

**AGREEMENT FOR A NON-EXCLUSIVE LICENSE BETWEEN THE
CITY OF SAN ANTONIO AND MOBILITIE, LLC, A NEVADA LIMITED LIABILITY
COMPANY
FOR THE USE OF PUBLIC RIGHTS-OF-WAY**

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**AGREEMENT FOR A NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO AND MOBILITIE, LLC, A NEVADA LIMITED
LIABILITY COMPANY
FOR USE OF PUBLIC RIGHTS-OF-WAY**

This License Agreement (“License Agreement”) is made by and between the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as “CITY” or “Licensor”), a Texas Municipal Corporation and Home-Rule Municipality, acting by and through its City Manager, or designee, pursuant to Ordinance No. _____, passed and approved by the City Council on October, _____, 2016; and **MOBILITIE, LLC, A NEVADA LIMITED LIABILITY COMPANY** (hereafter referred to as “MOBILITIE” or “Licensee”). The CITY and the MOBILITIE may hereinafter be referred to collectively as the “Parties”.

WHEREAS, MOBILITIE, desires the use of certain public rights-of-way within the CITY for the purpose of installing, and maintaining fiber optic cable, conduit, and related facilities, as defined by this License Agreement, to support small cell equipment installed by MOBILITIE in public rights-of-way pursuant to separate small cell agreement licenses entered into between the CITY and MOBILITIE; and

WHEREAS, the installation, maintenance, and repair of fiber optic cable, conduit, and related facilities on public rights-of-way will be done in a manner consistent with all City of San Antonio regulations, including the City’s Rights-of-Way Management Ordinance and Utility Excavation Criteria Manual; and

WHEREAS, the City hereby set forth rights, duties and obligations of MOBILITIE in this License Agreement;

NOW THEREFORE THE ABOVE PARTIES AGREE TO THE FOLLOWING:

SECTION 1. DEFINITIONS

For purposes of this License Agreement the following terms shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

- (a) “CITY” means the City of San Antonio, Texas, a home-rule municipality.
- (b) “Chief Information/Technology Officer” means the director of the Information Technology Services Department.
- (c) “Director” means the Director of Transportation & Capital Improvements Department.

- (d) "Excavation Manual" means the Utility Excavation Criteria Manual approved by the Director of Public Works on April 2, 2001 (as amended from time to time) pursuant to the authority granted by the Rights-of-Way Management Ordinance.
- (e) "Facilities" means any and all MOBILITIE'S ducts spaces, manholes, poles, conduits, fiber optic cables, repeaters, power sources, underground and overhead passageways, and other equipment, structures, plant, and appurtenances located within the Public Rights-of-Way.
- (f) "Rights-of-Way" or "Public Rights-of-Way" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter-held by the CITY or over which the CITY exercises any rights of management control.
- (g) "Rights-of-Way Management Ordinance" means the San Antonio Right-of-Way Management Ordinance passed by the San Antonio City Council on January 25, 2001 as Ordinance No. 93319, codified as Chapter 29 of the CITY'S Municipal Codes.
- (h) "Rights-of-Way Manager" means the Manager of the Rights-of-Way Management Division of the Transportation & Capital Improvements Department.

SECTION 2. GRANTING CLAUSE

- (a) The CITY hereby grants MOBILITIE, a non-exclusive license to use and occupy the Rights-of-Way to erect, install, construct, replace, and maintain all necessary Facilities to support small cell equipment installed in the Rights-of-Way pursuant to a separate small cell master license agreement to provide network capacity to personal communications services providers. MOBILITIE'S use of the Rights-of-Way shall be subject to the laws of the State of Texas and the CITY'S charter and laws as they exist now or may be amended from time to time, and subject to the conditions outlined in this License Agreement. MOBILITIE shall install its Facilities consistent with the CITY'S Rights-of-Way Management Ordinance and Excavation Manual.
- (b) MOBILITIE'S right to use and occupy the Public Rights-of-Way shall not be exclusive and the CITY reserves the right to grant a similar use of same to itself or any person or entity at any time during the period of this License Agreement.
- (c) The Right-of-Way Manager shall assign priorities among competing private uses of the Public Right-of-Way according to the order completed permit applications are received.
- (d) If the CITY vacates a Right-of-Way containing MOBILITIE'S Facilities, the

conveyance shall be subject to the rights of the MOBILITIE under this License Agreement.

- (e) In consideration for the rights granted under this License Agreement, MOBILITIE waives all claims, demands, causes of action, and rights it may assert against the City because of any loss, damage, or injury to any equipment or any loss or degradation of services because of any event or occurrence, except as provided for in Section 6.

SECTION 3. TERM

The License term and the rights, privilege and authority hereby granted shall be in force and effect for a term beginning upon final execution of this License agreement, and shall continue in effect for a term of ten (10) years.

SECTION 4. LICENSE RENEWAL PROCEDURES

- (a) Upon application by MOBILITIE, this License Agreement may be renewed by the CITY for subsequent five (5) year periods pursuant to the procedures established in this Section, and in accordance with the applicable laws, regulations, and the rules of the State of Texas.
- (b) At least six (6) months prior to the expiration of the then-current term of the License Agreement, MOBILITIE shall inform the Chief Information/Technology Officer in writing of its intent to seek renewal of the License Agreement. During this time period, the CITY may order a new appraisal of the Rights-of-Way used by MOBILITIE, and the Parties may re-negotiate other terms of the LICENSE AGREEMENT. A processing fee will apply to a renewal of the License Agreement.
- (c) Upon determination by the City Council that MOBILITIE'S performance is satisfactory, a renewal, subject to the agreed re-negotiation of compensation and other terms may be granted for a period of five (5) years.

SECTION 5. EXCAVATION REQUIREMENTS

The work done by MOBILITIE in connection with the installation, construction, reconstruction, maintenance, repair, extension, betterment, improvement, or enlargement of Facilities within the Public Rights-of-Way shall be subject to and governed by all pertinent local and state laws, rules, and regulations, including the CITY'S Right-of-Way Management Ordinance, that are applicable to insure the work done does not unduly inconvenience the public in the use of the surface of the streets and sidewalks. The remaining Rights-of-Way requirements set out in Subsections A through G of this Section 4 are for ease of use by MOBILITIE; however, MOBILITIE must comply with all applicable requirements in the Rights-of-Way Management Ordinance and the Excavation Manual whether or not included in this License Agreement word-for-word.

A. CONSTRUCTION WORK-REGULATION BY CITY

- (a) All excavations and other construction in the streets shall be so carried on as to minimize interference with the use of CITY'S Rights-of-Way and with the use of private property, in accordance with all regulations of the CITY necessary to provide for public health, safety and convenience.
- (b) The work of removing from the Rights-of-Way all obstructions, surplus materials, debris and waste matter of every description caused by and accumulated from the excavation shall be MOBILITIE'S responsibility. Streets shall be cleaned by use of a regenerative air or vacuum street sweeper. MOBILITIE shall clean the surrounding area, as outlined above, within one (1) day upon completion and approval of all trench work and pavement restoration unless the Rights-of-Way Manager grants an extension of time.
- (c) Prior to beginning any excavation or boring project on Public Rights-of-Way, MOBILITIE shall comply with the provisions of the Texas One Call utility locator service at least 48 hours in advance. MOBILITIE has the responsibility to protect and support the various utility facilities of other providers during construction.

B. WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS

- (a) The CITY reserves the right to lay, and permit to be laid, sewer, gas, water and other pipe lines or cables and conduits, as well as drainage pipes and channels and streets and to do and permit to be done any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the CITY, in, across, along, over or under any Rights-of-Way occupied by MOBILITIE, and to change any curb or sidewalk or the grade of any street and to maintain all of the CITY'S facilities. In permitting such work to be done by others, the CITY shall not be liable to MOBILITIE for any damage caused by those persons or entities.
- (b) If the CITY requires MOBILITIE to adapt or conform its Facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the CITY, to use, or to use with greater convenience, any Rights-of-Way, MOBILITIE shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse MOBILITIE for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of MOBILITIE'S Facilities; *provided, however*, that the CITY shall never be liable for such reimbursement.

C. ABANDONMENT OF FACILITIES

Whenever MOBILITIE intends to abandon any of its Facilities within a Right-of-Way, it shall submit to the Right-of-Way Manager an application describing the facilities to be abandoned and the date of the proposed abandonment. CITY may require MOBILITIE, at MOBILITIE'S expense: (a) to remove the facility from the Public Right-of-Way and repair any damage caused by removal, or (b) allow the Facilities to remain in place if the Rights-of-Way Manager determines it is in the best interest of the public to do so.

D. SUPERVISION BY CITY OF LOCATION OF POLES, CONDUITS AND FIBER

In the event MOBILITIE finds it necessary to install poles on Public Rights-of-Way, such poles shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location and route of all poles, stubs, guys, anchors, conduits, fiber, and cables placed and constructed by MOBILITIE in the installation, construction and maintenance of its Facilities shall be subject to the lawful, reasonable and proper control, direction and/or approval of the Rights-of-Way Manager.

E. ATTACHMENTS TO POLES AND SPACE IN DUCTS

- (a) Nothing contained in this License Agreement shall be construed to require or permit any pole attachments owned, leased, or controlled by MOBILITIE to be attached to CITY-owned poles or other CITY-owned property.
- (b) Nothing contained in this License Agreement shall obligate or restrict MOBILITIE in exercising its rights voluntarily to enter into pole attachment agreements with electric power companies or with other wire-owning companies which are authorized to operate within the CITY.

F. TREE TRIMMING

Permission is granted to MOBILITIE, its contractors and agents, subject to the requirements of the City's tree ordinance, as may be amended from time to time, to trim trees upon and overhanging the Rights-of-Way so as to prevent the branches of such trees from coming in contact with MOBILITIE'S Facilities, and when so directed by the CITY, the tree trimming shall be done under the supervision and direction of the CITY or of any CITY official to whom those duties have been or maybe delegated.

G. RELOCATION OR REMOVAL OF FACILITIES

- (a) MOBILITIE and the CITY shall cooperate to the extent possible to assure continuity of service during relocation of Facilities.

- (b) Nothing in this section shall be construed as preventing the MOBILITIE from recovering the cost of removal or relocation of its Facilities from a non-governmental third party responsible for the request.
- (c) If the MOBILITIE fails to remove or relocate its Facilities to the satisfaction of the Rights-of-Way Director by the 120th day after the date of notice, the CITY may remove or relocate the Facilities at the expense of MOBILITIE and without liability to the CITY.
- (d) Any damage to the Public Rights-of-Way or adjacent property that occurs during the removal or relocation of MOBILITIE'S Facilities shall be promptly repaired or replaced at MOBILITIE'S sole expense. Should MOBILITIE not make adequate repairs after receiving written notice, the CITY may make all reasonable and necessary repairs on behalf of MOBILITIE, and reimburse itself from proceeds from the surety bond required under Section 7. Any remaining amount will be charged to MOBILITIE. MOBILITIE shall promptly remit payment of such costs when invoiced by the CITY.

SECTION 6. INDEMNITY

- (a) **General Indemnity Clause – Licensee covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to Licensee's activities under this License Agreement, including any acts or omissions of Licensee, any agent, officer, director, representative, employee, consultant or subcontractor of Licensee, and its respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this License Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in the instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- (b) Licensee shall be liable for the acts and omissions of its own employees, officers, directors, and any contractors, subcontractors, representatives, agents, or any parties involved directly or indirectly in the construction, installation, maintenance of Licensee's Facilities and proprietary poles. Any act or omission of non-employees, officers, and directors shall be considered an act or omission of the Licensee.
- (c) **Duty to Indemnify Licensor Against Claims Arising from License Agreement** – Licensee shall defend, indemnify and hold the City and its officers, employees, and appointed and elected officials harmless against all damages, cost, loss or expense arising out of, incident to, directly or proximately resulting from the negligence or willful misconduct of Licensee, its employees, officers, directors, contractors, subcontractors, agents, or representatives in the performance of activities under this License Agreement for:
- (1) the repair, replacement, or restoration of City property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective;
 - (2) damage to or loss of the property of any person including, but not limited to Licensee, its agents, officers, employees and subcontractors, the City's agents, officers and employees, and third-parties; and
 - (3) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person no matter how, or to whom, the loss may occur.
- (d) **Licensor's Duty to Notify Licensee of Claims** – The City shall give prompt written notice to Licensee of any claim for which the City seeks indemnification. Licensee shall have the right to investigate, defend, and compromise these claims subject to the City Attorney's prior approval. Said approval shall not be unreasonably withheld, delayed or conditioned.
- (e) **Licensor's Consent to Settle Claims** – Licensee may not settle any claim subject to this Section 5 without the consent of City, unless (i) the settlement will be fully funded by Licensee, and (ii) the proposed settlement does not contain an admission of liability or wrongdoing by any elected officials, employees, officers, directors, volunteers or representatives of City. The City's withholding its consent as allowed in the preceding sentence does not release or impair Licensee of any obligations under this Section 5. Licensee must give City at least twenty (20) days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind City must first be approved by City Council.
- (f) **Licensor Not Liable to Licensee** – Licensor shall not be liable to Licensee, or its customers, agents, representatives, or employees for any claims arising from this License Agreement for lost revenue, lost profits, loss of equipment, interruption

or loss of service, loss of data; or for incidental, indirect, special, consequential, or punitive damages, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

SECTION 7. INSURANCE REQUIREMENTS

- (a) Prior to the commencement of any work under this License Agreement, the Licensee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City’s Information Technology Services Department, which shall be clearly labeled “*Mobilitie Master License Agreement for Use of Public Rights-of-Way*” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this License Agreement until such certificate and endorsements have been received and approved by the City’s Information Technology Services Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

- (b) City reserves the right to review the insurance requirements of this Section during the effective period of this License Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereupon the City may incur increased risk. Such review and modification shall not occur more frequently than every five (5) years.

- (c) The Licensee’s financial integrity is of interest to the City; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this License Agreement, and any extension hereof, at the Licensee’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

Type of Coverage	Amounts
1. Professional Liability (Claims Made Form)	\$1,000,000 per claim and aggregate to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
2. Workers’ Compensation	Statutory

3. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
4. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/complete operations d. Personal and Advertising Injury e. Contractual liability f. Property damage, to include Fire Legal Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence and General Aggregate limit of \$2,000,000 Property damage, minimum of \$50,000
5. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

- (e) The Licensee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
 - Upon receipt of notice from its insurer, Licensee will provide Licensor with thirty (30) days prior written notice of cancellation.
- (f) Within thirty (30) calendar days of a suspension, cancellation or non-renewal of coverage, the Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to the City. The City shall have the option to suspend the Licensee's performance should there be a lapse in coverage at any time during this License Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this License Agreement.
- (g) In addition to any other remedies the City may have upon the Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and

within the time herein required, the City shall have the right to order the Licensee to stop work hereunder, and/or withhold any payment(s) which become due to the Licensee hereunder until the Licensee demonstrates compliance with the requirements hereof.

- (h) Nothing herein contained shall be construed as limiting in any way the extent to which the Licensee may be held responsible for payments of damages to persons or property resulting from the Licensee's or its subcontractors' performance of the work covered under this Licensee Agreement.
- (i) It is agreed that the Licensee's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this License Agreement.
- (j) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License Agreement.
- (k) The Licensee and any subcontractors are responsible for all damage to their own equipment and/or property.

SECTION 8. SURETY BOND

- (a) **Duty to Obtain Bond** – Licensee shall obtain and maintain at its sole cost a corporate surety bond securing performance of its obligations and guaranteeing faithful adherence to the requirements of the License Agreement. The surety bond must be:
 - (1) in an amount not less than \$100,000.00;
 - (2) issued by a surety company license to do business in the State of Texas; and
 - (3) under terms and conditions acceptable to the City Attorney.
- (b) **Time Period to Obtain Bond** – Licensee shall obtain this bond no later than the 30th day after the effective date of this License Agreement.
- (c) **Bond Does Not Limit Other Rights and Remedies** – The rights reserved to the Licensor under the bond are in addition to all other rights. No action, proceeding or exercise of a right regarding the bond shall affect the Licensor's rights to demand full and faithful performance under this License Agreement or limit the Licensee's liability for damages.

SECTION 9. ADMINISTRATION OF LICENSE

- (a) The City Manager or her designee is the principal CITY officer responsible for the administration of this License Agreement. The Rights-of-Way Manager shall review the operations of MOBILITIE in the Rights-of-way under this License

Agreement.

- (b) MOBILITIE shall communicate with the Rights-of-Way Manager all matters in connection with or affecting the installation, construction, reconstruction, maintenance and repair of MOBILITIE'S Facilities in the Rights-of-Way and report any material changes to MOBILITIE'S Facilities.
- (c) Notices required by this License Agreement may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Either Party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to CITY shall be delivered as follows:

Director of Capital Improvements Management Services Department City of San Antonio P.O. Box 839966 San Antonio, Texas 78204 (210) 207-8140	City Clerk's Office City of San Antonio P.O. Box 839933 San Antonio, Texas 78283-3933 (210) 207-7253
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Until any such change is made, notices to MOBILITIE shall be delivered as follows:

	Copy to:	
Attn:		Attn:

- (d) Copies of petitions, applications, communications and reports submitted by MOBILITIE to the Federal Communications Commission or the Public Utility Commission of Texas concerning or affecting this License Agreement shall be provided to the CITY concurrently with the filing of such documents.

SECTION 10. RECORDS

- (a) MOBILITIE shall keep complete and accurate maps and records of its Telecommunications System. The CITY may require the keeping of additional records or maps which are reasonably necessary for purposes of identifying, accounting for, and reporting changes in Facilities.
- (b) The CITY may, at reasonable times and for reasonable purposes, examine, verify and review the documents, maps, plans and other records of MOBILITIE pertaining to the Facilities installed in the Rights-of-Way. MOBILITIE shall make the above records available to the CITY for review within ten (10) working days after requested by the Director or Rights-of-Way Manager.

SECTION 11. COMPENSATION FOR USE OF RIGHTS-OF-WAY

In exchange for the use and occupancy of the Public Rights-of-Way, MOBILITIE shall be required to allow and provide the following:

(a) **Processing Fee.** MOBILITIE shall remit to the CITY a one-time processing fee of two thousand five hundred dollars (\$3,500.00).

(b) **Right-of-Way Access Fees.**

(1) The annual consideration amount for use of public right-of-way for the purpose of installing aerial and/or subterranean fiber optic and related communications facilities is based on the fair market value of the Rights-of-Way used by MOBILITIE. The licensed area must be as wide as the MOBILITIE will reasonably need to maintain the licensed facilities but not more than twenty (20) feet. The Chief Information/Technology Officer in his discretion may utilize internal staff or engage an independent professional consultant to conduct an appraisal of the Rights-of-Way subject to this License Agreement, based on the appraised values of adjoining properties as assessed by the Bexar County Appraisal District. MOBILITIE will be responsible for paying the Rights-of-Way appraisal separate from the processing fee. The Chief Information/Technology Officer will determine the fair market value based on the total number of square feet of Rights-of-Way multiplied by the total number of per-linear-foot of the Rights-of-Way area associated with the MOBILITIE'S network footprint. An annual escalation factor of four (4) percent will be applied to the consideration amount for year one in order to derive the consideration amount for years two (2) to ten (10) of the license term. At the discretion of the Chief Information/Technology Officer, *the CITY may negotiate a discount off the total licensing fee in exchange for in-kind contributions of equivalent value.*

(2) The licensing fee will authorize MOBILITIE to install Facilities on CITY Rights-of-Way, but does not grant authority to use poles or other infrastructure of the CITY or utility agencies. The Chief Information/Technology Officer may require MOBILITIE to sign and deliver an agreement setting out the applicable license fee and conditions imposed by CITY departments and utility agencies. When reasonably conducive to the efficient use of the property on which Facilities are located, the Chief Information/Technology Officer may require MOBILITIE to relocate the Facilities, including all related equipment, at MOBILITIE'S expense.

(3) Following termination of this License Agreement for any reason, MOBILITIE must remove or otherwise dispose of all Facilities at its' own expense within sixty (60) days. Failure to take this action will result in the Facilities being considered abandoned and the property of the CITY.

(d) MOBILITIE shall remit the Rights-of-Way access fees on an annual basis. Each

payment shall be due on February 15th of the year and shall be accompanied by a statement explaining that the payment is made pursuant to this License Agreement.

- (e) Following termination of this License Agreement for any reason, MOBILITIE must remove or otherwise dispose of all Facilities at its own expense within sixty (60) days. Failure to take this action will result in the Facilities being considered abandoned and the property of the CITY.

SECTION 12. ASSIGNMENT OF LICENSE AGREEMENT

The rights granted by this License Agreement inure to the benefit of MOBILITIE and this License Agreement shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise by force or involuntary sale, without the expressed written consent of the CITY, approved by passage of an ordinance. For the purposes of this Section, assignment, transfer, sale, disposal, merger or consolidation shall exclude an assignment or transfer to entities that control, are controlled by, or are under common Control with MOBILITIE. Any such consent by the CITY shall not be unreasonably withheld.

SECTION 13. FUTURE CONTINGENCY

Notwithstanding anything contained in this License Agreement to the contrary, in the event that this License Agreement, in whole or in part, is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful, or otherwise inapplicable, MOBILITIE and the CITY shall meet and negotiate an amended License Agreement that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the amended License Agreement shall provide the CITY with a level of compensation comparable to that set forth in this License Agreement.

SECTION 14. VENUE AND GOVERNING LAW

- (a) VENUE OF ANY COURT ACTION BROUGHT DIRECTLY OR INDIRECTLY BY REASON OF THIS LICENSE AGREEMENT SHALL BE IN BEXAR COUNTY, TEXAS. THE PROVISIONS OF THE LICENSE AGREEMENT SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER SHALL BE PERFORMED IN BEXAR COUNTY, TEXAS.
- (b) This License Agreement shall be construed in accordance with the CITY Charter and Municipal Code(s) in effect on the date of passage of this License Agreement, and as may be subsequently amended, to the extent that such Charter and Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

SECTION 15. LICENSE AGREEMENT VIOLATIONS AND TERMINATION

The Director shall have the right to declare this License Agreement terminated at any time for failure of the MOBILITIE to comply with any term, condition, or provision of the License Agreement, including a challenge of this License Agreement, as further provided below.

- (a) If MOBILITIE initiates a challenge, legal or otherwise, to the validity of any part of this License Agreement, the entire agreement, all permits and permit applications to use Public Rights-of-Way or a municipal facility is declared null and void as of the challenge date.
- (b) MOBILITIE shall inform the CITY no later than the second day after initiating such a challenge. Failure to provide the CITY with notice constitutes a material breach of the License Agreement.
- (c) MOBILITIE must remove all Facilities installed in Public Rights-of-Way, or in, on, or around any CITY facility wherever located by no later than the 30th day after initiating the challenge.
- (d) The CITY may remove any MOBILITIE'S Facility that remain in or around Public Rights-of-Way or CITY facility on or after the 31st day following MOBILITIE'S challenge without incurring liability for the removal.
- (e) As to violations, other than a challenge of the License Agreement, MOBILITIE will have an opportunity to cure following notice from the CITY. If MOBILITIE fails to cure a violation within thirty (30) days after receiving written notice, then the CITY may pursue termination of this License Agreement.
- (f) Any termination, other than for a challenge to the License Agreement, shall be declared in writing by the Director following an opportunity to cure a violation of the License Agreement.
- (g) MOBILITIE shall not be excused from complying with any of the terms and conditions of this License Agreement by the previous failure of the CITY to insist upon or seek compliance with such terms and conditions.

SECTION 16. NON-BINDING MEDIATION

- (a) Prior to filing suit, the parties to this License Agreement shall use non-binding mediation to resolve any controversy, claim or dispute arising under the License Agreement, expressly excluding disputes involving the applicability or effect of superior laws, the constitutionality of any requirement in this License Agreement or the preemptive effect of federal law.

- (b) To initiate non-binding mediation, a Party shall give written notice to the other Party. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties. If the Parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a Party. Any mediator so designated must (shall) be acceptable to both Parties.
- (c) The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any finding by the mediator shall be a non-binding determination.
- (d) The mediation will be treated as a settlement discussion and therefore will be confidential in accordance with Tex. Civ. Prac. & Rem. Code § 154.073. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (e) Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

SECTION 17. WAIVER

None of the material provisions of this License Agreement may be waived or modified except expressly in writing signed by MOBILITIE and CITY, as authorized by City Council by passage of an ordinance. Failure of either Party to require the performance of any term in this License Agreement or the waiver by either Party of any breach thereof shall not prevent subsequent enforcement of this term and shall not be deemed a waiver of any subsequent breach.

SECTION 18. SEVERABILITY

If any clause or provision of the License Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the Parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this License Agreement that is illegal, invalid, or unenforceable, there be added as part of this License Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

SECTION 19. CAPTIONS

The captions contained in this License Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this License Agreement.

SECTION 20. EXTENT OF LICENSE AGREEMENT

This License Agreement, together with any attached exhibits and the authorizing ordinance, embodies the complete agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties and relating to this Agreement.

SECTION 21. AUTHORITY

The signer of this License Agreement for MOBILITIE hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of the MOBILITIE.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

**MOBILITIE, LLC, A NEVADA
LIMITED LIABILITY COMPANY**

(Signature)

(Signature)

Printed Name: **Hugh Miller**

Printed Name: _____

Title: **Chief Information/
Technology Officer**

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney