signals, including but not limited to voice, data, image, radio frequency, graphic or video or other programming information between or among points by wire, lines cable, fiber optics, circuits, laser or infrared, antennae, microwave, radio, satellite or other telecommunications facilities.

Section 2. Grant of Franchise.

(a) Non-Exclusive. There is hereby granted to Grantee this nonexclusive

franchise to construct, maintain, extend and operate its Network along, across, upon, under or above any PROW for the purposes identified herein subject to the terms and conditions of this Agreement.

(b) No Legal Interest in PROW. The grant of this franchise by the City shall not convey title, equitable or legal, in the PROW, and shall give only the right to occupy the PROW, for the purposes and for the period stated in this Agreement. This Agreement does not:

(1) Grant the right to use any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;

(2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way; or

(3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on poles or infrastructure owned or controlled by the City or a third- party.

(c) Permits; Licenses. As a condition of this grant, Grantee is required to obtain and is responsible for securing any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the PROW).

Section 3. Use of Public Right-of-Way.

(a) No Obstruction. Grantee's Facilities shall be constructed and maintained in such a manner as not to obstruct or hinder travel or public safety on such public ways or obstruct use by the City or other users of the PROW.

(b) Use Subordinate to City. Grantee's use of the PROW is subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may prohibit the use or occupancy of a specific portion of the PROW due to a reasonable public interest necessitated by public health, safety and welfare so long as such interest is exercised in a competitively neutral manner and is not unreasonable or discriminatory.

(c) Use Subject to Laws. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances (hereinafter "Laws") adopted by the City, including but not limited to Chapter 12.30 (Right of Way Excavation), Chapter 14.20 (Building Permits) and Chapter 18 (Land Use Regulations) to the extent such laws do not conflict with or are preempted by any federal law or regulation.

(d) Plan Approval. The installation of the Facilities shall be made in accordance with plans and specifications approved by the applicable City department head or designee and after obtaining all necessary permits for work in the PROW and compliance with applicable building codes and land use regulations. Grantee shall be responsible for all costs associated with the permitting process.

(e) No Interference. Grantee shall not impede, obstruct or otherwise interfere with the installation, existence and operation of any other facility in the PROW, including sanitary sewers, water mains, storm sewers, gas mains, traffic signals, poles, electrical infrastructure, cable television and telecommunication wires, public safety,

City networks and other telecommunication providers.

(f) Repair of PROW. Grantee shall repair all damage to the PROW by activities of Grantee, or any agent, affiliate, employee, or contractor, while occupying, installing, repairing or maintaining Facilities in the PROW and will return the PROW to its functional equivalence before the damage occurred in accordance with the requirements and specifications of City. If Grantee fails to make the repairs required by City, then City may do so and require reimbursement from Grantee within thirty (30) days of notice of the costs.

Section 4. Removal Due to Public Project.

Relocation of Facilities. Upon receipt of a written demand from the City, Grantee, at its sole cost and expense, shall remove and relocate any part of the Grantee's Facilities whenever the City reasonably determines that the removal and/or relocation of any part of the Network or Facilities is necessary to accomplish construction and maintenance activities related to improvements for the health, safety and welfare of the public, including but not limited to the following: (a) work proposed to be done by or on behalf of the City 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 such as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines and tracks; or (b) interference with the operation of City-owned light poles, traffic signals, or other City facilities. The City shall cooperate with Grantee in relocating any portion of the Network and/or Facilities in a manner that allows Grantee to continue providing service to its customers, including,

but not limited to, expediting approval of any necessary permits required for relocation. No permitting or other fees may be charged by the City for a removal occurring pursuant to this section.

Pursuant to 2016 House Bill 2131 (codified at K.S.A. 66-2019 and amendments thereto), Grantee shall relocate or adjust the Network or its Facilities, at no cost to City, within the time set forth in City's written request provided that City provides a minimum of 180 days advance written notice unless circumstances beyond the City's control require a shorter period of advance notice. If relocation or adjustment is for private benefit, Grantee is not responsible for the cost of the relocation or adjustment to the extent of such private benefit and Grantee shall not be obligated to commence relocation or adjustment until receipt of funds for such relocation or adjustment.

Section 5. Grantee's Facilities.

(a) Existing Utility Poles. Grantee may attach its Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner (City or third party), provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the City's police powers.

(b) New Poles and other City Facilities. Grantee may install new poles provided the poles comply with applicable City, state and federal specifications, and laws ("New Poles"). In areas where there are existing poles, Grantee will use commercially reasonable efforts to work with the owner of that existing pole to collocate a small cell facility or Advanced Wireless Facility but only when (i) the pole owner is willing to allow such attachment and (ii) such attachment is feasible from a safety, technical, and engineering (structural and radio frequency coverage)

perspective and (iii) such attachment is commercially reasonable for Grantee's business model, in Grantee's sole discretion.

(c) City Use of New Poles. City may use any New Poles for City purposes, including but not limited to City utilities and operations so long as such use does not interfere with Grantee's use of its Facilities from a safety, technical and engineering (structural and radio frequency coverage) and subject to Grantee's approval not to be unreasonably withheld, conditioned or delayed. Grantee shall reasonably cooperate with the City when using the New Poles.

(d) 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 City may cause the New Pole to be removed to the side of the street or a location that City believes reasonably eliminates the risk of such imminent threat of harm to persons or property. Grantee shall, after written notice from the City that any New Pole has been damaged or removed, cause the New Pole to be repaired or replaced within thirty (30) days after the City's written notice. The cost to repair and/or replace any New Pole shall be paid by Grantee; provided, however, that if the New Pole is damaged or destroyed by the City or a third party user that the City has given the right to use the New Pole, then the City and/or its third party user shall pay the cost to repair and/or replace the New Pole.

Section 6. Interference.

(a) City Public Safety Communications. Grantee's Network shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems or any components thereof have been placed in service.

(b) Correction of Interference. If such interference occurs, Grantee shall,

upon receipt of written notice thereof from City, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by Grantee to the reasonable satisfaction of City within the cure period set forth for in the City's notice, which notice shall not be less than 30 days absent an emergency or danger to public health and safety requiring shorter notice, such interference shall be deemed a material breach under this Agreement and City may terminate.

Section 7. Compensation to the City.

As compensation to City for use of the PROW, Grantee shall pay quarterly to City five percent (5%) of Grantee's Gross Revenue. Additionally, Grantee shall pay a rental fee of \$600 per year for each Facility (e.g. New Pole). The rental fees are in addition to the City's standard permit fees.

(a) No Invoice. Grantee shall pay without requirement for invoice or reminder from the City, and within 30 days of the last day of the quarter for which the payment applies. If the quarterly compensation is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

(b) Calculation of Compensation. Grantee shall submit to the City a statement, executed by an authorized officer of Grantee or designee, showing the amount of Gross Revenue for the period covered by the payment, and the manner in which the compensation was calculated.

(c) No Accord & Settlement. No acceptance by the City of any compensation shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall acceptance of any payment be construed as a release of any

claim of the City.

(d) Verification; City Right to Audit. To verify the correctness of the compensation paid by Grantee and Grantee's compliance with this Agreement, the City shall have the right to examine, audit, inspect, review, and/or obtain copies of (collectively, "Audit") at its cost and expense, except as set forth in this subsection (d), the papers, books, accounts, documents, maps, plans and other records (collectively, the "Records") of Grantee pertaining to all revenue derived by Grantee in connection with Grantee's provision of telecommunications service through Grantee's Facilities, upon no less than fifteen (15) business days written notice to Grantee (no more often than once per calendar year), to verify the correctness of the compensation paid by Grantee. Grantee shall fully cooperate in making reasonably available its records and otherwise assisting in these activities as is necessary for City to reasonably verify the correctness of the compensation paid by Grantee. The City may extend the time for the provision of such Records upon a reasonable showing by Grantee that such extension is justified. In the event that such audit discloses a discrepancy of more than five percent (5%) between the financial report submitted by the Grantee with a quarterly payment and the actual Gross Revenue collected by Grantee, the Grantee agrees to pay the City the costs of such audit; provided that (a) the City will not be entitled to reimbursement of such Audit costs more than once in any five (5) year period, and (2) the total reimbursement to the City in any five (5) year period for the Audit costs shall not exceed one hundred fifty percent (150%) of the amount of the discrepancy. In the event that such Audit results in a determination that additional compensation is due the City, Grantee further agrees to pay interest as required for late payment on such additional compensation computed from the date on which such

additional compensation was due and payable.

(e) Franchise Application Fee. Unless previously paid, within sixty (60) days of the effective date of this Agreement, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Agreement.

(f) Other Taxes; Fees. The compensation required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001, 17-1902, K.S.A. 66-2019 and amendments thereto.

Section 8. Indemnity and Hold Harmless.

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the PROW from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., Grantee shall have no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify, defend, and hold harmless the City, its officers, 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 Grantee pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its officers, employees, agents, or contractors. The City shall promptly notify Grantee of any claim, action or proceeding.

Section 9. Insurance Requirement and Performance Bond.

(a) Types of Insurance. During the term of this Agreement, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Grantee shall provide not less than the following insurance:

(1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

(2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability with a two million dollar (\$2,000,000) general aggregate limit. The Grantee may meet the policy limit requirements above in combination with commercial general liability policies and umbrella liability policies. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Franchise agreement.

(b) Self-Insured. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as

such Grantee has the ability to provide coverage in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

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

(d) Performance Bond. Grantee shall, as a material condition of this Agreement, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the PROW. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

Section 10. Revocation and Termination.

In case of failure on the part of Grantee to comply with any of the provisions of this Agreement, or if Grantee should do or cause to be done any act or thing prohibited

311 by or in violation of the terms of this Agreement, Grantee shall forfeit all rights,
312 privileges and the franchise granted herein, and all such rights and privileges and
313 hereunder shall cease, terminate and become null and void, and this Agreement shall
314 be deemed revoked or terminated, provided that said revocation or termination, shall
315 not take effect until the City has completed the following procedures: Before the City
316 proceeds to revoke and terminate this Agreement, it shall first serve a written notice
317 upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee
318 shall have sixty (60) days thereafter in which to comply. If at the end of such sixty (60)
319 day period the City deems that the conditions have not been complied with, the City
320 shall take action to revoke and terminate this Agreement by action of the Governing
321 Body, setting out the grounds upon which this Agreement is to be revoked and
322 terminated; provided, to afford Grantee due process, Grantee shall first be provided
323 reasonable notice of the date, time and location of the Governing Body's consideration,
324 and shall have the right to address the Governing Body regarding such matter. Nothing
325 herein shall prevent the City from invoking any other remedy that may otherwise exist
326 at law. Upon any determination by the Governing Body to revoke and terminate this
327 Agreement, Grantee shall have thirty (30) days to appeal such decision to the District
328 Court of Shawnee County, Kansas. This Agreement shall be deemed revoked and
329 terminated at the end of this thirty (30) day period, unless Grantee has instituted such
330 an appeal. If Grantee does timely institute such an appeal, such revocation and
331 termination shall remain pending and subject to the district court's final judgment.
332 Provided, however, that the failure of Grantee to comply with any of the provisions of
333 this Agreement or the doing or causing to be done by Grantee of anything prohibited
334 by or in violation of the terms of this Agreement shall not be a ground for the

335 revocation or termination thereof when such act or omission on the part of Grantee is
336 due to any cause or delay beyond the control of Grantee or to bona fide legal
337 proceedings.

338 **Section 11. Reservation of Rights.**

339 (a) No Waiver of City Authority. In granting its consent hereunder, the City
340 does not in any manner waive its regulatory or other rights and powers under and by
341 virtue of the laws of the State of Kansas as the same may be amended, its Home Rule
342 powers under the Constitution of the State of Kansas, nor any of its rights and powers
343 under or by virtue of present or future ordinances of the City.

344 (b) Reservation of Rights. In entering into this Agreement, neither the City's
345 nor Grantee's present or future legal rights, positions, claims, assertions or arguments
346 before any administrative agency or court of law are in any way prejudiced or waived.
347 By entering into the Agreement, neither the City nor Grantee waive any rights, but
348 instead expressly reserve any and all rights, remedies, and arguments the City or
349 Grantee may have at law or equity, without limitation, to argue, assert, and/or take any
350 position as to the legality or appropriateness of any present or future laws, non-
351 franchise ordinances and/or rulings.

352 **Section 12. Failure to Enforce.**

353 The failure of either the City or the Grantee to insist in any one or more
354 instances upon the strict performance of any one or more of the terms or
355 provisions of this Agreement shall not be construed as a waiver or relinquishment
356 for the future of any such term or provision, and the same shall continue in full force
357 and effect. No waiver or relinquishment shall be deemed to have been made by the
358 City or the Grantee unless said waiver or relinquishment is in writing and signed by

both the City and the Grantee.

Section 13. Term and Termination Provisions.

(a) Ten (10) Year Term; Renewal. This Agreement shall be effective for a term beginning on the effective date and ending ten (10) years after the effective date. 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 the Agreement at least one hundred and eighty (180) days before the termination of the then current term. The additional terms shall be deemed a continuation of this Agreement and not as a new franchise or amendment.

(b) Renegotiation. Upon written request of either the City or Grantee, this Agreement shall be renegotiated at any time 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 the City or Grantee, including but not limited to the scope of the franchise granted to Grantee or the compensation to be received by the City hereunder.

(c) Amendment. Amendments, if any, shall be made by franchise ordinance. This Agreement shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

(d) Extension of Termination Date. In the event the parties are actively negotiating in good faith a new franchise 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 current Agreement and not as a new contract franchise ordinance or amendment.

Section 14. Removal Due to Termination.

No later than ninety (90) days after termination of this Agreement, Grantee shall, at its sole cost and expense, remove its Network and Facilities and restore the PROW to its original condition, reasonable wear and tear excepted. Alternatively, City may allow Grantee, in the City's sole and absolute discretion, to abandon the Network and Facilities or any part thereof, in place and convey it to the City.

Section 15. Abandonment.

In the event Grantee ceases to operate and abandons Grantee's Network and Facilities or any part thereof, for a period of ninety (90) days or more, Grantee shall, at its sole cost and expense, vacate and remove the abandoned Facility within one hundred and eighty (180) days. Grantee shall also, at its sole cost and expense, restore the PROW to its original condition, reasonable wear and tear excepted. Alternatively, the City may allow Grantee, in the City's sole and absolute discretion, to abandon Grantee's Facilities, or any part thereof, in place and convey it to the City.

Section 16. Point of Contact and Notices.

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next

business day. "Business day" for purposes of this section shall mean Monday through Friday, excepting federally-designated holidays. Notices sent to the follow addresses or addresses that may be later designated in writing:

For City:

City of Topeka
City Clerk
215 SE 7th Street
Topeka, KS 66603

For Grantee:

Mobilitie LLC
Att: Legal
2220 University Drive
Newport Beach, CA 92660

Section 17. Transfer and Assignment.

This Agreement may be assigned by Grantee without any approval or consent of the City to Grantee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Grantee's assets in the market defined by the FCC in which the PROW is located by reason of a merger, acquisition or other business reorganization provided that such acquiring entity is bound by all of the terms and conditions of this Agreement. As to other parties, this Agreement may not be sold or assigned without the written consent of the City which shall not be unreasonably withheld. In the event of any transfer or assignment of either this Agreement or Grantee's business or assets, Grantee shall timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this Agreement with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and

replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

Section 18. Severability.

If any clause, sentence, or section of this Agreement, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Agreement invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Agreement.

Section 19. Acceptance of Terms by Grantee.

Within thirty (30) days after approval of this Ordinance, Grantee shall file with the City Clerk its acceptance, in writing, of the terms of this Ordinance which shall constitute a contract between City and Grantee.

Section 20. Effective Date of Contract and Ordinance.

This Contract and Ordinance shall take effect on the first day of the month after all of the following events have occurred: (1) approval by the governing body; (2) publication in the official City newspaper; and (3) acceptance by Grantee.

PASSED AND APPROVED by the Governing Body on December 20, 2016.

CITY OF TOPEKA, KANSAS

Larry E. Wolgast, Mayor

ATTEST:

Brenda Younger, City Clerk

467 **ACCEPTANCE OF FRANCHISE ORDINANCE**

468
469 To the Governing Body of the City of Topeka, Kansas

470
471 Mobilitie, LLC, for itself, its successors and assigns, hereby accepts in writing the
472 Ordinance and all rights and privileges therein granted, passed by the Governing Body
473 of the City of Topeka, Kansas, on the 20th day of December, 2016, entitled:

474
475 AN ORDINANCE introduced by Interim City Manager Douglas Gerber, granting a
476 nonexclusive franchise agreement to Mobilitie LLC to construct, operate and maintain
477 wireless telecommunications facilities within the public right-of-way.

478
479 This acceptance is executed and filed as provided in Section 19 of this Ordinance, and
480 Mobilitie, LLC, hereby agrees to all the terms and conditions of said Ordinance.

481
482 Dated this _____ day of _____, 201____.

483
484 Mobilitie, LLC

485
486 By: _____

487
488
489 _____
490 Print Name and Title

491
492
493 State of Kansas

494
495 County of Shawnee
496 City of Topeka

497
498 I, Brenda Younger, City Clerk of the City of Topeka, Kansas, do hereby certify that the
499 foregoing is a true and correct copy of acceptance of Ordinance No. _____ of
500 of which acceptance was filed in the office of the City Clerk on the _____ day of
501 _____, 201____, and is now recorded among the original
502 records thereof, and that I am the keeper of the same.

503
504 Witness my hand and the official seal of said City, this _____ day of _____,
505 201____.

506
507
508 _____
509 Brenda Younger, City Clerk
510