

RESOLUTION 2018 - 13

**A RESOLUTION APPROVING A RIGHTS-OF-WAY USE AGREEMENT
AND SETTLEMENT WITH EXTENET SYSTEMS, INC.**

WHEREAS, ExteNet Systems, Inc. (the "Licensee") has requested consent from the City to authorize its use of the City's Rights-of-Way to construct, install, maintain, and operate facilities for communications related capabilities; and

WHEREAS, the City is authorized to and has established standards for occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Public Service Commission's duties and jurisdiction; and

WHEREAS, the City and Licensee have negotiated a Rights-of-Way Use Agreement for Communications Facilities ("ROW Use Agreement"), to establish the terms of Licensee's use of the Rights-of-Way and to incorporate the provisions and definitions of the City's Code of Ordinances, particularly the City's Rights-of-Way Code, Chapter 505, Article III; and

WHEREAS, the City and Licensee also desire to compromise, resolve, and settle their dispute over compensation that the City claims to be due for past use of the City Rights-of-Way by Licensee as well as use by Licensee of the City Rights-of-Way (the "Dispute"), and a settlement and release relating to that Dispute between the City and Licensee is contained within Licensee's ROW Use Agreement; and

WHEREAS, the City Council now desires to authorize the City Manager to enter into the ROW Use Agreement with ExteNet Systems, Inc., on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED that the City Manager is hereby authorized to execute the ROW Use Agreement between the City and ExteNet Systems, Inc., in substantially the form of Exhibit A, attached hereto and incorporated herein by reference, relating to compensation for, and conditions upon, ExteNet Systems, Inc.'s use of the City's Rights-of-Way and resolution of the Dispute. The City Manager and designees are further authorized to take such additional action as may be necessary or contemplated pursuant to this Agreement or to carry out the intent of this Ordinance.

ADOPTED THIS 10th DAY OF SEPTEMBER, 2018.

By: _____

Terry Crow, Mayor

ATTEST:



LaRette Reese, City Clerk

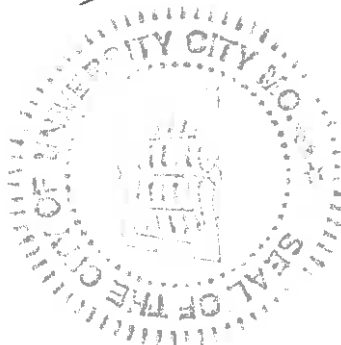


Exhibit A

ExteNet Systems, Inc. ROW Use Agreement

**RIGHTS-OF-WAY USE AGREEMENT
FOR COMMUNICATIONS FACILITIES**

THIS RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES (“Agreement”) is made and entered into as of the Effective Date (as defined in Section 11.1), by and between, ExteNet Systems, Inc., a Delaware corporation registered to do business in the State of Missouri (the “Licensee”), and the City of University City, Missouri, a municipality of the State of Missouri (the “City”). Licensee and City may sometimes be referred to in this Agreement individually as a “Party” or collectively as the “Parties.”

WHEREAS, Licensee has requested consent from the City to authorize its use of the City’s Rights-of-Way to construct, install, maintain, and operate antennae, support mast and mounts, fiber optic cable and cable equipment, amplifiers, conduits, coaxial cable, receivers, battery units, equipment cabinets, through bolts, washers, nuts, power supply cabinets, power meters, grounding or bond wires, and all other equipment that is used by Licensee within the City Rights-of-Way (the “Licensee Facilities”) for communications or related capabilities; and

WHEREAS, Missouri law provides conditions relating to the City’s consent to, and authorizes the City to regulate the use and occupancy of its Rights-of-Way (“Rights-of-Way” or “ROW”) for placement of various communications facilities; and

WHEREAS, the City is authorized to and has established standards for occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Public Service Commission’s duties and jurisdiction; and

WHEREAS, the City and Licensee desire to enter into this Agreement, to establish the terms of Licensee’s use of the Rights-of-Way, and to incorporate the provisions and definitions of the ROW Code (as defined in Section 1.2); and

WHEREAS, the City and Licensee also desire to compromise, resolve, and settle their dispute over compensation that the City claims to be due for past use of the City Rights-of-Way by Licensee, claims by the City for attorney’s fees and other costs for past alleged violations of City’s ordinances by Licensee and claims relating to Licensee’s prior requests for public documents information, or for prior demands for support or legal justifications relating to the City’s ordinances or requirements for use of the ROW or installation of Licensee’s Facilities (the “Dispute”); and

WHEREAS, Licensee enters into this Agreement voluntarily but nothing in this Agreement, shall constitute or be considered an admission by the Licensee that Licensee agrees the City’s linear foot fees or antenna fees are just and reasonable fees for use of the City’s Rights-of-Way; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

SECTION 1. GENERAL

1.1 Preservation of Police Power Authority. Any rights granted to Licensee pursuant

to this Agreement are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 Defined Terms. For purposes of this Agreement, the capitalized terms shall have the meanings as set forth herein and in the Code of Ordinances of the City, including specifically Article III of Chapter 505, and as may be amended (the “Code” or “ROW Code”). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning. The following additional capitalized terms shall also apply to this Agreement:

A. **“Communications”** The transmission via the Licensee Facilities, in whole or in part, between or among points specified by the user, of information of the user’s choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

B. **“Communications Service”** The transmission of writing, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any “telecommunications service,” “enhanced service,” “information service,” or “Internet Service,” as such terms are now, or may in the future, be defined under applicable law, and including all instrumentalities, Licensee Facilities, apparatus and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include “video services” as defined in § 67.2677 RSMo. The term “Communications Service” does not include the rental of conduit or physical facilities, which if proposed must be expressly separately approved in Exhibit A below or sought directly by such third party from City. Any party seeking to provide cable television, video services, or use wireless communication facilities shall be subject to additional and separate requirements, limitations and/or approvals of federal, state and local law and shall have on file with the City such authorization to provide such services prior to commencement.

1.3 Agreement Subject to Provisions of ROW Code. This Agreement fully incorporates the provisions of the ROW Code as if fully set forth herein, and Licensee agrees as a part of this Agreement to abide by the provisions of such Code and other applicable ordinances of the City as a ROW User, and to be subject to the enforcement by the City as provided therein and in this Agreement as a material term herein. This Agreement may establish Licensee obligations that are supplementary to the ROW Code, but nothing in this Agreement shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the ROW Code. The consent to use the Rights-of-Way authorized by this Agreement is subject to the continuing accuracy during the term of this Agreement of the application information provided by and maintained by Licensee for this authorization as provided to and on file with the City.

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 Agreements Non-Exclusive. This Agreement shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law. Nothing in this Agreement shall relieve Licensee from its obligations to apply for and obtain all necessary permits for installation of Licensee Facilities including excavation, building, electrical, zoning, etc. before installation of Licensee Facilities within the Rights-of-Way.

2.2 Nature of Rights Granted by this Agreement. This Agreement shall not convey title to Licensee, equitable or legal in the Rights-of-Way, and gives only the right to occupy the City's Rights-of-Way for the purposes and for the period stated in this Agreement and subject to the requirements of this Agreement. This Agreement also shall not grant the right to use Facilities owned or controlled by the City or a third-party, without the separate consent of the City or such third-party owning or controlling the Facilities, nor shall it excuse Licensee from obtaining appropriate access or pole attachment agreements before locating on Facilities controlled or owned by the City or a third-party.

2.3 Grant. Subject to the terms and conditions of this Agreement, the ROW Code, and the conditions set forth on Exhibit A attached hereto and incorporated by reference into this Agreement, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Licensee Facilities in, through, over, above, and along the City's Rights-of-Way for the purposes of supplying **Communications Service through a distributed network with wireless and fiber optic elements including providing transport services for customers' mobile networks** within the City, subject, however, to the terms and conditions herein set forth within this Agreement and the Code and all such special conditions as may be set forth in Exhibit A. Licensee agrees that this Rights-of-Way Use Agreement shall supersede any existing franchise or other rights-of-way use agreement between the Licensee and the City, if any. As a condition of this grant, Licensee is required to obtain and maintain any permit, license certification, grant, registration or any other authorization lawfully required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission, or the Missouri Public Service Commission. Licensee shall not have the right to install wireless antennae or antennae support structures in the ROW pursuant to this Agreement, nor provide services not authorized herein, except as provided in Exhibit A, or such subsequent amendment as may be approved thereto. The size, location, and specifications of the underground and above-ground Licensee Facilities are subject to prior City approval and consent. Any wireless Licensee Facilities shall first receive zoning authorization as may be required by Chapter 400 of the Code of Ordinances, to the extent permitted by applicable law, for the installation of wireless Licensee Facilities and with such location determined to be in compliance with the ROW Code before amendments to this Agreement may be authorized. Upon receipt of such required zoning authorization from the City, if any, and prior to installing Licensee Facilities at such locations, the Licensee may install such Licensee Facilities authorized only after seeking and obtaining from the City an amendment to this Agreement adding the authorized Licensee's wireless Facilities locations onto Exhibit A. Such amendment to this Agreement to add additional Licensee Facilities may be approved by the Director without further action of the City provided the amendment meets

applicable ordinance requirements and other City requirements for use of the Rights-of-Way herein and as may be otherwise lawfully established by the City. Any application for a new pole shall require prior review and approval by the City Council to determine whether Licensee has provided good cause in compliance with the ROW Code as reasonably determined by the Council. Licensee shall obtain all required permits for construction/installation of such Licensee Facilities before commencing construction or making any changes in the ROW. In the event that the use of the Rights-of-Way is proposed to change or Licensee desires to provide services other than as described herein, Licensee shall be required to seek amendment hereto prior to commencing such service or changed use.

2.4 Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate. The Licensee shall construct and maintain Licensee Facilities in accordance with all applicable federal, state and local laws, codes and ordinances, including all permit requirements, and fee payments, in effect as of the Effective Date or adopted after the Effective Date, to the extent such are not in contravention of applicable law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Licensee Facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Rights-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use of and rights to the same and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City. Licensee shall excavate in or install Licensee Facilities in the Rights-of-Way in locations and in a manner only as authorized by a permit granted by the City. Licensee shall further be subject to the City's exercise of its powers, including but not limited to its administration and regulation related to the management of the Rights-of-Way exercised in a competitively neutral and non-discriminatory reasonable manner.

2.5 No Interference. Licensee shall construct and maintain Licensee Facilities to be so located, constructed, and maintained as to avoid interference with the proper use of all Rights-of-Ways and so as not to materially or without authority interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Licensee shall reasonably notify all residents and properties materially affected by the proposed work prior to commencement of such work. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and all standard specifications, drawings, and procedures required or approved by the City.

2.6 Notification, Joint Installation, and Collocation Requirements. Licensee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way under such generally applicable written policy or direction as may be established by the City. Licensee shall further make its installed Licensee Facilities available to other licensees on a nondiscriminatory competitively neutral basis as may be required by federal law codified at 47 U.S.C. § 224.

2.7 Licensee Responsible for Costs. The Licensee shall be responsible for all reasonable, lawfully reimbursable, documented costs incurred by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of Licensee Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the permit fee

established pursuant to the ROW Code and not prohibited by any applicable superseding law. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Licensee. Licensee shall be responsible for its own costs incurred removing or relocating Licensee Facilities when required to do so by the City due to the City requirements relating to maintenance and use of the Rights-of-Way as set forth in Section 7.6, below.

SECTION 3. TERM, COMPENSATION, AND SETTLEMENT

3.1 Term. This Agreement shall be effective for a term of twenty (20) years from the Effective Date, and subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

3.2 Compensation. The Licensee agrees to pay the User Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the City's policies and Code. Unless otherwise established by the Governing Body, Licensee shall pay to the City as monthly compensation for the use of the Rights-of-Way pursuant to this executed Agreement:

- a. **Linear Foot Fee:** a monthly payment of \$.165 per linear foot of Licensee Facilities located in the Right-of-Way, for an annual amount of one dollar and ninety-eight cents (\$1.98) per linear foot of Licensee Facilities in the Right-of-Way; and
- b. **Antenna Fee:** a \$200.00 fee per month for each antenna in the Right-of-Way, if applicable to the user;

provided that all Right-of-Way Users shall be entitled to a credit against the User Fee due hereunder equal to the payment(s) from such Right-of-Way User in accordance with Section 67.1846 RSMo.; provided, however, such credit cannot exceed the amount due under this subsection and may not be carried forward or back to any other time period and a credit shall not apply to any taxes paid under protest or otherwise paid with qualification unless so required by law. User Fee adjustments during the term of this Agreement shall not increase by more than two percent (2%) per year aggregate over the term (or annually thereafter) upon designation by the City Council with at least 30 days' written notice and adjusted no more than once annually.

Licensee states that it currently has installed 7,673 of linear feet of fiber and conduit and 4 antennas installed in City Rights-of-Way ("Existing Licensee Facilities"). Licensee intends pursuant to this Agreement to add an additional 3,176 linear feet of underground fiber and conduit and two (2) antennas within the City ROW for the purposes authorized herein, as depicted on Exhibit B attached hereto and incorporated herein. The actual authorized installation shall be limited to that which has received approved permits from the City. The User Fee shall be paid based on the sum of the actual linear foot of Licensee Facilities installed and any additional linear foot of Licensee Facilities approved by permit for installation, and the sum of actual antennas installed. All User Fees shall be due and payable every month of each calendar year within thirty (30) days of each such month. Each User Fee payment shall be accompanied by an affidavit stating the greatest total linear feet of Licensee Facilities located in the Rights-of-Way the

preceding month, the total amount of antennas located in the Rights-of-Way the preceding month, any credit taken for gross receipt taxes or business license fees paid to the City, and the payment of the User Fee made. If any fee statement is determined to understated User Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Any payments due to the City hereunder and not paid at the due date shall bear interest at the rate of one and one-half percent (1.5%) per month, unless such other maximum rate is established by law. Licensee's credit to the User Fee as authorized above shall be calculated based upon gross receipt taxes paid and attributable to gross receipts received for the same months in which the User Fee is attributable. The User Fee required in this Paragraph shall be paid by Licensee as required herein without offset, credit, refund, or deduction except for such credit as is expressly provided for above for gross receipts taxes paid.

3.3 User Fee Not a Tax. The above required User Fee and other 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, except as may be provided for in the Code, herein, and as set forth in § 67.1846. Licensee acknowledges that the User Fee is compensation for use of the Rights-of-Way, both underground and above ground, and shall in no way be deemed a tax of any kind.

3.4 Settlement Payments and Release For Past Right-of-Way User Fees. Licensee will pay to the City on or before September 1, 2018 the non-refundable amount as follows:

	Monthly Linear foot fee December 1, 2017 through August 31, 2018 – 7,673 feet at \$.165 per linear foot	\$ 1,266.045
M.H. 9/10/18	Times nine (9) months:	\$ 11,394.405
	Monthly Antenna Fee December 1, 2017 through August 31, 2018 – 4 Antennas at \$200 per Antenna	\$ 800.00
M.H. 9/10/18	Times nine (9) months:	\$ 7,200.00

INTEREST on Linear Foot and Antenna Fees per ordinance -	\$1,115.66
--	------------

TOTAL PAYMENT:	\$19,710.07
-----------------------	--------------------

Licensee's agreement to make the payment of \$19,710.07 by September 1, 2018 and City's agreement to accept this payment to settle the Dispute shall not constitute or be considered an admission of liability or wrongdoing (including, without limitation, noncompliance with permitting requirements). Each Party agrees, on behalf of itself and its past, present, and future employees, officers, directors, attorneys, shareholders, representatives, predecessors, successors, permitted assigns, subsidiaries, parents, and partners absolutely, unconditionally, completely, and without reservation, to release, acquit, irrevocably remise, and forever discharge the other Party and its respective past, present, and future employees, officers, directors, attorneys, shareholders,

representatives, predecessors, successors, permitted assigns, parents, and partners of and from any and all manner of claims, counterclaims, costs, expenses, demands, rights, liabilities, damages, potential actions, causes of action, suits, judgments, decrees, retroactive adjustments or refunds, interest, late payment charges, fines, bonds, bills, and controversies of any kind and nature whatsoever, at law, in equity, or otherwise including, without limitation, claims based on specific or punitive damages, whether known or unknown, arising from the Dispute, provided nothing herein shall be deemed to release any claim to enforce this Agreement, and any other lawful obligation of Licensee to City or City to Licensee not released herein, including but not limited to such obligations of taxes or regulatory compliance to City as a governmental entity. The Parties acknowledge and agree that, although they may hereafter discover law or facts in addition to or different from those which they know or believe to be true as of the Effective Date related to the Dispute, it is their intention with respect to each other, to settle and release the Dispute fully, finally, and forever; and, in furtherance of such intention, the releases shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts or law. The Parties may have other disputes between them, known or unknown, that are not settled or released herein. Nothing in this Agreement binds or can bind any entity other than those named above, except as to any predecessor entities pursuant to which the Dispute has arisen. Each Party warrants and represents that it has not assigned, transferred, or conveyed all or any portion of the claims covered by this Agreement and that this warranty and representation is an essential and material term of this Agreement, without which it would not have entered into it.

SECTION 4. TAXES

4.1 Taxes. The Licensee agrees to pay all legally applicable taxes including license taxes, business taxes, utility taxes, video services provider fees, and other applicable taxes of the City and failure to pay such taxes shall be considered a breach of this Agreement. Nothing herein is intended to alter, amend, modify or expand the taxes that may be lawfully assessed on Licensee's business activities under applicable law. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Rights-of-Way. Such taxes shall be in addition to compensation, if any, required by the City by ordinance or otherwise subject to any limitations herein and of applicable state or federal law.

SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES

5.1 Transfer of Agreement. Unless otherwise permitted by law, Licensee shall not sell, transfer, lease, or assign this Agreement or its rights under this Agreement, in whole or in part, without obtaining the City's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing sentence, Licensee may sell, transfer, lease or assign this Agreement or its rights under this Agreement, in whole or in part, with prior thirty (30) days' written notice to the City if to: (a) any entity controlling, controlled by or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership or this Agreement. Licensee shall not change its name under which it does business with the public without providing at least thirty (30) days prior written notice to the City.

5.2 Agreement Binding. In the event of a sale, transfer, assignment or any other transaction Licensee may enter into that involves transfer of Licensee's rights, duties, and privileges under this Agreement, all provisions of this Agreement that are obligatory upon, or that inure to the benefit of Licensee, shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of Licensee. Further, all obligations, duties, liabilities, limitations, prohibitions, amendments and forfeitures by this Agreement created or imposed upon Licensee shall be binding upon and be assumed, kept and performed by its legal and bona fide assigns and successors in interest, according to the true intent and purpose of this Agreement, whether expressly so stated or not.

5.3 Sale or Lease of Facilities. Except as otherwise may be provided by law, Licensee shall not lease, sell, sublet or otherwise transfer possession or control or use of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. Notwithstanding the foregoing, Licensee may use and maintain Licensee Facilities installed for the benefit of its customers of its Communications Services provided that any such customer shall have no right of physical access to the Facilities in the ROW without a separate agreement with the City.

SECTION 6. FORFEITURE OF LICENSE AND PRIVILEGE.

6.1 Forfeiture. In case of material failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Agreement, including the provisions of the Code of Ordinances, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, including the provisions of the Code, or if the Licensee or its customer loses authority to provide its Communication Services or do business within the City under applicable law, or if the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Agreement, it shall first serve a written notice upon the Licensee, setting forth in detail the neglect or failure complained of, and the Licensee shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Agreement. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with, unless said material default could not have been cured within said thirty (30) day period by Licensee exercising reasonable diligence and Licensee is exercising diligence to cure said default, the City shall take action by an affirmative vote of the Governing Body present at the meeting and voting, at which Licensee may appear and be heard, to terminate the Agreement; setting out the grounds upon which said Agreement is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's Code of Ordinances or as may otherwise exist at law. All remedies described in this Section are cumulative and in addition to any other rights and remedies to which City may be entitled at law, in equity or under this Agreement.

SECTION 7. GENERAL CONDITIONS

7.1 Compliance With Laws. In performing activities and exercising its rights and obligations under this Agreement, the Licensee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, zoning, and other regulations and policies relating to construction, bonding, insurance, and use of public property.

7.2 Insurance. In addition to the requirements of Section 505.220 of the ROW Code, except as may be prohibited by law, Licensee shall provide, at its sole expense, and maintain during the term of this Agreement commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the Licensee, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officers, directors, employees and agents, or any subcontractors of Licensee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Licensee operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least \$2,804,046.00, but in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo., or its successor, for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is named as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the City Clerk. The City's additional insured coverage shall have no deductible. **The insurance requirements in this Section or otherwise shall not apply to Licensee to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted and provided that this exemption shall not apply if Licensee uses or obtains the right to use any City poles or other facilities.**

7.3 Construction Guarantee and Maintenance. Licensee agrees that it shall be responsible to guarantee for a period of four years the restoration of the Rights-of-Way in the area where such Licensee conducted excavation and performed the restoration minimally as required by § 67.1834 RSMo. A bond, letter of credit or other surety (collectively "Surety") in the form approved by the City shall be posted if required by the City to guarantee construction performance. **Surety shall not be required to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted and provided that this exemption shall not apply if Licensee uses or obtains the right to use any City poles or other facilities. Licensee shall also be responsible for maintenance of its Facilities and any**

and all damage caused to the Rights-of-Way, equipment within the Rights-of-Way or otherwise by Licensee's use of the Rights-of-Way.

7.4 Enforcement; Attorneys' Fees. The City shall be entitled to enforce this Agreement through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including reasonable attorneys' fees, in the event that Licensee is determined judicially to have violated the terms of this Agreement.

7.5 Relationship of the Parties. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties.

7.6 Relocation or Removal of Facilities.

7.6.1 In addition to the requirements of Section 505.220 of the ROW Code, the City may in its exercise of the public interest request, require that Licensee, at Licensee's sole cost and expense, relocate, adjust, or reinstall any of its Licensee Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of Licensee Facilities to be relocated and a reasonable time to relocate such Licensee Facilities. Licensee shall forthwith remove, adjust, or relocate such Licensee Facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Licensee Facilities shall be the exclusive obligation of said Licensee without expense to the City. If any Licensee Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Licensee Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate Licensee Facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate Licensee Facilities.

7.6.2 Licensee shall upon request of any person other than the City requesting relocation of Licensee Facilities and holding a validly issued building or moving permit and within a reasonable period as may be established by the City, temporarily raise, lower, adjust, or relocate Licensee Facilities as may be reasonably necessary for such permit-holder to exercise its rights under the permit. Except where good cause is approved by the City, a permit-holder must make its request at least fourteen (14) days prior to the date it intends to exercise its rights under the permit. If applicable, Licensee will, within seven (7) days of its receipt of such a request, deliver to the permit-holder an invoice for the services. However, Licensee will not be required to honor any such request unless and until the permit-holder makes payment in advance for any expenses incurred by said Licensee pursuant to said person's request. If any Licensee Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Licensee Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate Licensee Facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate

Licensee Facilities.

7.7 No Cause of Action Against the City. The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by said City, or for the failure of the City to have the authority to grant, all, or any part, of the rights herein granted; provided that said Licensee expressly acknowledges that it accepted the rights herein granted under this Agreement in reliance upon its independent and personal investigation and understanding of the power of authority of the City to enter into the Agreement herein with Licensee; provided further that the Licensee acknowledges by its acceptance of said Agreement that it has not been induced to enter into this Agreement upon any understanding, or promise, whether given verbally or in writing by or on behalf of any Party, or by any other person concerning any term or condition of this Agreement not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions of this Agreement. Nothing herein shall be deemed to waive the City's sovereign immunity.

SECTION 8. INDEMNIFICATION

8.1 Indemnification. Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, councils, boards, commissions, officers, employees, attorneys, and agents, from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Licensee may be liable, in constructing, operating, using, maintaining, repairing, restoring or removing Facilities, or in carrying on Licensee's business or operations in the City, or out of the fact that the City entered into this Agreement with Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors, or as otherwise may be limited by law. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. The indemnification, duty to defend, and hold harmless obligations set forth in this Section shall survive for a period of five (5) years after the date of expiration or termination of this Agreement. Any payments required by Licensee to City pursuant to this indemnification paragraph or otherwise required under this Agreement shall accrue interest from the date due at one and one-half percent (1.5%) interest per month until paid.

SECTION 9. NOTICE

9.1 Any notice, demand, consent, approval, request or other communication required or permitted to be given to either Party under or with respect to this Agreement (collectively, "Notice") must be in writing and must be delivered in person, by a reputable overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:

ExteNet Systems, Inc.
3030 Warrenville Road, Suite 340
Lisle, IL 60532
Attn: Executive Vice-President and CFO

With copies to General Counsel and VP of External Relations at the same address noted above

If Notice to City:

City of University City, Missouri
6801 Delmar Blvd.
University City, MO 63130
Attn: City Clerk

9.2 If notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if notice is given by certified mail or the confirmation of delivery form if notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no proper notice was given will be deemed to be receipt of the notice as of the date of rejection, refusal or inability to deliver. Either Party may change its address for notice by giving notice of address change to the other Party in the manner for giving notice prescribed in Section 9.1.

SECTION 10. MISCELLANEOUS

10.1 This Agreement and all Exhibits constitute the entire Agreement between the Parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect.

10.2 The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

10.3 No term or condition of this Agreement will be deemed to have been waived by a Party unless the waiver is made in writing and is signed by the Party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will

be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the Party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or conduct or failure of a Party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

10.4 The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Missouri shall govern this Agreement.

10.5 This Agreement is for the benefit of the Parties and not for any other person or entity. This Agreement creates no third-party beneficiary rights.

SECTION 11. EFFECTIVE DATE AND ACCEPTANCE

11.1 This Agreement shall be effective on the date this Agreement is last signed by both Parties ("Effective Date"). The Parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily, and have full authority to sign this Agreement.

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date.

CITY OF UNIVERSITY CITY, MISSOURI


_____, City Manager

Date: 9/11/18

ATTEST:

_____, City Clerk

EXTENET SYSTEMS, INC.

By: 

(CORPORATE SEAL)

Name: Oliver Valente

Title: Executive Vice President & COO

Date: 8/29/18

STATE OF Illinois)
) ss.
COUNTY OF Dolage)

The forgoing instrument was acknowledged before me this 8-29- 2018,
by Mary C Arena on behalf of Oliver Valente. This
person is personally known to me or has produced as identification.

Mary C. Arena
(Signature of Notary taking Acknowledgment)

Notary Public, State of Illinois



My Commission Expires: _____

EXHIBIT A

SPECIAL CONDITIONS

The following special conditions shall be a condition of this Agreement and shall supplement and limit any provision in this Agreement to the contrary:

1. All new Licensee Facilities shall be installed underground, except where good cause is shown to authorize use of existing above-ground Licensee Facilities, including (1) when and where nearby similar facilities exist above ground or (2) when conditions are such that underground construction is impossible, impracticable or economically unfeasible, as determined by the City. Above-ground Licensee Facilities authorized for good cause shall, in the City's reasonable judgment be limited to construction and Licensee Facilities having minimal detrimental impact on the area where construction is proposed. Ground-mounted pedestals customarily installed for underground Facilities shall be authorized subject to applicable permit requirements and design, location, appearance and other reasonable requirements of the City, provided that such pedestals or equipment that are larger than 3 feet in height or otherwise not customarily found within the City limits shall not be deemed authorized by this Agreement without specific separate written authorization of the City.
2. Licensee acknowledges and agrees that pursuant to its obligation to pay all applicable taxes it shall pay the City's license tax as a provider of telecommunication services, if applicable, and shall remit to the City such tax on gross receipts of its business as required by Article III of Chapter 615 of the City's Code of Ordinances, or as may be amended, regardless of technology or nomenclature used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law.
3. Licensee represents and agrees that it (including its duly licensed contractors acting on its behalf identified on the right-of-way permit application or otherwise to the City) shall not authorize third-parties without a valid license, Right-of-Way Use Agreement, or other lawful authorization in writing from the City to be within the City's Rights-of-Way to install or perform maintenance on Licensee Facilities or have physical access thereto in the Rights-of-Way.
4. For purposes of clarification only, a document providing Communication Service to a third party as authorized herein but nominated or referred to as lease authorizing a service or use to a third-party shall not be deemed to violate Section 5.3, or constitute rent outside the scope of providing a Communication Service, solely because of such nomenclature or reference provided it otherwise complies with the requirements of this Agreement and meets the following conditions:
 - Does not provide the third-party with an ownership or property interest in or any form or type of title in the ROW, ROW Agreement, or any facilities in the ROW, whether temporary or otherwise, and the lessee does not acquire the right to own, control, maintain, modify, physical access, or revise the facilities in the ROW,

whether specific facilities or not; and

- Does not grant any rights or remedies as against the City and any such rights or remedies are limited to those as may be granted herein to be directly exercised by Licensee.

5. Existing and New Wireless Facility Locations or Facilities:

- a. Existing Facilities. The Parties acknowledge that Licensee has certain existing Facilities currently in the ROW located at:

- 8348 Delcrest – Node installation of an Ameren Pole;
- 8200 Gannon (Old Bonhomme) – Node installation on Ameren Pole;
- 7951 Gannon (Center Dr.) – Node installation on Ameren Pole; and
- 7601 Delmar (Bemiston) – Node installation on Ameren Pole.

Licensee agrees to the extent such Licensee Facilities do not comply with applicable law, additional applications or zoning approval may be required by the City to bring the Licensee's Facilities in compliance with applicable law in accordance with the terms of this Agreement.

- b. Proposed New Facilities. The Parties acknowledge that the new wireless Licensee Facilities set forth in Exhibit B are subject to obtaining applicable permits and administrative approval prior to construction at the following locations:

- 7491 Amherst – Node installation on Ameren Pole; and
- 7206 Pershing – Node installation on Ameren Pole.

c. Additional Terms. The Parties acknowledge that during the pendency of the Dispute with Licensee, state legislation, HB1991 2018 (the "New Legislation"), was enacted that will, unless held invalid, portions thereof held invalid, or judicially stopped from becoming enforceable, impact the regulatory scheme over certain facilities or uses under certain circumstances, and accordingly the following additional clarifications exist applicable to the Licensee's specific circumstances: While neither party admits to the validity, applicability, or enforceability of the New Legislation to any existing or hypothetical circumstance, the Parties do agree that § 67.5112 RSMo, purported to be by its terms effective January 1, 2019, states "an authority shall permit a wireless provider, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, operate, and replace utility poles along, across, upon, and under the right-of-way . . ." The Parties agree that nothing in this Agreement shall impose an obligation or grant a right to any Party, including as to compensation or zoning authority, that is prohibited by the New Legislation if validly enforced under the circumstances so applied. For purposes of further clarification, the Parties agree that the compensation required by this Agreement is subject to any limitation of the New Legislation to the extent such is validly enforced, binding, and applicable to the specific circumstance, use, and/or facility. In the event

that the New Legislation is invalidated or does not go into effect, the Parties agree that Licensee retains any right to challenge the reasonableness of the antenna compensation if such a legal challenge exists under applicable law; provided that Licensee agrees that such compensation challenge may be only as to prospective compensation and only after written notice to the City on the basis of the claim, and providing the City at least 30 days' opportunity to respond and/or adjust such compensation in light of the specific facts provided.

EXHIBIT B

Site ID	ExteNet Node ID	Candidate	County	ROW	ROW Owner	Pole Owner	Lat	Long	Pole Type	Material
ST90XS D68	NC- MO- STLOUIS- 00075	L	St Louis	Yes	COUNTY ROW - University City	Ameren	38.66240600	- 90.33213300	Utility Pole	Wood
ST90XS E02	NC- MO- STLOUIS- 00086	M	St Louis	Yes	University City	Ameren	38.652381	-90.321797	Utility Pole	Wood



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/19/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CA #0H64724 IMA Waldman IMA, Inc. (Dallas Division) 6200 LBJ Freeway Suite 200 Dallas, TX 75240	1-972-581-4400	CONTACT NAME: Ashley Harris PHONE (A/C, No, Ext): 972 458-8700 E-MAIL ADDRESS: ashley.harris@imacorp.com	FAX (A/C, No): 972 458-8755
INSURED ExteNet Systems, Inc.; ExteNet Systems (California), LLC; ExteNet Systems New York, Inc.; ExteNet Systems (Virginia) 3030 Warrenville Rd., 3rd FL Lisle, IL 60532		INSURER(S) AFFORDING COVERAGE	
		INSURER A: CONTINENTAL INS CO	NAIC # 35289
		INSURER B: NATIONAL FIRE INS CO OF HARTFORD	20478
		INSURER C: AMERICAN CAS CO OF READING PA	20427
		INSURER D: BERKLEY ASSUR CO	39462
		INSURER E: HISCOX INS CO INC	10200
		INSURER F: FEDERAL INS CO	20281

COVERAGES CERTIFICATE NUMBER: 51925360 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:		4013130714	01/02/18	01/02/19	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		4013130681	01/02/18	01/02/19	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		6056871852	01/02/18	01/02/19	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N C ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	6056871849 6056871821	01/02/18 01/02/18	01/02/19 01/02/19	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Pollution Liability		PCADB-5003433-0118	01/27/18	01/02/19	Limit 10,000,000
E	Professional/Cyber Liability		MPL1869337	01/27/18	01/02/19	Limit 10,000,000
F	Fidelity/Crime Coverage		596759293	01/27/18	01/02/19	Limit 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER University City Public Works and Parks Dept 6801 Delmar Blvd. University City, MO 63130 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>C. P. M.</i>
--	---

© 1988-2014 ACORD CORPORATION. All rights reserved.

ACORD 25 (2014/01)
aharris
51925360

The ACORD name and logo are registered marks of ACORD