

## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** is made this 26th day of June, 2015, by and between the City of Lawrence, Kansas, a municipal corporation, and Dale Willey Automotive, Inc., a Kansas corporation.

### **RECITALS**

- A.** Pursuant to the laws of the State of Kansas and the ordinances of the City of Lawrence, Kansas ("City"), the authority to use the Public Rights of Way within the City of Lawrence, Kansas, is vested in the reasonable police powers of the City;
- B.** The City is the holder of that Right of Way on which the Iowa Street Frontage Road ("the City's Right of Way") is located in Lawrence, Douglas County, Kansas;
- C.** Dale Willey Automotive, Inc., a Kansas corporation ("the Owner"), owns certain real estate ("Property 1"), commonly known as 2840 Iowa Street and bearing the following legal description, to-wit:

2840 IOWA STREET: LOT 1, WILLEY'S AUTO ADDITION, IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS, CONTAINING 4.298 ACRES.

which Property is located adjacent to and along the City's Right of Way;

- D.** The Owner also certain real estate ("Property 2"), commonly known as 2828 Iowa Street and bearing the following legal de description, to-wit:

2828 IOWA STREET: NORWOOD ADDITION BEG. AT NW CORNER LOT 1, THENCE EAST ALONG NORTH LINE OF SAID LOT 220 FEET, THENCE SOUTH PARALLEL WITH WEST LINE OF SAID LOT 240 FEET, THENCE WEST PARALLEL WITH NORTH LINE OF SAID LOT 220 FEET TO WEST LINE OF SAID LOT, THEN NORTH 240 FEET TO POINT OF BEG. 1.21 AC. (DIV 1984 U12952 & U12952A)

which Property is located adjacent to and along the City's Right of Way;

- E.** In order to enhance the use and enjoyment of Property 1 and Property 2 (collectively, "the Properties"), the Owner wishes to place and install a two-inch conduit housing fiber optic cables within the City's Right of Way, for the sole and limited purpose of completing a portion of a private fiber optic network connecting the Properties;

- F. The Owner, has submitted to the City plans detailing its proposed use of the City's Public Rights of Way (copies of those plans are affixed hereto as Exhibit A); and
- G. The City has approved those plans contingent, *inter alia*, upon the execution of this License Agreement and compliance with the terms of this License Agreement.

### **TERMS**

**NOW, THEREFORE**, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. **Grant of License.** In exchange for the sum of **ONE DOLLAR AND NO CENTS** (\$1.00) and other good and valuable consideration, the City hereby grants to the Owner the non-exclusive license, right, privilege, and permission ("the License") to use, in common with others, that portion of the City's Right of Way, for the underground placement and installation of two-inch conduit housing fiber optic cable for the sole and limited purpose of completing a portion of a private fiber optic network connecting the Properties for the purpose of enhancing the use and enjoyment of the Property (a copy of the Owner's approved plans are affixed hereto as Exhibit A and are incorporated herein by reference).
2. **The Owner's Covenants.** In exchange for this License, the Owner hereby covenants and warrants as follows:
  - (a) To maintain the two-inch conduit and fiber optic cables located in the City's Right of Way at the Owner's sole cost and expense.
  - (b) To move, at the Owner's sole cost and expense, the two-inch conduit housing fiber optic cables, located in the City's Right of Way, in the event that the City needs to install, repair, or maintain any utilities that may be located or are to be located in the City's Right of Way. The Owner may replace the two-inch conduit housing fiber optic cables in its former location once said installations, repairs, or maintenance are completed, except as may otherwise be provided in paragraph 6 of this License Agreement.
  - (c) To comply with all applicable laws and ordinances, including all land use requirements of the City and Douglas County, Kansas.
  - (d) To place its two-inch conduit and facilities underground as required by City ordinances, including Chapter 5, Article 19 of the Code of the City of Lawrence, Kansas, and amendments thereto.

- (e) To comply with its plans and City standards in placing and installing the two-inch conduit housing fiber optic cables under the City's Right of Way.
  - (f) To refrain from providing either telecommunications services or cable television services to third parties without first entering into a franchise agreement with the City in accordance with K.S.A. 12-2001 *et seq.*
  - (g) To repair or replace an earth, materials, sidewalks, paving, utilities, Public Improvements, or improvements of any kind that may be injured, damaged, or removed by the Owner, while engaging in any activity under this License Agreement, at the Owner's sole cost and expense and to the reasonable satisfaction of the City.
  - (h) To refrain from causing any waste, damage, or injury to the City's Right of Way.
  - (i) The Owner shall not enlarge, intensify, or increase the proposed scope of its use or occupancy of the City's Right of Way as described in this License Agreement without the prior written consent of the City.
3. **The City Makes No Representations.** The Owner agrees that the City has made no representations to it with respect to the City's Right of Way or its condition, and that it is not relying on any representations of the City or its agents with respect to the City's Right of Way or its condition. This License Agreement grants the Owner the License to use the City's Right of Way in its present condition, "as is," without any warranties, representations, or assurances from the City.
4. **Compensation to the City.** As consideration for the grant of this License Agreement, the Owner agrees to pay and the City agrees to accept as compensation and sufficient consideration for granting this License, a one-time fee in the amount of **ONE THOUSAND DOLLARS AND NO CENTS** (\$1,000.00). The fee shall be due at the date of the execution of this License Agreement.
5. **Indemnification.** During the time that this License Agreement is in effect, the Owner agrees to indemnify, defend, save, and hold harmless the City, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to the Owner's use or occupancy of the City's Right of Way or any portion thereof as a parking lot or the maintenance of the parking lot, on account of any injury to persons or damage to property. This indemnification clause shall not apply to any injury or damage caused by the City's own negligence.

- 6. Termination.** The City reserves the right to terminate the permission granted by this License Agreement at any time and for any reason, by giving the Owner at least ninety (90) days written notice of such termination, except that the City may, at the City's election, terminate the permission immediately without such notice:
- (a)** If the Owner fails to comply with or abide by each and all of the provisions, including the Owner's Covenants, of this License Agreement;
  - (b)** If the Owner fails to comply with or abide by each and every condition established, if any, in the approved Design Review Plan; or
  - (c)** If the continued use or occupancy of the City's Right of Way presents a health or safety hazard.
- 7. Binding Effect.** This License Agreement shall, at all times, be binding upon the City and the Owner and all owners of the Property and all parties claiming by, through, or under them, and shall run with the land, and shall be for the benefit of and shall oblige all future owners of the Property; provided, however, that the rights, duties, and obligations of each owner, as set forth herein, shall cease with the termination of ownership of the Property, or portion thereof, except for those duties and obligations arising during the period of said ownership.
- 8. Severability.** If any section, sentence, clause, or phrase of this License Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this License Agreement.
- 9. Governing Law.** This License Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the State of Kansas.
- 10. Recitals.** The above-stated recitals are by reference incorporated herein and shall be as effective as if set forth *verbatim*.

*[SIGNATURES APPEAR ON THE FOLLOWING PAGES]*

**IN WITNESS WHEREOF**, the undersigned have caused this License Agreement to be executed as of the date noted above.

**CITY:  
CITY OF LAWRENCE, KANSAS, a  
municipal corporation**

\_\_\_\_\_  
DIANE STODDARD  
Interim City Manager

**ACKNOWLEDGMENT**

THE STATE OF KANSAS            )  
  )  
THE COUNTY OF DOUGLAS        )        ss:

**BE IT REMEMBERED**, that on this \_\_\_\_ day of June, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came Diane Stoddard, as Interim City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

\_\_\_\_\_  
Notary Public

My Appointment Expires:

**OWNER:  
DALE WILLEY AUTOMOTIVE, INC.,  
a Kansas corporation**

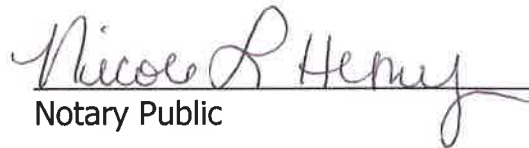
  
\_\_\_\_\_  
GREG MAURER  
President

**ACKNOWLEDGMENT**

THE STATE OF KANSAS            )  
  )  
THE COUNTY OF DOUGLAS        )        SS:

**BE IT REMEMBERED**, that on this \_\_\_\_ day of June, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came Greg Maurer, President of Dale Willey Automotive, Inc., a Kansas corporation, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

  
\_\_\_\_\_  
Notary Public

My Appointment Expires:

