# AMENDMENT NO. 5

# TO ORDINANCE NO. BL2016-343

**Mr. President,**

**I move to amend Ordinance No. BL2016-343 as follows:**

**Section 1.** That Section D of the OTMR Ordinance is deleted and replaced with the following:

D. At its own expense, Attacher shall be solely responsible for ensuring that all Make Ready is done in full accordance with all applicable federal, state and local laws and regulations; and all applicable engineering and safety standards.

**Section 2.** That Section G of the OTMR Ordinance is deleted and replaced with the following:

G. An Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall obtain and maintain, at its sole cost and expense, and file with the metropolitan clerk, a corporate surety bond with a surety company authorized to do business in the State of Tennessee and found acceptable by the metropolitan attorney, in the amount of one million dollars, in order to safeguard the public right of way, to guarantee timely performance of Make Ready construction and implementation of the telecommunication system, and to guarantee the Attacher's full compliance with all of the obligations set forth in this Chapter. Each such Attacher, to the extent permitted by applicable law, shall indemnify, defend and hold harmless an Owner from and against any action, suit, or proceeding (including the reasonable costs of defending such action, suit, or proceeding) arising from the Attacher's transfer, relocation, rearrangement or alteration, or arising from the Attacher's failure to comply with any provision of this Chapter.

**Section 3.** That a new Section is inserted immediately after the new Section G above as follows:

\_\_. If an Attacher has been provided written notice by any Owner or Pre-Existing Third Party User that any anticipated Make Ready will not be in accordance with all applicable federal, state and local laws and regulations or all applicable engineering and safety standards ("Non-Accordance Notice"), the Attacher must provide a copy of the Non-Accordance Notice to the metropolitan department of law within seven (7) days, and within fourteen (14) days thereafter the Attacher shall execute an agreement approved by the metropolitan department of law providing for the Attacher to indemnify, defend, and hold harmless the metropolitan government, its officers, agents and employees against, from and against any action, suit, or proceeding (including the reasonable costs of defending such action, suit, or proceeding) related to the Non-Accordance Notice or any related Make Ready. No Make Ready related to the Non-Accordance Notice may proceed until the Attacher has executed a hold harmless agreement as described in this section.

**Section 4.** That Section H of the OTMR Ordinance is deleted and replaced with the following:

H. Except as otherwise specified in this Chapter, in the event of a dispute arising out of this Chapter, the parties may exercise any of their legal rights, including the ability to negotiate a resolution in good faith.

**Section 5.** This Ordinance shall take effect upon its passage.

INTRODUCED BY:

Bob Mendes

Steve Glover