

**MASTER LICENSE FOR
WIRELESS FACILITIES ON CITY POLES IN THE RIGHT-OF-WAY**

between

CITY OF CHULA VISTA, A CALIFORNIA MUNICIPAL CORPORATION

and

Effective Date: **[insert]**

TABLE OF CONTENTS

1. GENERAL DEFINITIONS	2
2. SCOPE OF LICENSE	5
2.1. License Area	5
2.1.1. Pole License Issuance and Effect	5
2.1.2. Limitations on License Areas	5
2.2. Limitations on Licensee’s Interests	6
2.2.1. Limited Interest Created	6
2.2.2. Limited Rights Created	6
2.2.3. No Impediment to Municipal Uses	6
2.3. Diminutions in Light, Air and Signal	6
2.4. License Area Condition	7
2.4.1. “As-Is and With All Faults” Condition	7
2.4.2. Licensee’s Due Diligence	7
2.4.3. Certified Access Specialist Disclosure	7
3. TERM	7
3.1. Master License Term	7
3.2. Pole License Term	7
4. LICENSE FEE; OTHER PAYMENTS	8
4.1. License Fees	8
4.1.1. Commencement Date	8
4.1.2. Acknowledgment Letter	8
4.1.3. License Fee Amount	9
4.1.4. Annual License Fee Adjustments	9
4.1.5. License Fee Due Date	9
4.2. Administrative Fees	9
4.2.1. Master License Preparation Fee	9
4.2.2. Pole License Processing Fee	9
4.3. Late Charges	10
4.4. Default Interest	10
4.5. Additional Fees	10
4.6. Payment Procedures	10
4.7. Liquidated Charges and Fees	11

5.	USES	11
5.1.	Permitted Use	11
5.2.	Prohibition on “Macro Cell” Uses.....	11
5.3.	Prohibition on Illegal Uses or Nuisances.....	12
5.4.	Signs or Advertisements	12
6.	POLE LICENSES	12
6.1.	City Approval Required	12
6.2.	Pole License Application.....	12
6.3.	Pole License Application Review Procedures.....	13
6.3.1.	Incomplete Pole License Applications	13
6.3.2.	Required Changes to the Pole License Application.....	13
6.3.3.	Consultation with Other City Departments.....	13
6.3.4.	Pole License Application Approval.....	14
6.3.5.	City’s Right to Disapprove.....	14
6.3.6.	Federal and State Regulations Inapplicable.....	14
7.	EQUIPMENT INSTALLATION	15
7.1.	Approved Plans and Equipment Specifications	15
7.1.1.	Site Identification Required	15
7.1.2.	Changes Required for Regulatory Approvals	15
7.1.3.	Corrections to Approved Plans.....	15
7.2.	Prior Regulatory Approvals Required	15
7.3.	Installation; Strict Compliance with Approved Plans	16
7.3.1.	Alterations to City’s Property	16
7.3.2.	Licensee’s Contractors	16
7.4.	Labor and Materials Costs	16
7.5.	Project Managers	17
7.6.	Coordination with the City.....	17
7.7.	Fiber-Optic Cables	18
7.8.	Dedicated Short Range Communications.....	18
7.9.	Title to Licensee’s Equipment and Other Improvements	18
8.	PUBLIC WORKS OPERATIONS	18
8.1.	City’s Access to License Areas	18
8.2.	Repairs, Maintenance and Alterations to Poles	19
8.3.	Repairs, Maintenance and Alterations to License Areas.....	19

8.4.	Emergencies	19
9.	LICENSEE’S MAINTENANCE OBLIGATIONS	20
9.1.	Damage to Poles	20
9.1.1.	Notice to the City	20
9.1.2.	Damage Caused by Licensee	20
9.1.3.	No Right to Repair	20
9.2.	Equipment Maintenance	20
9.3.	Graffiti Abatement	21
9.4.	Standard of Work	21
9.5.	Inspections	21
10.	LIENS	21
11.	UTILITIES	22
12.	TAXES AND ASSESSMENTS	22
12.1.	Possessory Interest Taxes	22
12.2.	Licensee’s Tax Obligations	22
13.	COMPLIANCE WITH LAWS	23
13.1.	Compliance with Current and Future Laws	23
13.2.	Licensee’s Personnel	23
13.2.1.	Personnel Training and Certification	23
13.2.2.	Licensee’s Indemnification for Personnel Injuries	23
13.3.	Compliance with CPUC GO 95	24
13.4.	Compliance with Building and Electric Codes	24
13.5.	Compliance with RF Exposure Regulations	24
14.	DAMAGE OR DESTRUCTION	24
14.1.	City’s Rights After Damage or Destruction	24
14.1.1.	Election to Repair or Replace Damaged Pole	25
14.1.2.	Election to Remove Damaged Pole	25
14.1.3.	Election to Remove Equipment from Damaged Pole	25
14.2.	Licensee’s Rights upon Termination	25
14.3.	Waiver of Statutory Rights	25
15.	CONDEMNATION	25
15.1.	Permanent Takings	26
15.1.1.	Termination	26
15.1.2.	Award	26

15.1.3.	No Statutory Right to Terminate	26
15.2.	Temporary Takings	26
16.	ASSIGNMENT AND OTHER TRANSFERS	26
16.1.	General Restriction.....	26
16.2.	Proposed Assignment Procedures	27
16.2.1.	Proposed Assignment Notice	27
16.2.2.	City Response	27
16.3.	Permitted Assignments	27
16.3.1.	Definition.....	27
16.3.2.	Conditions.....	28
16.4.	Effect of Assignment	28
16.5.	Assumption by Transferee.....	28
17.	DEFAULT	29
17.1.	Events of Default by Licensee	29
17.2.	City’s Remedies	29
17.2.1.	License Continuation	29
17.2.2.	Pole License Termination	29
17.2.3.	Master License Termination	30
17.2.4.	Default Fees	30
17.3.	Licensee’s Remedies	30
17.4.	Cumulative Rights and Remedies	31
18.	LICENSEE’S INDEMNIFICATION OBLIGATIONS	31
19.	INSURANCE	31
19.1.	Licensee’s Insurance.....	31
19.1.1.	Required Coverages	32
19.1.2.	Required Endorsements	32
19.1.3.	Cancellation Notices	32
19.1.4.	Claims-Made Policies.....	32
19.1.5.	General Aggregate Limit.....	33
19.1.6.	Certificates.....	33
19.1.7.	Insurer Qualifications	33
19.1.8.	Effective Dates.....	33
19.1.9.	Licensee’s Self-Insurance Alternative.....	33
19.1.10.	No Limitation on Indemnification Obligations.....	34

19.1.11.	Right to Terminate	34
19.2.	City's Insurance	34
19.3.	Subrogation Waiver	34
19.4.	Contractors' Bonds and Insurance	34
20.	LIMITATIONS ON THE CITY'S LIABILITY	34
20.1.	General Limitations on the City's Liability.....	35
20.2.	Consequential Damages	35
20.3.	No Relocation Assistance.....	35
20.4.	Non-Liability for City Officials, Employees and Agents	35
20.5.	Licensee's Waiver.....	36
21.	RECORDS	36
21.1.	Accounting Records	36
21.2.	Estoppel Certificates	37
22.	RULES AND REGULATIONS	37
23.	SECURITY DEPOSIT.....	37
23.1.	Amount	37
23.2.	Further Deposits	37
23.3.	Application	38
24.	SURRENDER OF LICENSE AREA	38
24.1.	Surrender.....	38
24.2.	Abandonment.....	38
24.3.	Holding Over	39
25.	HAZARDOUS MATERIALS.....	39
25.1.	Hazardous Materials in License Area.....	39
25.2.	Licensee's Environmental Indemnity.....	39
26.	TERMINATION	40
26.1.	Termination for Failure to Obtain Regulatory Approvals	40
26.2.	Licensee's Termination Rights	40
26.2.1.	Master License Termination Rights.....	40
26.2.2.	Pole License Termination Rights.....	40
26.2.3.	Termination Rights after Pole Replacement	41
26.3.	City's Absolute Right to Terminate Pole Licenses	41
26.4.	Licensee's Rights after Termination	41
27.	INTERFERENCE	41

27.1.	Licensee’s Obligation Not to Cause Interference	41
27.2.	Impairment Caused by Change in City Use	42
27.3.	Impairment Caused by City Access	42
28.	MISCELLANEOUS PROVISIONS	42
28.1.	Notices	43
28.2.	Waiver; No Implied Waivers	44
28.3.	Amendments	44
28.4.	Interpretation.....	44
28.4.1.	General	44
28.4.2.	Multi-party License.....	44
28.4.3.	Captions	45
28.4.4.	City Actions	45
28.4.5.	Words of Inclusion	45
28.4.6.	Laws	45
28.5.	Successors and Assigns	45
28.6.	Brokers	45
28.7.	Severability.....	46
28.8.	Governing Law; Venue	46
28.9.	Time for Performance.....	46
28.10.	Survival.....	46
28.11.	Recording.....	46
28.12.	Counterparts	47
28.13.	Approval Authority	47
28.14.	Most Favored Nation Provisions	47
EXHIBIT A	.....	49
EXHIBIT A-1	.....	51
EXHIBIT A-2	.....	52
EXHIBIT A-3	.....	53
SCHEDULE A-4	.....	55

**MASTER LICENSE AGREEMENT
FOR WIRELESS FACILITIES ON CITY POLES IN THE RIGHT-OF-WAY**

This MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON CITY POLES IN THE RIGHT-OF-WAY (“**Master License**”) dated [*insert date*] (the “**Effective Date**”) is between the CITY OF CHULA VISTA, a chartered California municipal corporation (the “**City**”) and _____ (the “**Licensee**”). This License may refer to the City and/or Licensee individually as a “**Party**” or collectively as the “**Parties**.”

BACKGROUND

- A. WHEREAS**, technology developments and demand for high-speed mobile data service and capacity has extended beyond the capabilities of traditional macrocell wireless communications facilities. To meet this demand, wireless providers have accelerated their small cell deployments in the public right-of-way and the City has a clear incentive to develop public-private agreements that manage these accelerated deployments in a way that preserves local aesthetics and public health and safety while also deriving the benefits of these new technologies for the City’s residents to the greatest extent practicable; and
- B. WHEREAS**, Section 253 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as 47 U.S.C. § 253, preserves the City’s authority to control access to and use the rights-of-way within the City’s jurisdictional boundaries, and to require reasonable compensation for such use on a competitively-neutral and nondiscriminatory basis so long as such compensation is disclosed; and
- C. WHEREAS**, Licensee is a public communications utility in California, holding a Certificate of Public Convenience and Necessity from the California Public Utilities Commission (“CPUC”); and
- D. WHEREAS**, Licensee typically installs, maintains and operates its communications network facilities on existing vertical infrastructure in the public right-of-way pursuant to authority granted by the CPUC; and
- E. WHEREAS**, the City owns as its personal property a substantial number of existing poles within the public right-of-way that are suitable for installing wireless communications facilities within the City’s jurisdiction and has a duty to derive appropriate value from the City’s property assets for the public good; and
- F. WHEREAS**, Licensee desires to install, maintain and operate communications network facilities on the City’s poles in the public right-of-way in a manner consistent with the City’s regulatory authority and Licensee is willing to compensate the City for the right to use the City’s poles for communications purposes; and
- G. WHEREAS**, consistent with all applicable Laws, the City does not intend this

Master License to grant the Licensee any exclusive right to use or occupy the public rights-of-way within the City's territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the City may in its sole discretion enter into similar or identical agreements with other entities, which include without limitation Licensee's competitors; and

- H. **WHEREAS**, the City desires to authorize Licensee's access to individual City-owned poles based on a comprehensive and uniform Master License according to the terms and conditions set forth in this Master License, any applicable Pole License, and pursuant to all the applicable permits issued by the City to protect public health and safety; and
- I. **WHEREAS**, on [insert date], the City Council of the City of Chula Vista adopted Resolution No. [insert], which approved the form and material terms for a Master License Agreement for Wireless Facilities on City Poles in the Right-of-Way to be used in connection the licensing of Poles and other City-owned property for wireless communications facilities, and further delegated authority to the City Manager to enter into such agreements.

NOW THEREFORE, for good, valuable and sufficient consideration received and acknowledged by the City and Licensee, the City and Licensee agree as follows:

AGREEMENT

1. GENERAL DEFINITIONS

"Agent" means agent, employee, officer, contractor, subcontractor, and representative of a party in relation to this Master License and the License Area.

"Assignment" means any of the following: (a) a merger, acquisition, or other transfer of a controlling interest in Licensee, voluntarily or by operation of Law; (b) Licensee's sale, assignment, encumbrance, pledge, or other transfer of any part of its interest in or rights with respect to the License Area; and (c) any action by Licensee to permit any portion of the License Area to be occupied by anyone other than itself, including a sublicense.

"Claim" mean any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, whether direct or indirect.

"Common Control" means two entities that are both Controlled by the same third entity.

"Control" means (a) as to a corporation, the ownership of stock having the right to exercise more than 50% of the total combined voting power of all classes of stock of the controlled corporation, issued and outstanding; or (b) as to partnerships and other forms of business associations, ownership of more than 50% of the beneficial interest and voting control of such association.

“CPUC” means the California Public Utilities Commission established in the California Constitution, Article XII, Section 5, or it’s duly appointed successor agency.

“EMF” means electromagnetic fields or radio frequency between 30 kHz and 300 GHz in the electromagnetic spectrum range.

“Environmental Laws” means any Law relating to industrial hygiene, environmental conditions, or Hazardous Materials.

“Equipment” means antennas and any associated utility or equipment box, and battery backup, transmitters, receivers, radios, amplifiers, ancillary fiber-optic cables and wiring, and ancillary equipment for the transmission and reception of radio communication signals for voice and other data transmission, including the means and devices used to attach Equipment to a licensed City Pole, peripherals, and ancillary equipment and installations, including wiring, cabling, power feeds, and any approved signage attached to Equipment.

“FCC” means the Federal Communications Commission or its duly appointed successor agency.

“Hazardous Material” means any material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any Regulatory Agency to pose a present or potential hazard to human health, welfare, or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified as 42 U.S.C. §§ 9601 *et seq.*) or section 25316 of the California Health & Safety Code; and any “hazardous waste” listed California Health & Safety Code § 25140; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

“Investigate and Remediate” means the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the License Area or that has been, is being, or is in danger of being Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

“Invitee” means the client, customer, invitee, guest, tenant, subtenant, licensee, assignee and sublicensee of a party in relation to the License Area.

“Laws” means all present and future statutes, ordinances, codes, orders, regulations and implementing requirements and restrictions of federal, state, county and municipal authorities, whether foreseen or unforeseen, ordinary as well as extraordinary, as adopted or as amended at the time in question.

“Licensee’s On-Call Representative” mean the person(s) assigned by Licensee to be on-call and available to the City regarding the operation of Licensee’s Equipment. Such person(s) shall be qualified and experienced in the operation of Equipment and shall be authorized to act on behalf of Licensee in any emergency in and in day-to-day operations of the Equipment.

“Permitted Use” means Licensee’s installation, operation and maintenance of Equipment for the transmission and reception of wireless, cellular telephone and data and related communications equipment on License Areas.

“Pole” means a street light pole, utility pole or other support structure located in the public right-of-way within the City and owned by the City.

“Pole License” means the document in the form of Exhibit A that, when fully executed, incorporates the provisions of this Master License and authorizes Licensee to install, operate and maintain Equipment for the Permitted Use on City Poles identified in the Pole License.

“Pole Location” means the geographic information identifying each City Pole on which Licensee is authorized to install, operate and maintain Equipment under Pole Licenses. Pole Locations will be identified in Exhibit A-1 to each Pole License.

“Property” means any interest in real or personal property, including land, air and water areas, leasehold interests, possessory interests, easements, franchises and other appurtenances, public rights-of-way, physical works of improvements such as buildings, structures, infrastructure, utility and other facilities, and alterations, installations, fixtures, furnishings and additions to existing real property, personal property and improvements.

“Regulatory Agency” means the local, regional, state or federal body with jurisdiction and responsibility for issuing Regulatory Approvals in accordance with applicable Laws.

“Regulatory Approvals” means licenses, permits and other approvals necessary for Licensee to install, operate and maintain Equipment on the License Area.

“Release” when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing on, under or about the License Area, other City Property or the environment.

“RF” means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.

“RF Compliance Report” means a report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts ERP) for all

existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

2. SCOPE OF LICENSE

2.1. License Area

2.1.1. Pole License Issuance and Effect

Subject to the terms and conditions in this Master License, the City will issue to Licensee one or more Pole Licenses, which will grant Licensee a contractual privilege to use the space on the subject Pole approved for the Equipment, which includes any conduits, pull boxes or other City Property specifically identified in the Approved Plans attached to the Pole License (individually for each licensed Pole and collectively for all licensed Poles, the “**License Area**”). Any approved Pole License will become effective on the first day of the month following the date on which both the City and Licensee execute such Pole License.

2.1.2. Limitations on License Areas

This Master License applies to only Poles identified in final and fully executed Pole Licenses. This Master License does not authorize Licensee or any other persons or entities to enter on to or use any other City Property, except the License Areas specified in any Pole Licenses. Furthermore, neither this Master License nor any Pole License authorizes or confers any rights in Licensee or any other persons or entities to use any portions of the public rights-of-way, or any improvements or other personal property within the public rights-of-way owned by any third parties. The City reserves the absolute right to reject any Pole License Application. Licensee expressly acknowledges and agrees that the City will not be obligated to issue any Pole License to Licensee for any purpose related to the following poles:

- (1) any decorative Pole, which includes any Pole or light standard with ornate features or characteristics designed or intended to enhance the appearance of the Pole or light standard;
- (2) any Pole in a City-approved underground district when the Licensee does not propose to install the non-antenna equipment (other than the electric meter as may be required by Licensee’s utility provider) underground;

2.2. Limitations on Licensee’s Interests

2.2.1. Limited Interest Created

Licensee expressly acknowledges and agrees that (1) Licensee does not have any rights to use or interest in any Pole for any purpose whatsoever until and unless the City issues a Pole License for such Pole; and (2) neither this Master License nor any Pole License issued pursuant to this Master License creates or will be deemed to create any leasehold, easement, franchise or any other possessory interest or real property interest whatsoever in the License Area.

2.2.2. Limited Rights Created

Any Pole License the City approves pursuant to this Master License grants to Licensee only a non-possessory and revocable license to enter on to and use the License Area for the Permitted Use. Licensee expressly acknowledges and agrees that (1) neither this Master License or any Pole License will be coupled with an interest; (2) the City retains legal possession and control over all Poles for the City's operations, which will be superior to Licensee's interest at all times; (3) subject to the terms and conditions in this Master License, the City may terminate a Pole License in whole or in part at any time; (4) except as specifically provided otherwise in this Master License, the City may enter into any agreement with third parties in connection with use and occupancy of Poles and other City Property; and (5) neither this Master License nor any Pole License creates or will be deemed to create any partnership or joint venture between the City and Licensee.

2.2.3. No Impediment to Municipal Uses

Except as specifically provided otherwise in this Master License, neither this Master License nor any Pole License limits, alters or waives the City's right to use any License Area in whole or in part as infrastructure established and maintained for the City's and the public's benefit.

2.3. Diminutions in Light, Air and Signal

In the event that any existing or future structure diminishes any light, air or signal propagation, transmission or reception, whether erected by the City or not, Licensee shall not be entitled to any reduction in any License Fee, Additional Fees or any other sums payable to the City under this Master License or any Pole License, the City shall have no liability to Licensee whatsoever and such diminution will not affect this Master License, any Pole License or Licensee's obligations except as may be expressly provided in this Master License.

2.4. License Area Condition

2.4.1. "As-Is and With All Faults" Condition

Licensee expressly acknowledges and agrees to enter on to and use the License Area in its "as-is and with all faults" condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the License Area's condition or suitability for Licensee's use. Licensee expressly acknowledges and agrees that

neither the City nor its Agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the physical, structural or environmental condition of the License Area, the present or future suitability of the License Area for the Permitted Use or any other matter related to the License Area.

2.4.2. Licensee's Due Diligence

Licensee expressly represents and warrants to the City that Licensee has conducted a reasonably diligent and independent investigation, either for itself or through an Agent selected by Licensee, into the License Area condition and suitability for Licensee's intended use, and that Licensee relies solely on its due diligence for such determination. Licensee further expressly represents and warrants to the City that Licensee's intended use is the Permitted Use as defined in Section 5 in this Master License.

2.4.3. Certified Access Specialist Disclosure

Pursuant to California Civil Code § 1938, and to the extent applicable to this Master License, the City expressly advises Licensee, and Licensee expressly acknowledges, that a Certified Access Specialist (as defined in California Civil Code § 55.53) has not inspected any License Area in whole or in part to determine whether it meets all applicable construction-related accessibility requirements.

3. TERM

3.1. Master License Term

The term under this Master License (the "**Term**") will commence on the Effective Date and will automatically expire 10 years from the Effective Date on [*insert specific date*] (the "**Expiration Date**"), unless earlier terminated in accordance with this Master License.

3.2. Pole License Term

The term under each Pole License will commence on the Commencement Date and will automatically expire on the Expiration Date, unless earlier terminated in accordance with this Master License. To determine the applicable License Fee for each Pole License, the minimum term will be one year from the Commencement Date (the "**Minimum Term**"). Except as specifically provided otherwise in this Master License, the Minimum Term will prevail over Licensee's right to abate rent or terminate this Master License or any Pole License. All Pole Licenses will end on the Expiration Date, even if such expiration results in less than a one-year term for any particular Pole License.

4. LICENSE FEE; OTHER PAYMENTS

4.1. License Fees

4.1.1. Commencement Date

Licensee shall pay an annual License Fee under each Pole License beginning on its **“Commencement Date,”** which will be either: (1) the date six months from effective date of the Pole License or (2) the first day of the month after the date on which Licensee has obtained all Regulatory Approvals necessary for the Permitted Use on the License Area (whichever occurs first). The parties define a **“License Year”** to mean any 12-month period (or shorter period in the event that a Pole License commences less than 12 months from the next July 1 or the Expiration Date) that begins on the Commencement Date for each Pole License.

4.1.2. Acknowledgment Letter

For each Pole License approved by the City pursuant to Section 6.4.4 (Pole License Application Approval), Licensee shall deliver to the City a letter in the form shown in Exhibit A-3 to the Pole License (the **“Acknowledgment Letter”**) within approximately 10 business days after Licensee obtains all Regulatory Approvals necessary for the Permitted Use on any License Area. The parties intend the Acknowledgement Letter to:(a) confirm the Commencement Date; (b) tender or confirm payment by wire transfer of the License Fee for the first License Year and the Security Deposit; and (c) confirm that Licensee has submitted all information required in Section 19 (Insurance) under this Master License. Upon written notice to Licensee, the City shall have the right to correct the Commencement Date stated in Licensee’s Acknowledgement Letter after the City examines the Regulatory Approvals if, in the City’s reasonable determination, the Commencement Date stated on the Acknowledgment Letter is incorrect or inaccurate. The City’s reasonable determination in connection with this Section 4.1.2 will be final for all purposes under this Master License. The City will use reasonable efforts to deliver a countersigned Acknowledgement Letter to Licensee within approximately five business days after the City receives the partially executed Acknowledgment Letter with all required attachments and enclosures from Licensee. The fully executed Acknowledgment Letter will be Licensee’s notice to proceed with its installation. The date on which the City countersigns the Acknowledgement Letter will be the effective date for the subject Pole License.

4.1.3. License Fee Amount

Licensee shall pay to the City an annual fee at the rate specified in the License Fee Schedule attached to each Pole License (the **“License Fee”**). The License Fee Schedule will reflect the annual License Fee adjustments as provided in Section 4.1.4 (Annual License Fee Adjustments). Licensee shall pay each annual License Fee in advance without any prior demand, deduction, setoff or counterclaim for any reason, except to account for a partial year in the event that (1) the Commencement Date falls on a date other than January 1; (2) this Master License expires or terminates; or (3) any other abatement rights expressly granted in this Master License become effective. Any amounts for less than a full year or full month will be calculated based on a 360-day year and a 30-day month.

4.1.4. Annual License Fee Adjustments

Each year throughout the Term on January 1 (each an **“Adjustment Date”**), the License Fee will be increased 3.5% over the License Fee payable in the immediately previous

year. The adjustment provided in this Section will be effective even if the first License Year was for less than a full calendar year.

4.1.5. License Fee Due Date

Licensee shall pay the License Fee for the first year at the same time Licensee delivers the Acknowledgement Letter without any deduction or setoff for any reason. Thereafter, Licensee shall pay the annual License Fee on January 1 in each year throughout the Term.

4.2. Administrative Fees

4.2.1. Master License Preparation Fee

At the time Licensee delivers to the City a partially executed counterpart to this Master License, Licensee shall pay to the City a nonrefundable administrative fee equal to Eight Thousand and 00/100 Dollars (\$8,000.00) (the “**Master License Preparation Fee**”) to recoup the City’s costs to review and execute this Master License. The City will not be obligated to execute any Master License until the City receives the Master License Preparation Fee. The City’s execution of this Master License shall be its acknowledgment that Licensee has paid the full Master License Preparation Fee.

4.2.2. Pole License Processing Fee

At the time Licensee delivers to the City a Pole License Application, Licensee shall pay to the City a nonrefundable administrative fee equal to One Thousand and 00/100 Dollars (\$1,000.00) (the “**Pole License Processing Fee**”). Licensee recognizes that the City will incur costs to review each Pole License Application, which may include without limitation staff time, legal fees, and expert fees.

The parties further acknowledge that these costs may vary among and/or between various Pole License Applications due to circumstances particular to any given Pole, and that it would impracticable (if not impossible) to accurately predict such costs. Accordingly, the parties agree that the Pole License Processing Fee set forth in this Section represents a reasonable estimate of the City's administrative costs to review each Pole in the typical Pole License Application. The parties further acknowledge that the Pole License Processing Fee is intended to cover the City's administrative costs incurred in its proprietary capacity as the licensor and the Pole License Processing Fee does not substitute for or diminish the Licensee's obligation to pay any regulatory permit fees required by the City's departments. The City will not be obligated to commence its review for any Pole License Application until the City receives the Pole License Processing Fee. The parties to this Master License collectively refer to the Master License Preparation Fee and the Pole License Processing Fee as "**Administrative Fees.**"

4.3. Late Charges

In the event that Licensee fails to pay any License Fee, Additional Fee, Administrative Fees or any other amount payable to the City within 10 days after the City notifies that such amounts are due and unpaid, such amounts will be subject to a late charge equal to 6% of unpaid amounts.

4.4. Default Interest

Any License Fees, Additional Fees, Administrative Fees and all other amounts payable to the City other than late charges will bear interest at 10% per annum from the due date when not paid within 10 days after due and payable to the City. Any sums received shall be first applied towards any interest, then to the late charge and lastly to principle amount owed. Any interest or late charge payments will not alone excuse or cure any default by Licensee.

4.5. Additional Fees

The parties to this Master License define "**Additional Fees**" to collectively mean any sums payable by Licensee to the City in its proprietary capacity as the licensor, which includes without limitation any late charges, default interest, costs in connection with a request for the City's consent to an Assignment under Section 16.2 (Proposed Assignment Procedures) and Default Fees under Section 17.2.4; provided, however, that the term excludes any (1) License Fees; (2) Administrative Fees; (3) any other amounts payable to the City by Licensee in connection with the City's review of Pole License Applications or coordinating and inspecting Equipment installed on the License Area; and (4) any payments to the City in its regulatory capacity.

4.6. Payment Procedures

Licensee shall pay all License Fees, Additional Fees, Administrative Fees and all other amounts payable to the City in cash or other immediately available funds by (1) local check payable to City of Chula Vista, Finance Department, 276 Fourth Avenue, Chula

Vista, CA 91910 or (2) electronic wire transfer to an account specified by the City. Any payment made with a dishonored check will be deemed unpaid. The parties may change the payment address from time to time by written notice.

4.7. Liquidated Charges and Fees

The parties agree that the Additional Fees payable under this Master License represent a fair and reasonable estimate of the administrative costs that the City will incur in connection with the matters for which they are imposed and that the City's right to impose the Additional Fees is in addition to, and not in lieu of, any other rights it may have under this Master License. Furthermore:

THE PARTIES ACKNOWLEDGE AND AGREE THAT THE CITY'S ACTUAL ADMINISTRATIVE COSTS AND OTHER DETRIMENT ARISING FROM LICENSEE DEFAULTS AND OTHER ADMINISTRATIVE MATTERS UNDER THIS MASTER LICENSE WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. BY PLACING HIS OR HER INITIALS BELOW, EACH PARTY'S AUTHORIZED REPRESENTATIVE ACKNOWLEDGES THAT THE PARTIES HAVE AGREED, AFTER A NEGOTIATION, ON THE AMOUNT OF THE ADDITIONAL FEES AS REASONABLE ESTIMATES OF THE CITY'S ADDITIONAL ADMINISTRATIVE COSTS AND OTHER DETRIMENT.

Licensee _____

City _____

5. USES

5.1. Permitted Use

Licensee may use the License Area solely for the installation, operation and maintenance of Equipment for the provision of communications services (the "**Permitted Use**") in compliance with all applicable Laws and any conditions in any Regulatory Approvals and for no other use whatsoever without the City's prior written consent, which the City may withhold in its sole and absolute discretion for any or no reason.

5.2. Prohibition on "Macro Cell" Uses

The City and Licensee intend this Master License and any Pole License to cover only "small cell" installations, which are commonly understood to mean small, low-power, unobtrusive wireless facilities intended to cover relatively small geographic areas. Licensee expressly acknowledges and agrees that the Permitted Use under this Master License does not include the right to use any Pole as a support structure for a "macro cell" or a traditional wireless tower typically constructed on private property.

5.3. Prohibition on Illegal Uses or Nuisances

Licensee shall not use the License Area in whole or in part in any unlawful manner or

for any illegal purpose. In addition, Licensee shall not use the License Area in whole or in part in any manner that constitutes a nuisance as determined by the City in its reasonable judgment. Licensee shall take all precautions to eliminate any nuisances or hazards in connection with its uses and activities on or about the License Area.

5.4. Signs or Advertisements

Licensee acknowledges and agrees that its rights under this Master License and any Pole License do not authorize Licensee to erect, post or maintain, or permit others to erect, post or maintain, any signs, notices, graphics or advertisements whatsoever on the License Area.

6. POLE LICENSES

6.1. City Approval Required

Licensee shall not have any right to use the License Area in whole or in part for any purpose until and unless the City approves a Pole License. Subject to any express limitations in this Master License, the City will not be obligated to subordinate its municipal functions or proprietary interest in any manner whatsoever to Licensee's interest under any Pole License. When the City considers whether to approve or disapprove any Pole License Application, the City may consider any matter that affects its municipal functions or proprietary interests, which include without limitation: (1) Licensee's proposed plans and Equipment specifications; (2) compliance with any applicable Laws; (3) impacts on the City's street light operations; (4) any potential hazards or unsafe conditions that could result from Licensee's installation, operation or maintenance; (5) any potential visual or aesthetic impacts provided the proposed Equipment is in conformance with objective design standards adopted by the City; (6) the additional load on the Pole the proposed Equipment would create only if: (a) such additional load would exceed such Pole's permitted capacity; and (b) such Pole could not be replaced to support Licensee's proposed Equipment; and (7) any municipal plans for the Pole or right-of-way in proximity to the Pole.

6.2. Pole License Application

Each Pole License Application must include: (1) two partially executed duplicate counterparts of a Pole License in the form attached as **Exhibit A** to this Master License, with fully completed Exhibit A-1 and Exhibit A-2 attached to such partially executed Pole License; (2) the Pole License Processing Fee; and (3) a complete RF Compliance Report.

6.3. Pole License Application Review Procedures

The City will review complete Pole License Applications within applicable timeframes and pursuant to applicable Law, taking into account any tolling periods for such timeframes. Licensee shall provide the City with at least 60 days' prior notice before Licensee submits any Pole License Application that covers 15 or more Poles to allow the City sufficient time to prepare and/or augment its staff as necessary; provided, however, that Licensee shall not submit a single Pole License Application that covers 15 or more Poles within 120 days of the Effective Date of this Master License to give the City sufficient time to complete the procurement process for contract services. Licensee shall use best efforts not to submit successive Pole License Applications if those Pole License Applications would collectively cover 15 or more Poles, and will grant the City a reasonable extension of the applicable timeframe for the City's review if such successive Pole License Applications are submitted.

6.3.1. Incomplete Pole License Applications

The City will not be obligated to review or approve any incomplete Pole License Application. In the event that Licensee submits an incomplete Pole License Application, the City will notice Licensee that it has suspended its review for that incomplete Pole License Application until Licensee delivers all required elements for a complete Pole License Application. In addition, the City may suspend all pending Pole License Application, whether complete or incomplete, reviews when Licensee fails to timely submit any Pole License Processing Fee. The date and time when Licensee submits the missing elements will be deemed the date and time that Licensee submitted the Pole License Application.

6.3.2. Required Changes to the Pole License Application

In the event that the City determines for any reason that the Permitted Use at any particular Pole Location would impede its municipal functions or otherwise negatively affects its proprietary interests, the City will provide notice to Licensee as soon as reasonably practicable. Licensee will have 14 days from such notice to change its Pole License Application without any impact on the Pole License Application's priority relative to any other applications then under review or later received by the City. Any changes received after the 14-day period or any other changes Licensee may make to the Pole License Application will cause the date and time on which the application was submitted or deemed submitted to be changed to the date and time on which Licensee submitted the proposed changes.

6.3.3. Consultation with Other City Departments

The City may consult with other departments within the City to assess whether Licensee's proposed Equipment poses any concerns, which includes without limitation any concerns about aesthetics, historic or environmental impacts, traffic control, pedestrian access and general right-of-way management. Licensee acknowledges that

any consultation with any other City departments in accordance with this Section 6.3.3 and any actions or failures to act by the City that may result from such consultations would be in the City's proprietary capacity as the Pole owner and not an exercise of the City's regulatory authority.

6.3.4. Pole License Application Approval

In the event that the City approves a Pole License Application, the City will return one fully executed Pole License to Licensee. Licensee acknowledges and agrees that the City's decision to approve or disapprove any Pole License Application is not, and will not be deemed to be, a regulatory determination subject to any administrative appeal, but is an exercise of the City's proprietary authority over its Poles as its personal property. In the event that Licensee fails to commence construction pursuant to the Pole License within one year from the date the City fully executes the Acknowledgment Letter, the Pole License shall automatically expire unless the City Manager grants a written extension that may not exceed one additional year. Licensee shall not be entitled to any refund for any fees, which include without limitation the License Fee, paid in connection with a Pole License that expires pursuant to this Section 6.3.4. Nothing in this Section 6.3.4 is intended to prohibit or prevent Licensee from submitting a new Pole License Application for the same or substantially the same Poles as those covered under a Pole License that expired pursuant to this Section 6.3.4.

6.3.5. Waiver of Certain Federal and State Rights of Licensee Inapplicable

Despite any potential future change in Law during the initial 10-year term of this Master License, Licensee expressly waives any State or Federal rights to challenge: (1) the fees paid to the City pursuant to this Master License and any Pole License; (2) the timeframes established in this Master License by which the City must review and process Pole License Applications, including any notices, tolling, or extensions required under this Master License; and (3) the right to claim that existing facilities and new facilities installed pursuant to this Master License are eligible for mandatory collocations or modifications under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. Preceding the commencement of an extension to this Master License, Licensee may request from the City an amendment of this Master License to comply with such changed laws, if applicable. For the avoidance of doubt, any such amendment would be effective only after the initial 10-year term of this Master License expires or as otherwise agreed to in writing by the Parties.

7. EQUIPMENT INSTALLATION

7.1. Approved Plans and Equipment Specifications

Licensee must submit complete plans and equipment specifications as Exhibit A-2 to any Pole License Application, which must include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed in connection with the License Area. Licensee acknowledges

that Exhibit A-2 to any approved Pole License will be deemed to be the “**Approved Plans**” and that Licensee will be permitted to install only the Equipment and other improvements shown on such Approved Plans.

7.1.1. Site Identification Required

On each licensed Pole, Licensee must install one identification plate in strict compliance with the size, material, form and substance as shown on the Approved Plans. The identification plate must include Licensee’s corporate name and telephone number at which Licensee’s On-Call Representative can be reached at all times (24 hours per day and 7 days per week). Licensee must replace the identification plate in the event that any information on such plate changes.

7.1.2. Changes Required for Regulatory Approvals

Licensee may amend previously Approved Plans when such changes are required to obtain or maintain compliance with other Regulatory Approvals necessary to install the Equipment. Any such changes will require the City’s prior written approval. The City will provide notice of its decision to Licensee in accordance with Section 28.1 (Notices).

7.1.3. Corrections to Approved Plans

Licensee shall have the obligation to correct any errors or omissions in any Approved Plans and related Regulatory Approvals. Licensee shall immediately send written notice to the City in the event that Licensee discovers any such defects. Any Approved Plans and/or amendments to Approved Plans by the City will not release or excuse Licensee’s obligations under this Section 7.1.3.

7.2. Prior Regulatory Approvals Required

Licensee shall not commence any work at the License Area until Licensee obtains all necessary Regulatory Approvals, which includes without limitation a Wireless Communications Facilities Permit on Public Property from the City’s Development Services Department and any other permit obtained through any other City department, and tenders full and complete copies of each Regulatory Approval to the City. The City’s consent or refusal to consent to any Pole

License issued by the City in its proprietary capacity as the Pole owner will not be deemed to be any approval or denial in connection with any Regulatory Approval issued by the City in its regulatory capacity as a municipal government.

7.3. Installation; Strict Compliance with Approved Plans

Licensee shall not commence any work at the License Area until the City provides Licensee with the Acknowledgement Letter or an equivalent letter to confirm the Commencement Date. Licensee shall perform all work in connection with the License Area in strict compliance with the Approved Plans and in a diligent, skillful and workmanlike manner. All installed Equipment must be high quality, safe, fire resistant, modern in design and attractive in appearance, all as approved by the City. After any work at the License Area concludes, Licensee shall restore the License Area and any other City Property to the condition that existed immediately prior to the work commenced.

7.3.1. Alterations to City's Property

Licensee shall not remove, damage or in any manner alter any City Property without prior written consent from the City and any other City agencies with jurisdiction over the subject City Property. The City may withhold its consent in its sole and absolute discretion, and may reasonably condition its consent in each instance based on scope and nature of the proposed alterations. Licensee shall immediately notify the City if any removal, damage or other alteration occurs to City Property for any reason and through any cause.

7.3.2. Licensee's Contractors

Licensee and all of its contractors shall obtain all necessary licenses, including without limitation Contractor State Licensing Board licenses and a City of Chula Vista Business License, prior to performing work on or about the License Area. Licensee shall use only qualified and trained persons and appropriately licensed contractors for all work performed on or about the License Area. Licensee shall give the City at least ten (10) days' prior written notice of commencement of any construction or installation on any part of the License Area except or minor and routine repair and maintenance of Licensee's Equipment. At least five (5) business days before any work commences on or about the License Area, Licensee shall provide the City with: (1) a schedule with all activities to be performed in connection with the work; and (2) a list with all the names, contractor's license numbers and business addresses for all contractors who will perform the work.

7.4. Labor and Materials Costs

Licensee shall be responsible for all direct and indirect costs (labor, materials, and overhead) in connection with designing, purchasing and installing all Equipment in accordance with the Approved Plans and all applicable Laws. Licensee shall also bear all costs to obtain and maintain all Regulatory Approvals required in connection with the installation, which includes without limitation all direct and indirect costs to comply with

any approval conditions or mitigation measures that arise from Licensee's proposed

installation. Licensee shall timely pay for all labor, materials, Equipment and all professional services related to the Permitted Use or furnished to the License Area at Licensee's direction or for Licensee's benefit.

7.5. Project Managers

The City and Licensee each designate the person listed in this Section 7.5 as its project manager to coordinate Licensee's Equipment design and installation, and serve as each party's respective primary contact person for all design, engineering, construction and installation issues that may arise between the parties in connection with this Master License.

City's Project Manager:

Name: William Valle
Title: City Engineer
Phone: (619) 691-5021
Address: 276 Fourth Avenue
Chula Vista, CA 91910

Licensee's Project Manager:

Name: _____
Title: _____
Phone: _____
Email: _____
Address: _____

Licensee acknowledges that the City's project manager is not exclusively assigned to this Master License, and that the City's project manager may not always be immediately available to Licensee or its project manager. Licensee further acknowledges that the authority delegated by the City to the City's project manager is limited to the administration of this Master License, any Pole License Applications and any approved Pole Licenses. The parties' respective project managers will have no obligation to perform any term or covenant to be performed by the other party under this Master License. Notices to the parties' respective project managers alone will not be deemed effective notice for any purpose under this Master License. The parties may designate a new project manager from time-to-time by written notice to the other party.

7.6. Coordination with the City

Licensee must coordinate all its installation, construction and other work on or about the License Area with the City so as to avoid any interference (physical, electronic or

otherwise) with any existing utilities, substructures, facilities, City Property and the City's municipal operations.

7.7. Fiber-Optic Cables

In the event that Licensee's Equipment on the License Area includes any fiber-optic cables, Licensee shall, as partial consideration paid to the City for this Master License, grant the City a license to use twelve (12) strands in any fiber-optic cable that Licensee owns at each licensed Pole. Such license shall be automatically effective upon Licensee's installation of any fiber-optic cables on the License Area, and Licensee shall designate and mark the twelve (12) fiber strands in any conduit that serves the License Area for the City's use at the time it installs such fiber-optic cables. Licensee further agrees that, at the time this Master Agreement expires or terminates, Licensee shall transfer to the City title and ownership of any fiber strands that the City uses or desires to use by quitclaim or bill for sale at no cost to City.

7.8. Dedicated Short Range Communications (DSRC)

Licensee shall, as partial consideration paid to the City for this Master License, install a Dedicated Short Range Communications (DSRC) system, for City's sole use, upon all licensed Poles located at signalized intersections. Licensee further agrees that, at the time this Master Agreement expires or terminates, Licensee shall transfer to the City title and ownership of all DSRC system equipment that the City uses or desires to use by quitclaim or bill for sale at no cost to City.

7.9. Title to Licensee's Equipment and Other Improvements

Except as specifically provided otherwise in this Master License, all Equipment and other improvements installed, constructed or placed on or about the License Area by Licensee or its Agents or Invitees will be and remain at all times Licensee's personal property. All structural improvements to any Pole, any replacement Pole and any underground fiber optic cables, all as approved by the City and shown in the Approved Plans, will become City Property and remain should Licensee vacate or abandon such License Area, unless the City elects in a written notice to Licensee that it does not wish to take title to such structural improvements, in which case Licensee shall remove such improvements at its sole cost and in a manner acceptable to City, and shall restore all affected areas by such removal to a condition compliant with all applicable Laws. Subject to Section 24 (Surrender of License Area), Licensee may remove its Equipment from the License Area at any time after 30 days' written notice to the City.

8. PUBLIC WORKS OPERATIONS

8.1. City's Access to License Areas

Except as specifically provided otherwise in this Master License, the City and its Agents have the right to access any License Area in whole or in part at any time without notice for any purpose. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or

other damages that may arise from the City's or its Agents' access to the License Area, which includes any Equipment removed in an emergency or other exigent circumstances pursuant to Section 8.4 (Emergencies), except to the extent that the damage arises directly and exclusively from the gross negligence or willful misconduct of the City or its Agents and not contributed to by the acts, omissions or negligence of Licensee, its Agents or Invitees. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost

business, nuisance or other damages that may arise from the City's or its Agents' gross negligence or willful misconduct and not contributed to by Licensee's or its Agents' or Invitees' acts, omissions or negligence.

8.2. Repairs, Maintenance and Alterations to Poles

The City and/or the City's Public Works Department will: (1) maintain and repair Poles as needed, in its sole judgment, for its street light operations and other municipal functions; and (2) correct any immediately hazardous condition. If City requires the termination of electrical service to the Equipment in order to maintain or repair any Poles, the City shall inform Licensee at the telephone number provided in section 7.5 and the parties shall coordinate in good faith to determine suitable dates and times to complete such actions. If City requires the termination of electrical service to the Equipment in order to correct any immediately hazardous condition, Licensee shall provide and install an emergency shut-off switch which will terminate electrical service to all Equipment. If City uses Licensee's emergency shut-off switch, City will notify Licensee at the telephone number provided in section 7.5. Except as provided in Section 26 (Termination), and excluding conditions that arise from the City's or its Agents' gross negligence or willful misconduct, neither any City work on any Pole nor any condition on any Pole will: (1) entitle Licensee to any damages; (2) excuse or reduce any obligation by Licensee to pay any License Fees or Additional Fees or perform any covenant under this Master License; or (3) constitute or be construed as a constructive termination of this Master License or any Pole License.

8.3. Repairs, Maintenance and Alterations to License Areas

The City may, at any time, alter, add to, repair, remove from and/or improve the License Area in whole or in part for any operational purpose, which includes without limitation maintenance and improvements in connection with street light services and compliance with Laws; provided, however, (1) the City makes a good-faith effort to provide notice to Licensee's On-Call Representative; (2) the City allows Licensee's representative to observe the City's work; and (3) the City takes reasonable steps not to disrupt Licensee's ordinary operations on the License Area. If City requires the termination of electrical service to the Equipment in order to alter, add to, remove from, and/or improve the License Area, the City shall inform Licensee at the telephone number provided in section 7.5 and the parties shall coordinate in good faith to determine suitable dates and times to complete such actions. The provisions in this Section 8.3 will not be construed to allow Licensee's ordinary operations to impede or delay the City's authority and ability to make changes to the License Areas necessary to maintain street light services.

8.4. Emergencies

In emergencies, the City's work will take precedence over Licensee's operations, which includes without limitation any Equipment operated on the License Area, and the City may access the License Area in whole or in part as the City deems necessary in its sole determination and in accordance with this Section 8.4, whether the City has notified Licensee of such emergency or other exigent circumstances or not. When safe and practicable, the City will notify Licensee of any emergency or other exigent circumstances that requires the City to remove or replace any Pole and will allow

Licensee to remove its Equipment before the City removes or replaces the Pole; provided, however, that the City will remove the Equipment from the Pole when in the City's sole determination it would (1) be unsafe or not practicable to wait for Licensee to perform the work; (2) cause significant delay; or (3) otherwise threaten or compromise public safety or public services. In order to allow City to remove Equipment under this section, Licensee shall provide and install an emergency shut-off switch which will terminate electrical service to all Equipment. If City uses Licensee's emergency shut-off switch, City will notify Licensee at the telephone number provided in section 7.5. The City will remove any Equipment with reasonable care and store the Equipment for retrieval by Licensee. Licensee shall have the right to reinstall such removed Equipment or equivalent Equipment at Licensee's sole expense on the repaired or replaced Pole and in accordance with Section 7 (Equipment

Installation). The City's removal of Licensee's Equipment in emergencies or other exigent circumstances will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee's contractual privilege to use the License Area.

9. LICENSEE'S MAINTENANCE OBLIGATIONS

9.1. Damage to Poles

9.1.1. Notice to the City

Licensee agrees to give the City notice of the need for any repair to a Pole promptly after Licensee discovers any damage from any cause. Licensee's agreement to provide notice is not an assumption of liability for any life-threatening or hazardous conditions unless caused by the acts, omissions or negligence of Licensee or its Agents or Invitees. Failure to provide such notice will be a material default under this Master License.

9.1.2. Damage Caused by Licensee

In the event that any use or maintenance by Licensee or its Agents or Invitees cause any damage to any Pole, Licensee must repair such damage within 30 days after the City provides a notice to Licensee that describes such damage. Such 30-day cure period may be extended to a date certain if the City agrees the cure reasonably requires more time. In the event that Licensee fails to timely cure the damage, the City may repair the damage at Licensee's expense. Licensee will reimburse the City for all costs incurred to repair such damage within 10 days after Licensee receives the City's demand for payment, together with copies of invoices or other evidence to document the costs incurred.

9.1.3. No Right to Repair

Absent notice from the City with a demand to cure any damage to a Pole, Licensee is not authorized to make any repairs to any Pole. Licensee expressly waives all rights it may have under any applicable Laws to make repairs at the City's expense.

9.2. Equipment Maintenance

Licensee shall, at its sole cost and expense, install, maintain and promptly repair any damage to any Equipment installed on the License Area whenever repair or maintenance may be required, subject to the City's prior approval if required under Section 7 (Equipment Installation). Licensee is not required to seek the City's prior approval for any Equipment repair, maintenance, replacement or other installation on the License Area when such Equipment is shown on the Approved Plans. Licensee must obtain the City's prior written approval for any Equipment repair, maintenance, replacement or other installation that involves larger, different or additional Equipment

than shown on the Approved Plans. Licensee expressly acknowledges that Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455) does not apply to this Master License or any Pole License because the City is granting them in its proprietary capacity as the owner of the City Poles. Any work on Licensee's Equipment installed on Poles that is authorized or permitted under this Subsection is subject to Licensee obtaining any required Regulatory Approvals.

9.3. Graffiti Abatement

Licensee's repair and maintenance obligation includes the removal of any graffiti from the License Area within seven (7) days after the City notifies Licensee.

9.4. Standard of Work

For all work performed by or for Licensee under this Section 9.5, Licensee shall be: (1) at Licensee's sole cost and expense; (2) performed only qualified and trained persons and appropriately licensed contractors; (3) performed in a manner and with equipment and materials that will not interfere with or impair the City's operations; and (4) compliant with all applicable Laws.

9.5. Inspections

At least once in every License Year, Licensee shall perform an inspection of all Equipment. Upon the City's request, Licensee shall furnish, within 30 days, a written report to the City on the condition of such Equipment that includes, without limitation, any identified concerns and corrective action taken or planned to be taken. In the event that Licensee's inspection reveals any maintenance concerns in connection with any Pole or any other City Property, Licensee shall promptly notify the City.

10. LIENS

Licensee shall keep the License Area free and clear from any and all liens in connection with any work performed, material furnished or obligations incurred by or for Licensee. Licensee shall inform each and every contractor and material supplier that provides any work, service, equipment or material to Licensee in any way connected with Licensee's use of the License Area that the License Area is public property and is not subject to mechanics' liens or stop notices for Equipment or other materials or services provided for Licensee's Equipment. If Licensee does not cause the release of lien of a

mechanic's lien or stop notice by any contractor, service provider or equipment or material supplier purporting to attach to the License Area or other City Property within 30 days after notice or discovery of the lien, the City will have the right, but not the obligation, to cause the same to be released by any means it deems proper, including payment of the Claim giving rise to such lien. Licensee must reimburse the City for all expenses it incurs in connection with any such lien (including reasonable attorneys' fees) within 10 days following receipt of the City's demand together with copies of invoices or other evidence to document the costs incurred. Licensee shall give the City at least 10 days' prior notice of commencement of any construction or installation on any part of the License Area except for minor and routine repair and maintenance of Licensee's Equipment. Licensee shall not create, permit, or suffer any other encumbrances affecting any portion of the License Area.

11. UTILITIES

Licensee shall be responsible to secure its own utility services for its Permitted Use and shall not be permitted to use or submeter from any electrical service provided to the City on any Pole. The City may, in its sole and absolute discretion, permit Licensee to connect to or submeter from any electrical service provided to the City on any Pole not subject to a flat rate from the City's electrical service provider. Licensee shall timely pay when due all charges for all utilities furnished to its Equipment.

12. TAXES AND ASSESSMENTS

12.1. Possessory Interest Taxes

Licensee understands and acknowledges that this Master License may create a possessory interest subject to taxation and that Licensee will be required to pay any such possessory interest taxes. Licensee further understands and acknowledges that any sublicense or assignment permitted under this Master Agreement and any exercised options to renew or extend this Master License may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this Master License.

12.2. Licensee's Tax Obligations

Licensee agrees to pay when due and prior to delinquency any and all taxes, assessments, charges, excises and exactions whatsoever, including without limitation any possessory interest taxes, that arise from or in connection with Licensee's use within the License Area or Licensee's Equipment that may be imposed on Licensee under Law. Licensee shall not allow or suffer any lien for any taxes assessments, charges, excises or exactions whatsoever to be imposed on the License Area or Licensee's Equipment. In the event that the City receives any tax or assessment notices on or in connection with the License Area or Licensee's Equipment, the City shall promptly (but in no event later than 30 calendar days after receipt) forward the same,

together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount attributable to Licensee's Equipment.

13. COMPLIANCE WITH LAWS

13.1. Compliance with Current and Future Laws

Licensee shall install, operate and maintain the Equipment, and shall perform all work in connection with such installation, operation and maintenance, in strict compliance with all applicable Laws and all conditions in any Regulatory Approvals issued in connection with the Equipment or its installation and operation on any Pole. The parties agree that Licensee's obligation to comply with all Laws is a material part of the bargained-for consideration under this Master License, irrespective of the degree to which such compliance may interfere with Licensee's use or enjoyment of the License Area, the likelihood that the parties contemplated the particular Law involved and whether the Law involved is related to Licensee's particular use of the License Area. No occurrence or situation arising during the Term arising under any current or future Law, whether foreseen or unforeseen and however extraordinary, will relieve Licensee from its obligations under this Master License or give Licensee any right to terminate this Master License or any Pole License in whole or in part or to otherwise seek redress against the City. Licensee waives any rights under any current or future Laws to terminate this Master License or any Pole License, to receive any abatement, diminution, reduction or suspension of payment of License Fees, or to compel the City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

13.2. Licensee's Personnel

13.2.1. Personnel Training and Certification

Licensee shall ensure that all persons who install, operate or maintain the Equipment are appropriately trained and licensed by the California State Contractors Licensing Board as required under applicable CPUC rules and regulations. Licensee shall ensure that such persons are trained in and observe all safety requirements established by the City, the CPUC and the California Division of Occupational Safety and Health, Department of Industrial Relations, which includes without limitation site orientation, tag-out and lock-out de-energization rules, ladder and lift restrictions and track and street right-of-way safety requirements.

13.2.2. Licensee's Indemnification for Personnel Injuries

Licensee acknowledges that (1) the City has delegated to Licensee control over the License Area at any time in which Licensee or its Agents are installing, operating or maintaining the Equipment; and (2) the City is not a co-employer of any employee of Licensee or any employee of Licensee's Agents, and the City shall not be liable for any Claim by Licensee's or its Agent's employee(s). Licensee agrees to fully indemnify, defend and hold the City harmless in the same manner as provided in Section 18

(Licensee's Indemnification Obligations) against any Claim by any employee of Licensee or its Agents that arises in connection with Licensee's or its Agents' access, uses or other activities on or about the License Area.

13.3. Compliance with CPUC GO 95

Licensee shall conduct all activities on the License Area in accordance with CPUC General Order 95 and the rules and other requirements enacted by the CPUC under that General Order, as applicable and as amended.

13.4. Compliance with Building and Electric Codes

Licensee shall conduct all activities on the License Area in accordance with the requirements of all applicable codes and regulations related to building and construction safety, which includes without limitation the California Building Code, the California Electric Code, National Electric Safety Code IEEE C2 (the "NESC") and any applicable local building electrical code, as those codes exist now or may be amended in the future. To the extent that CPUC General Order 95 does not address cellular telephone antenna installations on Poles carrying electrical lines, Licensee shall apply applicable provisions of the NESC, with particular attention to paragraphs 224, 235C, 235F, 238, 239 and 239H and sections 22, 41 and 44. Where any conflict exists between the California Building Code, the NESC, the California Electric Code, any local code and CPUC General Order 128, the more stringent requirements will apply, as determined by the City.

13.5. Compliance with RF Exposure Regulations

Licensee's obligation to comply with all Laws includes all Laws related to maximum permissible exposure to RF or EMF emissions on or about the License Area, which includes all applicable FCC standards, whether such RF or EMF emissions or exposure results from Licensee's Equipment alone or from the cumulative effect of Licensee's Equipment added to all other sources on or near the License Area. Licensee must provide to the City an RF Compliance Report for each proposed Pole on which the Licensee desires to install or operate its Equipment. If not provided earlier, Licensee must submit the RF Compliance Report to the City with the applicable Pole License Application.

14. DAMAGE OR DESTRUCTION

14.1. City's Rights After Damage or Destruction

In the event the License Area in whole or in part becomes damaged due to any cause, the City (1) will have no obligation whatsoever to repair or replace the damaged License Area; and (2) may, in the City's sole and absolute discretion, elect to take any of the following actions:

14.1.1. Election to Repair or Replace Damaged Pole

Within 30 days after the date on which the City discovers damage or destruction of a Pole licensed to Licensee, the City will give Licensee notice of the City's decision whether to repair or replace the damaged Pole and its good faith estimate of the amount of time the will need to complete the work. If the City cannot complete the work within 30 days after the date that the City specifies in its notice, or if the City elects not to do the work, then Licensee will have the right to terminate the affected Pole License on 30 days' notice to the City.

14.1.2. Election to Remove Damaged Pole

If the City elects to remove, rather than repair or replace, a damaged Pole licensed to Licensee, then the applicable Pole License will automatically terminate on the last day of the month in which the removal occurs.

14.1.3. Election to Remove Equipment from Damaged Pole

If the acts of third parties or an act of nature or other force majeure circumstance outside the control of Licensee or its Agents or Invitees destroys or damages any Pole to such an extent that, in the City's reasonable determination, the Equipment on the Pole cannot be operated, the City may decide to terminate the affected Pole License on 30 days' written notice to Licensee and require Licensee to remove the Equipment from the damaged Pole before the termination date specified in the City's notice.

14.2. Licensee's Rights upon Termination

After the City terminates a Pole License pursuant to Section 14.1 (City's Rights After Damage or Destruction), the City will: (1) refund any pre-paid License Fee in connection with the terminated Pole License on a pro-rata basis determined by the number of months left in the current License Year at the time such termination occurs, subject to the Minimum Term as defined in Section 3.2 (Pole License Term) in this Master License; and (2) prioritize Licensee's Pole License Application for one replacement Pole.

14.3. Waiver of Statutory Rights

The parties understand, acknowledge and agree that this Master License fully governs their rights and obligations in the event that any licensed Poles become damaged or destroyed, and, to the extent applicable, the City and Licensee each hereby waives and releases the provisions in California Civil Code §§ 1932(2) and 1933(4) or any similar Laws.

15. CONDEMNATION

15.1. Permanent Takings

In the event that any entity with the power to condemn permanently takes any License Area in whole or in part, or in the event that the City transfers any License Area in whole or in part to such entity in lieu of eminent domain, the following provisions will apply:

15.1.1. Termination

Any affected Pole License will automatically terminate as to the part taken or transferred on the date the permanent taking or transfer occurs, and the License Fee under the affected Pole License will be ratably reduced to account for the reduction in License Area.

15.1.2. Award

The City will be entitled to any award paid or made in connection with the taking or any sums paid in lieu of such taking. Licensee will have no Claim against the City for the value of any unexpired Term of any Pole License or otherwise except that Licensee may claim any portion of the award that is specifically allocable to Licensee's loss or damage to Licensee's Equipment.

15.1.3. No Statutory Right to Terminate

The parties understand, acknowledge and agree that this Section 15.1 (Permanent Takings) is intended to fully govern the parties' rights and obligations in the event of a permanent taking. Licensee and the City each hereby waives and releases any right to terminate this Master License in whole or in part under California Code of Civil Procedure §§ 1265.120 and 1265.130 and under any similar Laws to the extent applicable to this Master License.

15.2. Temporary Takings

Any taking that affects any License Area in whole or in part for less than 90 days will have no effect on the affected Pole License, except that Licensee will be entitled to a pro-rata abatement in the applicable License Fee to the extent that such temporary taking materially impairs Licensee's use of the License Area. Furthermore, in the event that the City receives an award, if any, in connection with such temporary taking, Licensee will receive the portion from the award that represents compensation for the use or occupancy of the License Area during the Term but not to exceed the License Fees and Additional Fees payable by Licensee for the period of the taking, and the City will retain the balance of the award.

16. ASSIGNMENT AND OTHER TRANSFERS

16.1. General Restriction

Except as specifically provided in Section 16.3 (Permitted Assignments), Licensee shall not directly or indirectly assign its interests or rights, whether in whole or in part, in connection with this Master License, any Pole License or the License Area without the City's prior written consent. The City shall not unreasonably withhold its consent to any proposed Assignment; provided, however, that the parties acknowledge that the City may reasonably withhold its consent to any proposed Assignment at any time in which any monetary or other material default by Licensee under this Master License remains uncured.

16.2. Proposed Assignment Procedures

16.2.1. Proposed Assignment Notice

In the event that Licensee desires to Assign its interests or rights, whether in whole or in part, in connection with this Master License, any Pole License or the License Area, Licensee shall first send written notice (the "**Proposed Assignment Notice**") to the City, which states in detail the proposed terms and conditions for the Assignment and complete information, which includes without limitation financial statements, business track records, references and other information about the proposed assignee (the "**Proposed Assignee**") that the City reasonably requires to fully evaluate Licensee's request and render an informed decision. In the event that Licensee does not provide all the such information simultaneously with the Proposed Assignment Notice, the Proposed Assignment Notice shall not be deemed effective until Licensee delivers all such information as the City may reasonably require.

16.2.2. City Response

The City shall approve or disapprove any request for consent to an Assignment within 30 days after the City receives a complete Proposed Assignment Notice, or 30 days after the deemed-effective date if Licensee delivers an incomplete Proposed Assignment Notice as described in Section 16.2.1 (Proposed Assignment Notice) (in either case, the "**Assignment Response Period**"). If the City fails to respond within the Assignment Response Period, the request for consent will be deemed disapproved. If the City delivers to Licensee written consent to the proposed Assignment, then Licensee shall have 100 days from such written consent to complete the Assignment. The City's consent will be deemed revoked if Licensee fails to complete the proposed Assignment within the 100-day period; provided, however, that the 100-day period may be extended to a date certain in a written agreement, which the City shall not unreasonably refuse.

16.3. Permitted Assignments

16.3.1. Definition

The City agrees that Licensee will be permitted to enter into an Assignment of this Master License and Pole Licenses issued under it (a "**Permitted Assignment**"), without

the City's prior consent but with notice to the City as provided below, to: (i) Licensee's parent; (ii) Licensee's subsidiary; (iii) an entity that acquires all or substantially all of Licensee's assets in the market in which the License Area is located (as the market is defined by the FCC under an order or directive of the FCC); (iv) an entity that acquires Licensee by a change of stock ownership or partnership interest; or (v) an entity Controlled by Licensee or that, with Licensee, is under the Common Control of a third party.

16.3.2. Conditions

A Permitted Assignment is subject to all the following conditions: (a) the Assignee uses the License Area only for the Permitted Use and holds all Regulatory Approvals necessary to lawfully install, operate, and maintain Equipment on the License Area; (b) Licensee provides the City with notice 30 days before the effective date of Permitted Assignment, stating the contact information for the proposed Assignee and providing financial information establishing that the proposed Assignee has the capital and fiscal qualifications greater than or equal to Licensee's; and (c) Licensee is in good standing under this Master License.

16.4. Effect of Assignment

No Assignment by Licensee, consent to Assignment by the City, or Permitted Assignment under Section 16.3 (Permitted Assignments) will relieve Licensee of any obligation on its part under this Master License, unless expressly provided in a writing signed by the City. Any Assignment that is not in compliance with this Article will be void and be a material default by Licensee under this Master License without a requirement for notice and a right to cure. The City's acceptance of any License Fee, Additional Fee, or other payments from a proposed Assignee will not be deemed to be the City's consent to such Assignment, recognition of any Assignee, or waiver of any failure of Licensee or other transferor to comply with this Section 16.

16.5. Assumption by Transferee

Each Assignee shall assume all obligations of Licensee under this Master License and each assigned Pole License and will be and remain liable jointly and severally with Licensee for all obligations to be performed by Licensee. No Assignment will be binding on the City unless Licensee or the Assignee delivers to the City evidence satisfactory to the City that the Assignee has obtained all Regulatory Approvals required to operate as a wireless telecommunications service provider on the assigned License Area, a copy of the Assignment agreement (or other document reasonably satisfactory to the City in the event of a Permitted Assignment under Section 16.3 (Permitted Assignments)), and an instrument in recordable form that contains a covenant of assumption by such Assignee satisfactory in substance and form to the City, consistent with the requirements of this Article. However, the failure or refusal of an Assignee to execute such instrument of assumption will not release such Assignee from its liability as set forth in this Section. Except for a Permitted Assignment as provided in Section 16.3 (Permitted

Assignments), Licensee shall reimburse the City on demand for any reasonable costs that the City incurs in connection with any proposed Assignment, including the costs of investigating the acceptability of the proposed Assignee and legal costs incurred in connection with considering any requested consent. The City agrees that its right to reimbursement under this Section during the Term will be limited to Two Thousand Dollars (\$2,000.00) for each request.

16.6 Licensee's Customers

Licensee may provide capacity to Licensee's customers using, or permit such customers to use, the Equipment installed by Licensee without the City's consent required in this Section provided that (1) Licensee remains solely responsible for such Equipment and (2) such use by Licensee or Licensee's customers does not involve any physical changes to the Equipment other than changes permitted in writing by the City. In any other case, Licensee may provide capacity to Licensee's customers using, or permit such customers to use, the Equipment installed by Licensee upon prior written notice to the City that (a) identifies the customer who will be using the Equipment and the location(s) where such use will occur; and (b) includes the appropriate annual fee for the additional carrier as specified in Schedule A-4, prorated to account for any partial year. Thereafter, Licensee shall pay the additional carrier fee each year in the same manner as the License Fee so long as the additional carrier continues to use the Equipment. Notwithstanding anything in this Master License to the contrary, Licensee shall not be required to pay any additional fee to allow Licensee's customers to use the wireline portions of the Equipment for data transport, backhaul or similar services.

17. DEFAULT

17.1. Events of Default by Licensee

Any of the following will constitute an event of default by Licensee under this Master License and any Pole Licenses issued under it: (1) Licensee fails to pay any sums due to the City within 10 days after notice from the City; (2) Licensee fails to perform or comply with any other obligation or representation made under this Master License, if the failure continues for 30 days after the date of notice from the City, or, if such default is not capable of cure within the 30-day period, Licensee fails to promptly undertake action to cure such default within such 30-day period and thereafter fails to use its best efforts to complete such cure within 60 days after the City's notice; (3) Licensee removes its Equipment or abandons the License Area for a continuous period of more than 60 days, such that the License Area is longer being used for the Permitted Use; or (3) any of the following occurs: (i) the appointment of a receiver due to Licensee's insolvency to take possession of all or substantially all of the assets of Licensee; (ii) an assignment by Licensee for the benefit of creditors; or (iii) any action taken by or against Licensee under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief Laws, if any such receiver, assignment, or action is not released, discharged, dismissed, or vacated within 60 days.

17.2. City's Remedies

In addition to all other rights and remedies available to the City at law or in equity,

the City will have the following remedies following the occurrence of an event of default by Licensee.

17.2.1. License Continuation

Without prejudice to its right to other remedies, the City may continue this Master License and applicable Pole Licenses in effect, with the right to enforce all of its rights and remedies, including the right to payment of License Fees, Additional Fees, and other charges as they become due.

17.2.2. Pole License Termination

If a default specific to one or more Pole Licenses is not cured by Licensee within the applicable cure period, if any, specified in Section 17.1 (Events of Default by Licensee), the City may terminate each Pole License in default.

17.2.3. Master License Termination

If Licensee's default is of such a serious nature in the City's sole judgment that the default materially affects the purposes of this Master License, the City may terminate this Master License in whole or in part. Termination of this Master License in whole will terminate all Pole Licenses issued under it automatically and without the need for any further action by the City. In either case, the City will deliver notice to Licensee providing 30-days' notice of termination and specify whether the termination affects the entire Master License or only certain Pole Licenses in the notice. The City will specify the amount of time Licensee will have to remove its Equipment from any affected City Pole, which will be at least 30 days after the date of the City's notice for up to 50% of licensed City Poles and an additional 30 days for more than 51% of licensed City Poles. If Licensee does not remove its Equipment within the specified period, the City will be entitled to remove Licensee's Equipment from the City Pole. The City will have the right to make any terminated portion of the License Area available for license to other parties as of the effective date of the termination, even if Licensee's Equipment is still on the Pole.

17.2.4. Default Fees

Without limiting the City's other rights and remedies under this Master License, the City may require Licensee to pay Additional Fees for the City's administrative cost in providing notice or performing inspections for the events described below (each, a "**Default Fee**") by giving notice of the City's demand that Licensee cure the default and specifying the cure period. The Default Fee for the initial notice from the City will be due and payable to the City 10 days after delivery of notice to Licensee. In addition, if Licensee fails to cure the condition within the cure period set forth in the initial notice, and the City then delivers to Licensee a follow-up notice requesting compliance, then the Default Fee for the follow-up notice will be due and payable to the City 10 days after delivery of the follow-up notice to Licensee. Default Fees will apply to any of the following events: (1) Licensee constructs or installs any alteration or improvement without the City's prior approval as required by Section 6 (Pole Licenses), Section 7 (Equipment Installation), or Section 7.3.1 (Alterations to City's Property) of this Master License; (2) Licensee fails to cure damage required by Section 9 (Licensee's Maintenance Obligations) on a timely basis; (3) Licensee fails to notify the City, through its project manager, before accessing the License Area or following the plan approval procedures as set forth in Section 7 (Equipment Installation); or (4) Licensee fails to provide evidence of the required bonds and insurance coverage described in Section 19 (Insurance) on a timely basis.

17.3. Licensee's Remedies

Licensee's sole remedy for the City's breach or threatened breach of this Master License or any Pole License issued under it will be an action for damages, subject to Section 20 (Limitations on City's Liability).

17.4. Cumulative Rights and Remedies

All rights and remedies under this Master License are cumulative, except as otherwise provided.

18. LICENSEE'S INDEMNIFICATION OBLIGATIONS

To the maximum extent permitted by applicable Laws, Licensee, for itself and its successors and assigns, shall indemnify, defend, protect and hold the City, its Agents, Invitees and their respective heirs, legal representatives, successors and assigns (the "**Indemnified Parties**"), harmless from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, whether direct or indirect, incurred in connection with or arising in whole or in part from: (1) death or personal injury to any person or property damage or other loss that occurred on or about the License Area or arises in connection with Licensee's or its Agents' or Invitees' authorized or unauthorized uses on or about the License Area; (2) any failure or refusal by Licensee to observe or perform any term, covenant or condition in this Master License to be observed or performed on Licensee's part; (3) Licensee's or its Agents' or Invitees' uses or occupancy, or manner of use or occupancy, of the License Area; (4) any exposure to RF emissions or EMFs from Licensee's Equipment or uses on or about the License Area; (5) the License Area condition or any occurrence on or about the License Area attributable to the events described in clauses (1), (2), (3) or (4) in this Section 18; or (6) any act, omission or negligence of Licensee, its Agents or Invitees in, on or about the License Area; all whether any negligence may be attributed to the Indemnified Parties or not, and all whether liability without fault is imposed or sought to be imposed on the Indemnified Parties, but except to the extent that such Claim(s) arise from the Indemnified Parties' willful misconduct or gross negligence. Licensee's obligations under this Section 18 includes, without limitation, reasonable fees, costs and expenses for attorneys, consultants and experts, and the City's costs to investigate any Claim. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim that actually or potentially falls within this Section 18, even when the allegations in such Claim are groundless, fraudulent or false, and which obligation arises at the time the Indemnified Parties tender such Claim to Licensee and continues at all times until such Claim's final resolution. Licensee's obligations under this Section 18 will survive the expiration or termination of this Master License.

19. INSURANCE

19.1. Licensee's Insurance

As a condition to issuance of any Pole License, Licensee must provide proof of compliance with the insurance requirements in this Section except to the extent the City's Risk Manager agrees otherwise.

19.1.1. Required Coverages

Licensee shall procure and keep in effect at all times during the Term, at Licensee's cost, insurance in the following amounts and coverages: (1) Commercial General Liability insurance (including premises operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability meeting the indemnification obligations herein; independent contractors; personal injury) with limits of at least \$2 million combined single limit for each occurrence; (2) Worker's Compensation Insurance per California statutory limits with Employer's Liability Limits not less than \$1 million each accident or disease; (3) Commercial Automobile Liability Insurance with limit not less than \$2 million each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles. The required limits may be met by a combination of primary and excess or umbrella insurance.

19.1.2. Required Endorsements

Commercial General Liability Insurance and Commercial Automotive Liability Insurance policies must contain the following endorsements: (1) name the City, its officers, agents, employees and volunteers as additional insureds; (2) that such policies are primary insurance to any other insurance available to the additional insureds with respect to any Claims that arise in connection with this Master License; (3) that such insurance applied separately to each insured against whom a Claim is made or brought, except with respect to the limits; (4) that such policies provide for the severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not void or otherwise reduce coverage as to any other named insured; and (5) that such policies shall afford coverage for all Claims based on acts, omissions, injury or damage that occurred or arose (or the onset occurred or arose) in whole or in part during the policy period. Additional Insured Endorsement shall not exclude products/completed operations.

19.1.3. Cancellation Notices

All insurance policies required to be maintained by Licensee under this Master License shall be endorsed to provide written notice of cancellation by the insurer for any reason, other than non-payment of premium to the City. In the event that Licensee receives a notice of intent to cancel or notice of cancellation for non-payment or reduction of any coverage required under this Master License, Licensee shall forward such notice to the City within two business days and promptly take action to prevent cancellation, reinstate cancelled coverage or obtain coverage from a different insurer qualified under Section 19.1.7.

19.1.4. Claims-Made Policies

In the event that any required insurance under this Master License is provided under a claims-made form, Licensee shall continuously maintain such coverage throughout the Term and, without lapse, for three years after this Master License expires or terminates, to the effect that, should any event during the Term give rise to a Claim brought after this Master License expires or terminates, such Claims will be covered under Licensee's claims-made policies.

19.1.5. General Aggregate Limit

The general aggregate limit for any required insurance under this Master License must be double the per-occurrence or Claims limits specified in Section 19.1 when coverage includes a general annual aggregate limit or provides that Claims investigation or legal defense costs will be included in such general annual aggregate limit.

19.1.6. Certificates

On or before the Effective Date, Licensee shall deliver to the City all insurance certificates and additional insured endorsements from Licensee's insurance providers in a form reasonably satisfactory to the City that evidences all the required coverages under this Master License. In addition, Licensee shall promptly deliver to the City all certificates and endorsements required herein after Licensee receives a request from the City. Upon request, Licensee shall make copies of complete policies available for review at the Licensee's place of business.

19.1.7. Insurer Qualifications

Licensee's insurance providers must be licensed to do business in California and must meet or exceed an A.M. Best's Key Rating A-X or its equivalent.

19.1.8. Effective Dates

The City shall not authorize Licensee to install any Equipment on any Pole until and unless all insurance coverages required to be carried by Licensee under this Master License have been obtained. Licensee shall ensure that all insurance coverages required to be carried by Licensee under this Master License remain in effect at all time until all Equipment has been removed from the License Area. The requirements in this Section 19.1.8 (Effective Dates) shall survive the expiration or termination of this Master License.

19.1.9. Licensee's Self-Insurance Alternative

Licensee shall not be permitted to meet its insurance obligations under this Master License through self-insurance without prior written consent from the City, which the City may withhold in its sole discretion for any or no reason. In the event that the City consents to allow Licensee to self-insure as an alternative insurance program, such consent will not be deemed an amendment or implied waiver to any other requirement

in this Master License. Any amendment to any insurance requirement must be in a written agreement.

19.1.10. No Limitation on Indemnification Obligations

Licensee's insurance obligations under this Section 19 in no way relieves or decreases Licensee's liability under Section 18 (Licensee's Indemnification Obligations) or any other provision in this Master License.

19.1.11. Right to Terminate

The City may elect, in its sole and absolute discretion, to terminate this Master License on written notice to Licensee if Licensee allows any required insurance coverage to lapse and does not reinstate the lapsed insurance coverage within three days after Licensee receives such written notice.

19.2. City's Insurance

Licensee acknowledges that the City self-insures against casualty, property damage and public liability risks. The City agrees to maintain an adequate program of self-insurance for public liability risks during the Term and will not be required to carry any third party insurance with respect to the License Area or otherwise.

19.3. Subrogation Waiver

The City and Licensee each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the License Area or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance obtained by the waiving party under this Master License or is actually covered by insurance obtained by the waiving party. Each waiving party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the License Area, but the failure to obtain any such endorsement will not affect the waivers in this Section.

19.4. Contractors' Insurance

Licensee shall provide of evidence of insurance for all contractors that install, maintain, repair, replace or otherwise perform any work on or about the License Area as determined by Licensee in accordance with its qualified vendor insurance requirement.

20. LIMITATIONS ON THE CITY'S LIABILITY

20.1. General Limitations on the City's Liability

The City is not responsible or liable to Licensee for, and Licensee hereby waives all Claims against the City and its Agents and releases the City and its Agents from, all Claims from any cause (except to the extent caused by the gross negligence or willful misconduct of the City and its Agents), including acts or omissions of persons using the sidewalk or street adjoining or adjacent to or connected with the License Area; utility interruption; theft; burst, stopped or leaking water, gas, sewer or steam pipes; or gas, fire, oil, or electricity in, flood, or vehicle collision on or about the License Area or other City Property.

20.2. Consequential Damages

Licensee expressly acknowledges and agrees that the License Fees and Additional Fees payable under this Master License do not take into account any potential liability of the City for consequential or incidental damages. The City would not be willing to enter into this Master License or issue any Pole Licenses in the absence of a complete waiver of liability, to the fullest extent permitted by Law, for consequential or incidental damages due to the acts or omissions of the City or its Agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Licensee or other waivers contained in this Master License and as a material part of the consideration for this Master License, Licensee fully releases, waives and discharges forever any and all Claims against the City for consequential and incidental damages arising out of this Master License or any Pole License, including lost profits arising from the disruption to Equipment, any interference with uses conducted by Licensee under this Master License and Pole Licenses, regardless of the cause, and whether or not due to the active or passive negligence or willful misconduct of the City or its Agents, and covenants not to sue for such damages the City, and the City's other departments, and all City agencies, officers, directors and employees, and all persons acting by, through or under each of them. Without limiting any Indemnification obligations of Licensee or other waivers contained in this Master License, in no event shall Licensee be liable to the City for any special, consequential or indirect damages.

20.3. No Relocation Assistance

This Master License creates no right in Licensee to receive any relocation assistance or payment for any reason under the California Relocation Assistance Law (Cal. Gov. Code §§ 7260 *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601 *et seq.*) or similar Law upon any termination of occupancy except as provided in Section 15 (Condemnation). To the extent that any relocation law may apply, Licensee waives, releases and relinquishes forever any and all Claims that it may have against the City for any compensation from the City except as specifically provided in this Master License upon termination of its occupancy of all or any part of the License Area.

20.4. Non-Liability for City Officials, Employees and Agents

No elective or appointive board, agency, member, officer, employee or other Agent of the City will be personally liable to Licensee, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of the City under this Master License.

20.5. Licensee's Waiver

Licensee acknowledges the City's rights under this Section and waives any Claims arising from the exercise of their rights. In connection with the preceding sentence and releases and waivers under Section 8.1 (City's Access to License Areas), Section 9.1.3 (No Right to Repair), Section 13.1 (Compliance with Current and Future Laws), Section 14.1.1 (Election to Repair or Replace Damaged Pole), Section 15.1.3 (No Statutory Right to Terminate), Section 19.3 (Subrogation Waiver), Section 20.1 (General Limitations on City's Liability), Section 20.2 (Consequential Damages), Section 20.3 (No Relocation Assistance), Section 23.3 (Application) and any other waiver by Licensee under this Master License, Licensee acknowledges that it is familiar with section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Licensee realizes and acknowledges that the waivers and releases contained in this Master License include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated Claims. Licensee affirms that it has agreed to enter into this Master License in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of California Civil Code section 1542 and any similar Law. The releases and waivers contained in this Master License will survive its expiration or earlier termination.

21. RECORDS

21.1. Accounting Records

Licensee shall maintain throughout the Term and for at least three years after this Master Agreement expires or terminates the following records in physical format at Licensee's place of business within San Diego County and in an electronic format: (1) site identification and location for all Poles under active Pole Licenses; (2) the amount and payment date for all License Fees paid to the City pursuant to this Master License; (3) all Regulatory Approvals issued in connection with the Equipment on Poles; and (4) all correspondence with the City in connection with any matter covered under this Master License. The City, or its designee, will have the right to inspect and audit

Licensee's records at Licensee's place of business during regular business hours on 10 days' notice to Licensee.

21.2. Estoppel Certificates

Licensee, at any time and from time-to-time on not less than 30 days' notice from the City, shall execute, acknowledge and deliver to the City or its designee, a certificate of Licensee stating: (a) that Licensee has accepted the License Area (or, if Licensee has not done so, that Licensee has not accepted all or any part of the License Area and specifying the applicable portions of the License Area and reasons for non-acceptance); (b) the Commencement Dates of any Pole Licenses then in effect; (c) the Effective Date and Expiration Date of this Master License; (d) that this Master License and Pole Licenses are unmodified and in full force and effect or, if modified, the manner in which they are modified; (e) whether any defenses then exist against the enforcement of any of Licensee's obligations under this Master License (and if so, specifying the same); (f) whether any of the City's obligations under this Master License are outstanding (and if so, identifying any City obligations that Licensee believes that the City has failed to meet); (g) the dates, if any, to which the License Fees and Additional Fees have been paid; and (h) any other information that may be reasonably required by any such persons.

22. RULES AND REGULATIONS

At all times throughout the Term, Licensee shall faithfully comply with any and all reasonable rules, regulations and instructions that the City may from time-to-time establish and/or amend with respect to the License Area.

23. SECURITY DEPOSIT

23.1. Amount

At the time Licensee tenders to the City the first Acknowledgement Letter, Licensee must also tender to the City for deposit a sum equal to **Four Thousand and 00/100 Dollars (\$4,000.00)** (the "**Security Deposit**") to secure Licensee's faithful performance of all terms, covenants and conditions in this Master License and any Pole License.

23.2. Further Deposits

In the event that the City applies or uses the Security Deposit in whole or in part to cure any default by Licensee under this Master License or any Pole License, Licensee shall replenish the Security Deposit in the amount and on the date specified in a written notice to Licensee. The City may, in the City's reasonable judgment, require Licensee to increase the Security Deposit amount from time-to-time when the City determines that Licensee's past acts or omissions in connection with the License Area warrants additional security.

23.3. Application

Licensee agrees that the City may use the Security Deposit in whole or in part to remedy any damage to the License Area caused by Licensee, its Agents or Invitees or any failure by Licensee to perform any term, covenant or condition in this Master License or any Pole License (including without limitation any failure to pay any License Fee or other sums due under this Master License or any Pole License either before or after any default). In the event that the City uses the Security Deposit in whole or in part, the City will not be deemed to have waived any rights under this Master License, or legal or equitable rights whatsoever. Licensee expressly waives any rights it may have under California Civil Code section 1950.7 or any similar Law and agrees that the City may retain from the Security Deposit any portion reasonably necessary to compensate the City for any foreseeable or unforeseeable loss or damage caused by Licensee's, its Agents' or Invitee's acts or omissions.

The City's obligations with respect to the Security Deposit shall be in the nature of a debtor, and the City shall not be deemed to hold the Security Deposit in trust for any reason. The City may (but shall not be obligated to) keep the Security Deposit separate from general funds. Licensee shall not be entitled to any interest on the Security Deposit.

24. SURRENDER OF LICENSE AREA

24.1. Surrender

No later than 30 days after the Expiration Date or other termination of this Master License or any Pole License, Licensee shall peaceably remove its Equipment from the applicable portion of the License Area and surrender it to the City in good order and condition, normal wear and tear excepted, free of debris and hazards, and free and clear of all liens and encumbrances. Immediately before the Expiration Date or other termination of this Master License, Licensee shall remove all of Licensee's Equipment except for any fiber optic cable to which the City will obtain title under Section 7.8 (Title to Licensee's Equipment and Other Improvements) and repair any damage resulting from the removal. Licensee's obligations under this Section 24.1 will survive the Expiration Date or other termination of this Master License.

24.2. Abandonment

At its option, the City may deem any items of Licensee's Equipment that remain on a City Pole or otherwise on the License Area or other City Property more than 30 days after the Expiration Date of this Master License to be abandoned and in such case the City may dispose of the abandoned Equipment in any lawful manner after expiration of a 60-day period initiated by the City's notice to Licensee to remove the Equipment. Licensee agrees that California Civil Code sections 1980 et seq. and similar provisions of the Civil Code addressing abandoned property by residential or commercial tenants do not apply to any abandoned Equipment.

24.3. Holding Over

Any holding over after the Expiration Date with the express consent of the City will be construed to automatically extend the Term of this Master License for a period of one License Year at a License Fee equal to 150% of the License Fee in effect immediately before the Expiration Date, and the Master License otherwise will be on its express terms and conditions. Any holding over without the City's consent will be a default by Licensee and entitle the City to exercise any or all of its remedies, even if the City elects to accept one or more payments of License Fees, Additional Fees or other amounts payable to the City from Licensee after the Expiration Date.

25. HAZARDOUS MATERIALS

25.1. Hazardous Materials in License Area

Licensee covenants and agrees that neither Licensee nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, disposed of or Released in, on, under or about the License Area or any other part of City Property, or transported to or from any City Property in violation of Environmental Laws, except that Licensee may use small quantities of Hazardous Materials as needed for routine operation, cleaning and maintenance of Licensee's Equipment that are customarily used for routine operation, cleaning and maintenance of such equipment and so long as all such Hazardous Materials are contained, handled and used in compliance with Environmental Laws. Licensee shall immediately notify the City if and when Licensee learns or has reason to believe any Release of Hazardous Material has occurred in, on, under or about the License Area or other City Property.

25.2. Licensee's Environmental Indemnity

If Licensee breaches any of its obligations contained in this Section, or if any act, omission, or negligence of Licensee or any of its Agents or Invitees results in any contamination of the License Area or other City Property, or in a Release of Hazardous Material from, on, about, in or beneath any part of the License Area or other City Property, or the violation of any Environmental Law, then Licensee, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless the City, including its Agents, and their respective successors and assigns from and against any and all Claims (including damages for decrease in value of the License Area or other City Property, the loss or restriction of the use of usable space in the License Area or other City Property and sums paid in settlement of Claims, attorneys' fees, consultants' fees, and experts' fees and related costs) arising during or after the Term of this Master License relating to such Release or violation of Environmental Laws; provided, however, Licensee shall not be liable for any Claims to the extent such Release was caused by the gross negligence or willful misconduct of the City or its Agents. Licensee's Indemnification obligation includes costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought onto the

License Area or other City Property by Licensee or any of its Agents or Invitees and to restore the License Area or other City Property to its condition prior to Licensee's introduction of such Hazardous Material or to correct any violation of Environmental Laws. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and the other Indemnified Parties from any Claim that actually or potentially falls within this Indemnity provision even if the allegations supporting the Claim are or may be groundless, fraudulent, or false, which obligation arises at the time such Claim is tendered to Licensee by the Indemnified Party and continues until the Claim is finally resolved. Without limiting the foregoing, if Licensee or any of its Agents or Invitees causes the Release of any Hazardous Material on, about, in, or beneath the License Area or other City Property, then in any such event Licensee shall, immediately, at no expense to any Indemnified Party, take any and all necessary actions to return the License Area or other City Property, as applicable, to the condition existing prior to the Release of any such Hazardous Materials on the License Area or other City Property or otherwise abate the Release in accordance with all Environmental Laws, except to the extent such Release was caused by the gross negligence or willful misconduct of the City or its Agents. Licensee shall afford the City a full opportunity to participate in any discussions with Regulatory Agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise or proceeding involving Hazardous Material.

26. TERMINATION

26.1. Termination for Failure to Obtain Regulatory Approvals

In the event that Licensee cannot obtain all Regulatory Approvals required for any Pole License after six months from the subject Pole License effective date, then either the City or Licensee may terminate that Pole License on 60 days' notice to the other party delivered within 10 days after said six-month period elapses. The parties agree that the Commencement Date will be deemed to have not occurred for any Pole License terminated under this section, and Licensee will have no obligation to pay the applicable License Fee for that Pole License.

26.2. Licensee's Termination Rights

26.2.1. Master License Termination Rights

Licensee may, in Licensee's sole discretion, elect not to extend this Master License at the end of the initial ten (10) year term or any subsequent extension terms with at least one (1) year's written notice to the City at any time after the Effective Date. Licensee may not terminate this Master License during the initial ten (10) year term except as expressly provided in this Master License.

26.2.2. Pole License Termination Rights

Licensee may, in Licensee's sole discretion, terminate any Pole License on 90 days' written notice to the City at any time after 12 months from the subject Pole License

Commencement Date so long as Licensee is not in default with respect to the subject Pole License.

26.2.3. Termination Rights after Pole Replacement

In the event that the City exercises its absolute right to replace any Pole, the City shall make a reasonable effort to provide Licensee with at least 60 days' notice. The City's failure to provide at least 60 days' notice prior to any Pole replacement shall not affect the City's rights under this Master License. Within 90 days after Licensee receives notice from the City, Licensee may elect to either (1) install Licensee's Equipment on the replacement Pole at Licensee's sole cost and expense or (2) terminate the applicable Pole License as to the replacement Pole.

26.3. City's Absolute Right to Terminate Pole Licenses

The City has the absolute right to terminate any or all Pole Licenses on 30 days' written notice to Licensee when the City determines, in the City's sole discretion, that Licensee's continued use of the License Area adversely affects or threatens public health and safety, constitutes a nuisance, interferes with the City's municipal functions or requires the City to maintain a Pole no longer necessary for the City's purposes.

26.4. Licensee's Rights after Termination

In the event that the City terminates any Pole License for reasons unrelated to Licensee's failure to perform its obligations under this Master License, the City shall refund any pre-paid Licensee Fee on a pro-rata basis. In addition, the City shall prioritize Licensee's Pole License Application for any Pole License to replace the terminated Pole License; provided, however, that (1) the City shall prioritize only as many Pole License Applications as Pole Licenses terminated by the City and (2) the City's prioritization will not affect Licensee's obligations under this Master Agreement.

27. INTERFERENCE

27.1. Licensee's Obligation Not to Cause Interference

Licensee will not operate or maintain its Equipment in a manner that interferes with or impairs other communication (radio, telephone and other transmission or reception) or computer equipment lawfully used by any person, including the City or any of its Agents. Such interference will be an event of default under this Master License by Licensee, and upon notice from the City, Licensee shall be responsible for eliminating such interference promptly and at no cost to the City. Licensee will be required to use its best efforts to remedy and cure such interference with or impairment of City operations. If Licensee does not cure the default promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the City will have the right to bring an action against Licensee to enjoin such interference or to terminate all Pole

Licenses where the Equipment is causing interference or impairment, at the City's election.

27.2. Impairment Caused by Change in City Use

If any change in the nature of the City's use of the License Area during the Term results in measurable material adverse impairment to Licensee's normal operation of its Equipment making it necessary to alter the Equipment to mitigate the adverse effect, Licensee shall notify the City and provide evidence of the claimed impairment. Upon receipt of such notice, the City will have the right to make its own reasonable determination and, if it agrees with Licensee, investigate whether it can reasonably and economically mitigate that interference. The City will provide notice to Licensee of the City's determination.

If the City determines in its sole discretion that mitigation is feasible and can be achieved for a reasonable cost in the City's reasonable judgment, the City's notice will specify when the City will mitigate the adverse effect. The City's mitigation will effect a cure, and the City will not be liable to Licensee in any other way or be required to take any other measures with respect to the Equipment.

If the City determines in its sole discretion that mitigation is not feasible or cannot be achieved for a reasonable cost in the City's reasonable judgment, Licensee may elect either to: (1) terminate the Pole License as to the affected City Pole and receive a ratable reduction in the License Fee; or (2) take steps itself at its own cost to mitigate the adverse effect and continue to operate the Equipment on the City Pole, and receive from the City a waiver of the License Fee for the first six months of the following License Year under the affected Pole License to offset the cost of mitigation.

Licensee agrees that the City's temporary and partial abatement or waiver of the License Fee under this Section 27.2 will be the only compensation due to Licensee for costs incurred or otherwise arising from the adverse effect as liquidated damages fully compensating Licensee for all Claims that may arise or be related to the adverse effects. Under no circumstances may the City be required to alter its operations at the identified City Pole or provide a replacement City Pole to Licensee.

27.3. Impairment Caused by City Access

Licensee agrees that it will not be entitled to any abatement of License Fees if the City exercises its rights of access under Section 8.1 (City Access to License Area) unless the City's activities cause Licensee to be unable to operate Equipment on the License Area for its permitted use for a period of more than 10 days, in which case, subject to proof, License Fees will be abated ratably for the entire period that Licensee is unable to operate any Equipment on any affected City Pole.

28. MISCELLANEOUS PROVISIONS

28.1. Notices

Except as may be specifically provided otherwise in this Master License, all notices, demands or other correspondence required to be given under this Master License must be written and delivered through (1) an established national courier service that maintains delivery records and confirmations; (2) hand delivery; or (3) certified or registered U.S. Mail with prepaid postage and return receipt requested, and addressed as follows:

TO CITY: Department of Economic Development
Attn: Rick Ryals
276 Fourth Avenue
Chula Vista, CA 91910
Telephone: (619) 691-5118
Email: rryals@chulavistaca.gov

with a copy to: City Attorney
276 Fourth Avenue
Chula Vista, CA 91910
Telephone: (619) 691-5037
Facsimile: (619) 409-5823
Email: cityattorney@ci.chula-vista.ca.us

TO LICENSEE:

All notices under this Master License will be deemed to have been delivered: (i) five days after deposit if delivered by first class mail; (ii) two days after deposit if delivered by certified mail; (iii) the date delivery is made by personal delivery or overnight delivery; or (iv) the date an attempt to make delivery fails because a party has failed to provide notice of a change of address or refuses to accept delivery. Telephone, facsimile and email information are provided for convenience and for couriers who may require such information, and any notice given solely through electronic means will not be deemed to be effective notice. Any copies required to be given constitute an administrative step

and not actual notice. The parties may change the notice addresses above from time-to-time through written notice to the addresses above or the then-current notice address.

28.2. Waiver; No Implied Waivers

No failure by either party to insist upon the strict performance of any obligation of the other under this Master License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, will constitute a waiver of such breach. No acceptance by the City or any its Agent of full or partial payment of License Fees or Additional Fees during the continuance of any such breach will constitute a waiver of such breach or of the City's right to demand strict compliance with such term, covenant or condition, or operate as a waiver of any requirement of this Master License. No express waiver by either party of any default or the performance of any provision hereof will affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more waivers of a default or the performance of any provision hereof by either party will not be deemed to be a waiver of a subsequent default or performance. The City's consent given in any instance under the terms of this Master License will not relieve Licensee of any obligation to secure the City's consent in any other or future instance under the terms of this Master License.

28.3. Amendments

No part of this Master License (including all Pole Licenses) may be changed, waived, discharged or terminated orally, nor may any breach thereof be waived, altered or modified, except by a written instrument signed by both parties.

28.4. Interpretation

The following rules of interpretation apply to this Master License.

28.4.1. General

Whenever required by the context, the singular includes the plural and vice versa; the masculine gender includes the feminine or neuter genders and vice versa; and defined terms encompass all correlating forms of the terms (e.g., the definition of "indemnify" applies to "indemnity," "indemnification," etc.).

28.4.2. Multi-party License

In the event that the City provides consent, which the City may withhold for any or no reason, to enter into this Master License with more than one Licensee, the obligations and liabilities under this Master License imposed on Licensee will be joint and several among them.

28.4.3. Captions

The captions preceding the sections of this Master License and in the table of contents

have been inserted for convenience of reference and such captions in no way define or limit the scope or intent of any provision of this Master License.

28.4.4. City Actions

All approvals, consents or other determinations permitted or required by the City under this Master License will be made by or through the Public Works Director/City Engineer or his or her designee, unless otherwise provided in this Master License or by the City Charter, Municipal Code or any City ordinance.

28.4.5. Words of Inclusion

The use of the term “including,” “such as,” or words of similar import when following any general or specific term, statement or matter may not be construed to limit the term, statement or matter to the stated terms, statements or matters, whether or not language of non-limitation, such as “including, but not limited to” and “including without limitation” are used. Rather, the stated term, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within the broadest scope of the term, statement or matter.

28.4.6. Laws

References to all “Laws,” including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the Effective Date and as they are amended, replaced, supplemented, clarified, corrected or superseded at any time while any obligations under this Master License or any Pole License are outstanding, whether or not foreseen or contemplated by the parties.

28.5. Successors and Assigns

The terms, covenants and conditions contained in this Master License bind and inure to the benefit of the City and Licensee and, except as otherwise provided herein, their successors and assigns.

28.6. Brokers

Neither party has had any contact or dealings regarding the license of the License Area, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder’s fee in connection with the license contemplated herein (“**Broker**”), whose commission, if any is due, is to be paid pursuant to a separate written agreement between such Broker and the party through which such Broker contracted. In the event that any Broker perfects a claim for a commission or finder’s fee based upon any such contact, dealings or communication, Licensee shall indemnify the City from all Claims brought by the Broker. This Section will survive expiration or earlier termination of this Master License.

28.7. Severability

If any provision of this Master License or the application thereof to any person, entity or circumstance is invalid or unenforceable, the remainder of this Master License, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each provision of this Master License will be valid and be enforced to the full extent permitted by Law, except to the extent that enforcement of this Master License without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Master License.

28.8. Governing Law; Venue

This Master License must be construed and enforced in accordance with the laws of the State of California and the City Charter, without regard to the principles of conflicts of law. This Master License is made, entered and will be performed in the City of Chula Vista, County of San Diego, State of California. Any action concerning this Master License must be brought and heard in Superior Court for the County of San Diego or in the United States District Court for the Southern District of California.

28.9. Time for Performance

Provisions in this Master License relating to number of days mean calendar days, unless otherwise specified. "Business day" means a day other than a Saturday, Sunday or a bank or City holiday. If the last day of any period to give notice, reply to a notice, or to undertake any other action occurs on a day that is not a business day, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding business day. Time is of the essence with respect to all provisions of this Master License in which a definite time for performance is specified.

28.10. Survival

Expiration or earlier termination of this Master License will not affect the right of either party to enforce any and all Indemnities and representations and warranties given or made to the other party under this Master License, or any provision of this Master License that expressly survives termination.

28.11. Recording

Licensee agrees not to record this Master License, any Pole License or any memorandum or short form of any of them in the Official Records of the County of San Diego.

28.12. Counterparts

This Master License may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will be one and the same instrument.

28.13. Approval Authority

Each person signing this Master License and any Pole License on behalf of Licensee warrants and represents that: (i) he or she has the full right, power and capacity to act on behalf of Licensee and has the authority to bind Licensee to the performance of its obligations under those agreements without the subsequent approval or consent of any other person or entity; (ii) Licensee is a duly authorized and existing entity; (iii) Licensee is qualified to do business in California; and (iv) Licensee has full right and authority to enter into this Master License and Pole Licenses. Upon the City's request, Licensee shall provide the City with evidence reasonably satisfactory to the City confirming the representations and warranties above.

28.14. Most Favored Nation Provisions

Licensee shall report to the City at the City's request, the terms of any agreement or amendment to an existing agreement with any other public agency or public agencies within San Diego County for the same or substantially the same Permitted Use, that contains a fee or other significant financial benefit greater than the License Fee or other significant financial benefit to the City contained in this Master License or any Pole License. Licensee shall also report about such other provisions which may be beneficial to Licensee. If the City decides the fee or other significant financial benefit should be incorporated into this Master License and any Pole License issued under this Master License, such change shall be provided for by an amendment in a form reasonably acceptable to both the City and Licensee; any such change shall not be considered a renewal or enlargement of this Master License.

[END OF MASTER LICENSE – SIGNATURES APPEAR ON NEXT PAGE]

The City and Licensee executed this Master License as of the date last written below:

THE CITY:

LICENSEE:

City of Chula Vista,
a California municipal corporation

By: _____

By: _____

Its: City Manager

Its: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Glen R. Googins
City Attorney

Date: _____

APPROVED BY CITY COUNCIL
RESOLUTION No. **[insert]**

ATTEST:

By: _____
Kerry Bigelow
City Clerk

Date: _____

[END OF SIGNATURE – EXHIBITS AND SCHEDULES APPEAR ON NEXT PAGE]

EXHIBIT A

FORM OF POLE LICENSE AGREEMENT

MLA NO. [INSERT]

POLE LICENSE NO. [INSERT NUMBER IN CONSECUTIVE ORDER]

Pursuant to that certain Master License between the City of Chula Vista, a California chartered municipal corporation (the “**City**”) and _____ (“**Licensee**”), Licensee submits to the City two partially executed counterparts of this Pole License, together with all the materials listed below, as its Pole License Application in accordance with Section 6 under the Master License:

1. Exhibit A-1, which designates all Pole Locations that Licensee seeks to be included in the License Area under this Pole License;
2. Exhibit A-2, which includes complete, detailed and final plans and specifications for all Licensee’s Equipment to be installed in the License Area, subject to Regulatory Approvals;
3. an Pole License Processing Fee equal to [\$1,000 multiplied by the number of pole locations];
4. an RF Compliance Report, if not previously provided;

Licensee acknowledges that: (1) this Pole License will not be effective until the City returns a fully executed copy to Licensee; (2) the City may require Licensee to supplement the Administrative Fee on conditions specified in Section 4.2 under the Master License; (3) Licensee will not have the right to access or install Equipment on the License Area until after Licensee has: (a) submitted a complete Acknowledgment Letter to the City with all information and funds required, which includes the applicable License Fee specified in Schedule A-4; (b) submitted insurance information to the City as specified in Exhibit A-3; and (c) the City has provided notice to proceed by returning to Licensee a countersigned copy of the Acknowledgment Letter.

This Pole License is executed and effective on the last date written below and, upon full execution will be the City’s authorization for the City to begin its review of the Pole Locations and plans and specifications proposed in this Pole License application.

[Signatures begin on next page]

THE CITY:

City of Chula Vista,
a California municipal corporation

By: _____

Its: _____

Date: _____

LICENSEE:

By: _____

Its: _____

Date: _____

EXHIBIT A-1

POLE LOCATIONS / LICENSE AREA

MLA No. [REDACTED] / Pole License No. [REDACTED]

[Licensee to list all proposed Pole Locations requested in this Pole License Application]

EXHIBIT A-2

LICENSEE'S PLANS AND SPECIFICATIONS

MLA No. [REDACTED] / Pole License No. [REDACTED]

[Licensee to attach all plans and specifications for all Equipment proposed to be installed at all proposed Pole Locations]

EXHIBIT A-3

FORM OF ACKNOWLEDGEMENT LETTER

[Licensee to complete and submit with Pole License Application or upon obtaining all Regulatory Approvals]

[insert date]

[insert addressee information]

RE: MLA No. [] / Pole License No. []

Dear City Manager:

This letter will confirm the following: (1) that Licensee has obtained all the Regulatory Approvals required for the Permitted Use under this Pole License, and (2) the Commencement Date of this Pole License is [insert date], which is the first day of the month after Licensee obtained all Regulatory Approvals.

This letter also confirms that Licensee has submitted all required insurance and bond information to the City. A check for the full Security Deposit (if not already provided) and the License Fee for the first License Year of this Pole License is enclosed herewith.

Please acknowledge the City's receipt of this letter and the items listed below, and issue the City's approval for Licensee to begin installation of Equipment on the License Area by signing and returning a copy of this letter.

Sincerely,

[insert name]

[insert title][Intentionally deleted]

[Acknowledgement signature on next page]

Acknowledgment

By signing below, the City acknowledges receipt of this letter and the enclosures listed below. Based upon receipt of the same, the City issues a notice to Licensee to proceed with installation of the approved Equipment in strict accordance the Pole License and the Master License as of the date below.

City of Chula Vista,
a California municipal corporation

By: _____

Its: _____

Date: _____

Enc.

- Executed Pole License
- Approved WTF Permit
- All other Regulatory Approvals
- Insurance certificates
- Contractor's bonds
- First License Year's License Fee

SCHEDULE A-4

ANNUAL LICENSE FEE AND DEFAULT FEE SCHEDULE

Pole License No.

Year	Per Pole Fee		1 Additional Carrier Fee	2 Additional Carriers Fee
1	\$ 1,500.00		\$2,000.00	\$2,500.00
2	\$			
3	\$			
4	\$			
5	\$			
6	\$			
7	\$			
8	\$			
9	\$			
10	\$			

DEFAULT FEE SCHEDULE		
VIOLATION	INITIAL NOTICE	EACH FOLLOW-UP NOTICE
unauthorized installations	\$500	\$500
failure to make required repairs	\$300	\$350
access violations	\$300	\$350
insurance violations	\$300	\$350