

Attachment G

Draft Master License Agreement Template

MASTER LICENSE AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND <LICENSEE> FOR WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

This MASTER LICENSE AGREEMENT (“Master License”) is entered into between the City of Newport Beach, a California municipal corporation and charter city (“City”), and <Licensee>, a California <entity type> (“Licensee”) on this _____ day of _____, 20__ (“Effective Date”). City and Licensee are each a “Party” and together the “Parties” to this Master License.

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the City Charter;
- B. City is the fee title owner of certain Streetlight(s), as defined in Section 1 below, located within the Public Right-of-Way in the City of Newport Beach, California;
- C. Licensee has requested to install, maintain, access, and operate wireless facilities in the Public Right-of-Way as specified in this Master License;
- D. City Council Policy L-23 establishes the rates for wireless facilities located in the Public Right-of-Way; and
- E. City is willing to make approved locations within the City of Newport Beach available to Licensee on a non-exclusive basis via Amendment(s), and subject to the terms, conditions of this Master License.

NOW THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. DEFINITIONS

1.1 “Amendment” means an agreement executed by the Parties in substantially the same form as Exhibit “A” describing and depicting the License Area(s) on which Licensee is authorized to install Wireless Facilities. The Amendment form may be modified in the future without amendment to this Agreement. The Amendment may have special clauses specific to each Licensed Area. In the event of a discrepancy or inconsistency between the term and conditions of a particular Amendment and this Master License, the terms and conditions of this Master License shall govern and control.

1.2 “City Pole” means any, standard-design concrete, fiberglass, or metal pole that is owned by the City that features a mast arm for electrolier support and is used for streetlighting purposes.

1.3 “FCC” means the Federal Communications Commission or successor entity.

1.4 “License Area” means, individually, that specific portion of the Public Right-of-Way authorized by the City for the installation, operation, and maintenance of Wireless Facilities on an approved Streetlight or Licensee Streetlight.

1.5 “Light Fixture” means the City-owned lighting unit mounted to a pole, including the lamp, housing, and photocells.

1.6 “Licensee Streetlight” means a streetlight furnished by Licensee, in accordance with Section 8 of this Master License.

1.7 “NBMC” shall mean the Newport Beach Municipal Code.

1.8 “Public Right-of-Way” means the improved or unimproved surface of and the space above and below a City easement for public utility purposes, or street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use now or hereafter held by City, however acquired.

1.9 “Regulatory Approvals” means licenses, permits, and other approvals necessary from City, state and federal agencies for Licensee to install, operate, and maintain the Wireless Facilities on the License Area(s), which may include a blanket encroachment permit, if required by City.

1.10 “Standards and Regulations” means the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations published by the City’s Public Works Director.

1.11 “Streetlight” or “City-owned Streetlight” means the streetlights owned and operated by the City within the Public Right-of-Way. The Streetlight shall include the City pole, light fixture (luminaire), photocell and any associated City-owned electrical components and structures associated with the operation of the Streetlight.

1.12 “Temporary Streetlight” means a standard design streetlight of equal version to surrounding Streetlights that is temporary in nature.

1.13 “Utility Use Fee” means the monthly fee charged to Licensee for each License Area(s) that uses the City’s power source in lieu of installing a separate electrical meter.

1.14 “Wireless Facility(ies)” means equipment installed for the purpose of providing wireless transmission of voice, data, images, or other information including, but not limited to, cellular telephone service, personal communications services, and paging services, consisting of equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, equipment cabinets, pedestals, meters, tunnels, vaults, splice boxes, surface location markers, related transmission equipment, equipment buildings, parking areas, and other accessory development.

2. LICENSE

2.1 City grants a non-exclusive license to Licensee to install, operate, maintain, and remove Wireless Facilities within the Public Right-of-Way, pursuant to the terms and conditions of this Master License and any executed Amendment(s).

2.2 If support equipment is placed on private property, Licensee shall obtain the private property owner's prior written authorization in a form approved by the City Attorney.

2.3 This Master License and any Amendment(s) granted herein are subject to the terms, covenants and conditions set forth herein. As a material part of the consideration for this Master License, Licensee covenants to comply with and perform each and every term, covenant, and condition of this Master License.

3. USES

3.1 Licensee shall use the License Area(s) for the sole purpose of constructing, installing, operating, maintaining, and securing Wireless Facilities to provide wireless telecommunications service.

3.2 Licensee shall not intensify, expand, modify, or alter its Wireless Facilities, operating frequencies, or use of the License Area without the City's prior written consent and the issuance of all required Regulatory Approvals. Except as expressly permitted under this Master License, Licensee shall not make any alterations, additions, or structural improvements to License Area, including painting, or installing unauthorized lighting, decorations, signs, lettering, advertising media, or other visual displays—without the prior written approval of the City.

3.3 Notwithstanding the restrictions in Section 3.2, Licensee shall place warning and safety signage on or about the Wireless Facilities as strictly required by federal, state, or local regulations (including FCC radiofrequency exposure guidelines). The type, size, and precise placement of all such required signage must be clearly depicted on the City-approved construction drawings and permit sets.

4. PERMITS, APPROVALS AND PUBLIC NOTIFICATION

4.1 All Wireless Facilities shall be installed pursuant to a fully executed Amendment under Section 5 of this Agreement. Each Amendment is expressly contingent upon Licensee obtaining, at its sole cost and expense, all applicable Regulatory Approvals to construct, install, operate, maintain, repair, and remove the Wireless Facilities within the Licensed Areas. All such activities must strictly comply with: (1) The approved site plans and related drawings on file with the City's Community Development Department; (2) Regulatory Approvals; (3) The Newport Beach Municipal Code (NBMC), including Chapter 13.22 and City Council Policies, as may be amended from time to time; and (4) The requirements outlined in the Standards and Regulations.

4.2 Licensee shall provide the City's Real Property Administrator with a copy of all Regulatory Approvals that are required to enable Licensee to install and operate a Wireless Facility at each Licensed Area. Licensee shall submit all required items along with the processing fee, as outlined in Section 7.1, below.

5. AMENDMENT TO MASTER LICENSE AGREEMENT

5.1 Licensee shall submit to the Community Development Director a proposed list of locations ("Site List") identifying the specific City-owned Streetlights targeted for Wireless Facility installation or replacement, along with a description and depiction of each proposed site ("License Area Depiction") to be licensed under an Amendment(s) to this Master License. The submission of a proposed Site List does not grant any right to access the Public Right-of-Way or obligate the City to execute an Amendment.

5.2 The review and approval of the Site List and each License Area Depiction shall be conducted in compliance with the requirements and procedures set forth Section 4 of this Master License.

5.3 The Parties shall execute an Amendment to this Master License once the Site List and License Area Depiction is approved by City. The Amendment shall be effective and incorporated into this Master License once the Amendment is fully executed by the Parties. A sample form of the Amendment is attached hereto as Exhibit "A."

5.4 Should the Licensee determine a location on the Site List is no longer necessary, or wish to obtain a License Area for a location not on the Site List, Licensee shall be responsible for obtaining the necessary Regulatory Approvals for any site where they wish to install Wireless Facilities, and execute an Amendment to the Master License adding the new License Area(s) or removing the existing location(s).

5.5 The City Manager is authorized to execute Amendments on the City's behalf with the approval as to form by the City Attorney.

5.6 Licensee shall only install Wireless Facilities within the License Area(s) identified on the Site List, incorporated into this Master License by a fully executed Amendment to this Master License.

6. TERM

6.1 The initial term of the license granted hereunder ("Initial Term") shall commence on the Effective Date and continue for a period of ten (10) years. After the Effective Date, this Master License shall not be revoked or terminated except as expressly provided in this Master License.

6.2 This Master License shall automatically be extended on the same terms and conditions as set forth in this Master License, for up to two (2) successive terms of five (5) years (each, a "Renewal Term"), unless at least thirty (30) calendar days prior to the expiration of the Initial Term or the applicable Renewal Term, unless the Licensee notifies the City in writing of their intention not to extend this Master License. Notwithstanding the

above, this Master License shall not be automatically extended if Licensee has defaulted in the performance of any term or condition of the Master License and has failed to cure such default after notice as provided in this Master License. "Term" shall refer to the Initial Term and all Renewal Terms (if applicable), unless expressly stated elsewhere within this Master License.

6.3 Each Amendment shall become effective and commence its initial term ("Amendment Initial Term") on the first day of the month following its full execution. The Amendment's Initial Term shall be ten (10) years. The term shall automatically extend for up to three (3) successive five (5) year periods (each, an "Amendment Extension Term"), unless either Party delivers a written notice of non-renewal at least one hundred eighty (180) days prior to the expiration of the then-current term. Notwithstanding the timelines above, all individual Amendment(s) executed between the Parties under this Master License shall automatically expire concurrently with the expiration or termination of this Master License.

7. FEES

7.1 Processing Fee. For each Amendment, Licensee shall pay City a nonrefundable document preparation fee in the amount of _____ and 00/100 (\$ _____), as adjusted from time-to-time in accordance with the City's then current fee schedule. This amount shall be paid upon request to prepare an Amendment and prior to execution of the Amendment by the Parties.

7.2 Licensee shall pay an annual License Fee for each License Area identified in the applicable Amendment's Site List. The obligation to pay the License Fee shall begin on the "License Fee Commencement Date," which shall be the effective date of the Amendment (i.e., the date that the Amendment is fully executed and delivered by and between City and Licensee). For invoicing purposes, the initial "License Year" for an approved Amendment shall begin on its respective License Fee Commencement Date and end on the immediately following June 30. Each subsequent License Year shall run concurrently with the City's fiscal year from July 1 through June 30.

7.3 License Fee. Within forty-five (45) days of the License Fee Commencement Date, Licensee shall pay to the City the pro-rata License amount covering the period from the License Fee Commencement Date through June 30. Thereafter, Licensee shall pay to the City the annual License Fee for each Amendment as set forth by the License Fee Schedule attached hereto as Exhibit "B".

7.4 License Fee Adjustments. The License Fee may be adjusted in July of each License Year to reflect increases or decreases in the cost of living as indicated by the Consumer Price Index annually as described below. Rent may be adjusted if the Consumer Price Index for the Los Angeles – Long Beach – Anaheim, CA, All Urban Consumers, All Items, Not Seasonally Adjusted ("Index"), as published by the United States Department of Labor, Bureau of Labor Statistics ("Bureau"), increases or decreases over the term of this Lease. The initial "Base Period Index" shall be the index for the month of September (thus, September 2025, which equals 345.865). The initial

Base Period Index shall be compared with the Index for the same calendar month for each subsequent License Year (“Comparison Index”). The Comparison Index used for a given year’s adjustment calculation will become the Base Period Index for purposes of the next annual fee adjustment calculation. If the Comparison Index is higher or lower than the Base Period Index, the annual license fee for the next License Year shall be increased or decreased by the amount of such percentage change. Should the Bureau discontinue the publication of the above Index, or publish same less frequently, or alter same in some other manner, then the Parties shall adopt a substitute Index or substitute procedure which reasonably reflects and monitors consumer prices.

7.5 In the event the FCC 2018 Order provisions related charges for small wireless facilities use of the Public Right-of-Way, are determined to be invalid, removed, stayed, or altered in a significant manner by the FCC or a court of competent jurisdiction, either party to this Agreement may request that the Parties meet and confer as to whether the License Fee provisions in this Master License should be modified. If after good faith negotiation the Parties are unable to reach an agreement regarding the License Fee to be paid hereunder, the License Fee for each Licensee Area, shall revert to the most current published fee schedule approved by the City Manager and available on the City’s website.

7.6 All License Fee payments shall be made in lawful money of the United States of America and shall be paid to City in person or by United States’ mail, or overnight service, at the Cashier’s Office located at 100 Civic Center Drive, P.O. Box 1768, Newport Beach, California, 92658, or to such other address as City may from time to time designate in writing to Licensee. If requested by City, Licensee shall make payments electronically (at www.newportbeachca.gov) or by wire transfer (at Licensee’s cost). Licensee assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by City regardless of the method of transmittal.

7.7 Delinquent Payments. A ten percent (10%) penalty shall be added to the License if not received by City within five (5) calendar days after July 1st of each License Year. In addition, an unpaid License Fee shall accrue interest on the amount due at the rate of ten percent (10%) interest per annum from the date due and payable by the terms of this Master License until paid in full. All late charges and interest payments hereunder, shall, as incurred, become a License Fee due under this Master License.

7.8 Adjustment of License Fee Upon Modification of Use. The City and Licensee intend this Master License and any Amendment to cover only “small cell” installations, as those terms are commonly understood to mean small, low-power, low-elevation, unobtrusive wireless facilities intended to cover relatively small geographic areas. The License Fee, as set out in Section 7.3, is based upon the scope of the project outlined. Changes to the Wireless Facility(ies), or License Area(s) may increase the value of the Master License. To the degree that a change in the Wireless Facility(ies) requires amendment or modification to the Amendment, City and Licensee understand and mutually agree that a corresponding increase in the market rate of the Wireless Facilities shall be commensurate with the additional License Area being used to reflect an

adjustment to the License Fee. Such an adjustment may be defined at the time at which Licensee seeks City's approval for modifications in the Wireless Facility, and shall be mutually agreed to by the Parties as a condition of the City's approval of such expanded service by the Licensee.

8. REPLACEMENT OF STREETLIGHTS

8.1 If the Wireless Facilities require replacement of a City-owned Streetlight, Licensee shall be responsible for all costs to remove the existing Streetlight and design, procure, and install a Licensee Streetlight. A Licensee Streetlight shall comply with the City's Standards and Regulations (as determined by the City) and shall remain the Property of Licensee for the duration of the term.

8.2 Upon approval of the installation of a Licensee Streetlight, Licensee shall have one hundred eighty (180) calendar days to install a Licensee Streetlight. The existing Streetlight shall remain in operating condition until such time a Licensee Streetlight is installed. Licensee shall have seventy-two (72) hours to complete the installation of a Licensee Streetlight once the existing Streetlight is removed.

8.2 In the event Licensee removes a Streetlight or Temporary Streetlight, Licensee shall use its best efforts to remove the Streetlight or Temporary Streetlight in a manner whereby the Streetlight or Temporary Streetlight can be reused. The Streetlight or Temporary Streetlights and or any components removed by the Licensee shall remain the property of the City. Licensee shall contact the Municipal Operations Director or his/her designee at (949) 644-3055 at least five (5) working days prior to removal for instructions on where to deliver the Streetlight or Temporary Streetlight along with the components upon removal.

9. INTERFERENCE WITH CITY WIRELESS FACILITIES

9.1 Licensee agrees that its operation of the Wireless Facilities shall at all times comply with all FCC requirements and shall not cause any direct or indirect interference with the City's own wireless communications facilities, including but not limited to public safety transmissions, police and fire communications, water or sewer internal or external radio signals and communications, as they now exist or may from time-to-time hereafter exist ("City's Facilities").

9.2 In the event of any interference with City Police or Fire Department public safety communications, Licensee shall work with the affected department(s) to correct the interference within twenty-four (24) hours of City's written or telephone notice to Licensee. In the event of interference with City's Wireless Facilities including wireless communications system or external radio signals and communications other than Police or Fire Department, Licensee shall work with City to correct the interference within seventy-two (72) hours of City's written or telephone notice to Licensee. If it is determined the interference is caused by Licensee's Wireless Facilities and if Licensee is unable to correct interference to City's satisfaction, Licensee shall cease its operation of the interfering Wireless Facilities immediately, until the cause of the interference is corrected

to City's satisfaction. If Licensee fails to correct any interference, City may, in addition to and without compromising any other available remedy cut off power to Licensee's Wireless Facilities in the manner set forth in this Master License after notifying of City's intent to cut off power.

9.3 Prior to making any changes to the frequency or operating conditions approved by any permit issued by the City, Licensee shall submit plans for the proposed changes to City for its review and approval. Licensee agrees to fund any studies required to ensure that any contemplated changes will be compatible with the City's Wireless Facilities. No change shall occur prior to the City's written approval. Notwithstanding the foregoing, replacement of equipment with like-kind equipment by Licensee shall not be considered a change to operating conditions hereunder.

9.4 City agrees that City and/or any tenant, licensee or other permittee of City will be permitted to install on a Streetlight or Licensee's Streetlight only such equipment that is of the type and frequency that will not cause harmful interference with the then existing Wireless Facilities.

10. EMERGENCY

10.1 Licensee understands that the Wireless Facilities are located on a public structure or on public property and emergency situations may develop from time-to-time that require power to the Wireless Facilities to be immediately shut off and thereby interfere or temporarily terminate the Licensee's use of its Wireless Facilities. Notwithstanding any other provision in this Master License, Licensee agrees that if such a situation occurs, and/or there are frequency interferences of any nature between City's Police or Fire Department public safety communications equipment or City's facilities affecting operation of sewer or water service and that of Licensee in a manner that threatens public health or safety, City shall have the right to immediately shut off power to the Wireless Facilities and any equipment of Licensee's located in the License Area(s) for the duration of the emergency. Licensee shall reimburse City for all actual, reasonable costs and expenses incurred by City in connection with taking these emergency actions, including but not limited to labor, equipment use and contractor fees within thirty (30) days of receiving an itemized invoice. However, City agrees to use reasonable efforts to provide notice to Licensee prior to shutting-off power to the Wireless Facilities. Licensee agrees not to hold City responsible or liable for and shall protect, defend, indemnify and hold City harmless for any damage, loss, claim or liability of any nature suffered as a result of the loss of the use of the Wireless Facilities or other communication facilities by the shut off of power, as permitted hereunder.

10.2 Licensee agrees to install a clearly marked and accessible master power "cut-off" switch on the Wireless Facilities for the purpose of assisting City in such an emergency.

10.3 Unless otherwise specifically provided in a notice of termination of this Master License, City's exercise of the right to shut off any power to the Wireless Facilities pursuant to this Master License is not intended to constitute a termination of this Master

License by either Party and such event is a risk accepted by the Licensee. Licensee and City shall meet after the City determines that an emergency situation has ended to establish the time and manner in which power shall be restored.

10.4 City shall have the right to determine what constitutes an “emergency situation” pursuant to this Section.

11. ACCEPTANCE OF CONDITION OF LICENSE AREA

Licensee accepts use of the License Area(s) in an “as is” condition, with no warranty, express or implied from the City as to any latent, patent, foreseeable and unforeseeable condition of the License Area(s), including their suitability for the use intended by Licensee. To the best of City’s knowledge, License Area(s) have not been used for generation, storage, treatment or disposal of Hazardous Substances as defined in this Master License. The Licensee has conducted its own appropriate due diligence investigation of the License Area(s) prior to its execution of this Master License or any Amendment hereto, or will do so prior to its installation of Wireless Facilities within the License Area(s).

12. NO INTEREST IN PROPERTY

Nothing herein shall be deemed to create a lease, or easement of any property right, or to grant any, possessory or other interest in License Area(s), or any Public Right-of-Way, except for a revocable real property license to access and use the Wireless Facilities within the License Area(s) for the term and on the conditions set forth in this Master License and any applicable Amendment(s).

13. RESERVATION OF RIGHTS

Licensee understands, acknowledges and agrees that any and all authorizations granted to Licensee under this Master License are non-exclusive and shall remain subject to all prior and continuing regulatory and propriety rights and powers of City to regulate, govern and use City property, as well as any existing encumbrances, deeds, covenants, restrictions, easements, dedications and other claims of title that may affect City property.

14. UTILITIES

14.1 The Wireless Facilities shall be separately metered. Licensee shall be responsible for the cost of all utility services necessary for the operation of the Wireless Facilities, and if required by City, shall have such utilities installed underground and/or connected if already installed, and maintained at Licensee’s sole cost and expense (along with all ongoing use charges). Subject to City’s approval, Licensee shall obtain an encroachment permit from City’s Public Works Department and submit plans for underground construction of any required utility lines to City for its review and approval prior to commencement of construction.

14.2 Alternatively, subject to City’s prior written authorization, Licensee may tap into City’s power source within the applicable License Area where Licensee’s Wireless

Facilities are proposed to be located. Licensee shall pay to City a monthly fixed fee for the use of the City's Utility services, which the Parties agree shall initially be One Hundred Dollars (\$100.00) per License Area("Utility Use Fee"). City, upon not less than thirty (30) days' notice to Licensee, may increase or decrease the Utility Use Fee commensurate with costs incurred by City for Licensee's use of City provided utilities. City's costs incurred for Licensee's use of City provided utilities shall be determined in City's sole and absolute discretion, and Licensee agrees not to dispute the accuracy of any fee charged hereunder, either during the Term of the Agreement or at any time thereafter, on the basis that it exceeds the cost(s) actually incurred by City for Licensee's use of City provided utilities.

15. INSPECTION

City shall be entitled, at any time, to inspect Licensee's Wireless Facilities and License Area(s) for compliance with the terms of this Master License, and with all applicable Federal, State and local (including those of the City) government regulations.

16. CITY RETENTION RIGHTS

Licensee's right to use the License Area(s) during the term of this Master License shall be subordinate and junior to the rights of City to use and occupy the Streetlights, Licensee Streetlights, and License Area(s) for any purpose that does not interfere with Licensee's use of the Streetlights and License Area(s) as provided herein.

17. LICENSEE'S RETENTION OF TITLE

Title to the Wireless Facilities placed on the Streetlights, Licensee's Streetlights and License Area(s) by Licensee shall be held by Licensee or its equipment lessors, successors, or assigns. The Wireless Facilities shall not be considered fixtures.

18. SURRENDER

18.1 Obligation Upon Surrender. Within sixty (60) calendar days after the expiration or termination of this Master License, Amendment(s), or relocation or termination of a specific License Area, Licensee at its sole cost and expense, shall: (a) remove the Wireless Facilities; (b) remove the Licensee Streetlight in the License Area and restore the Streetlight; (c) restore the License Area to a condition satisfactory to and approved in writing by City; and (d) vacate the License Area. Any Wireless Facility that is not removed by Licensee within the time frames set forth in this Section may be declared abandoned and disposed of by the City in accordance with Section 18.2.

18.2 Abandonment. At its option, the City may deem any items of Licensee's Wireless Facilities that remain in a License Area or Streetlight after the applicable time period(s) set forth in Section 18.1 above to be abandoned and in such case the City may dispose of the abandoned Wireless Facilities in any lawful manner after expiration of a sixty (60) calendar day period initiated by a City written notice to Licensee to remove the Wireless Facilities. Should Licensee fail to restore the License Area(s) to a condition satisfactory to and approved in writing by City, City may perform such work or have such

work performed by others and Licensee shall reimburse City within thirty (30) calendar days for all direct and indirect costs associated with such work upon receipt of an invoice for such costs. 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.

19. ASSIGNMENT

19.1 All of the terms and provisions of this Master License shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Master License and the rights and obligations of Licensee shall not be assigned, transferred, or hypothecated (collectively, "transferred"), in whole or in part, without the express written consent of the City Manager or his/her designee. Any attempted transfer in violation of this Section shall be null and void. Except as provided below, the transfer of the rights and obligations of Licensee to any successor in interest or entity acquiring fifty-one percent (51%) or more of Licensee's stock or assets, shall be deemed an assignment requiring consent. Licensee shall provide City at least thirty (30) calendar days advance written notice of any proposed transfer.

19.2 If Licensee desires at any time to effect a transfer, it shall first deliver to City: (a) a written request for approval; (b) the name, address and most recent financial statements of the proposed transferee; (c) the proposed instrument of assignment or sublease, which in the case of assignment shall include a written assumption by the assignee of all obligations of this Master License arising from and after the effective date of assignment; and (d) any other information requested by the City Manager to assist him/her in making their decision.

19.3 Notwithstanding Section 19.1 above, Licensee may, without prior approval from time-to-time, do any of the following:

19.3.1 Grant to any person or entity a security interest in some or all of Licensee's Wireless Facilities which lien shall be subordinate and junior to this Master License. A security interest shall not include the Streetlights or other City property, and does not imply approval of any other use of the Wireless Facilities or License Area(s); and

19.3.2 Assign its rights hereunder: (i) to any entity which has, directly, or indirectly, a thirty percent (30%) or greater interest in Licensee (a "Parent") or in which Licensee or a Parent has a thirty percent (30%) or greater interest (an "Affiliate"); (ii) to any entity with which Licensee and/or any Affiliate may merge or consolidate; (iii) to a buyer of substantially all of the outstanding ownership units or assets of Licensee or any Affiliate; or (iv) to the holder or transferee of the FCC license under which the Wireless Facilities is operated, upon FCC and, if applicable, California Public Utilities Commission approval of any such transfer. Any such assignment shall be conditioned upon and not be effective until Licensee cures any defaults under this Master License and the assignee signs and

delivers to City a document in which the assignee accepts responsibility for all of Licensee's post, current and future obligations under the Master License.

19.4 No assignment by the Licensee shall release Licensee from continuing liability under this Master License with the exception of a buyout of the Licensee by another entity that formally assumes all past, current and future obligations of the Licensee under this Master License.

19.5 Wireless Facilities shall be mounted by Licensee and shall not be otherwise assigned, transferred, contracted, or subcontracted out without the prior written approval of City.

20. TAXES

20.1 Licensee recognizes and understands that this Master License may create a possessory interest subject to property taxation and that Licensee may be required to pay possessory interest taxes. (See Rev. & Tax. Code, sections 107–107.9.) Licensee further recognizes and understands that any sublicense or assignment permitted under this Master License and any exercise of any option to renew or extend this Master License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created under this Master License.

20.2 Licensee agrees to pay taxes of any kind, including possessory interest taxes that are assessed on Licensee's license interest created by any Amendment(s) entered into by Licensee and City pursuant to this Master License as well as excises, licenses, permit charges, and assessments based on Licensee's usage of the License Area that may be imposed upon Licensee by any applicable laws, if any, when the same become due and payable and before delinquency. Licensee agrees not to allow or suffer a lien for any taxes to be imposed upon the License Area without promptly discharging the same, provided that Licensee, if so desiring, will have a reasonable opportunity to contest the validity or amount of the same using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction and to the extent allowed by Laws. The City will provide Licensee with copies of all tax and assessment notices on or including the License Area promptly, along with sufficient written documentation detailing any assessment increases attributable to Licensee's Facilities, but in no event later than thirty (30) days after receipt by the City.

20.3 Licensee shall be responsible for any taxes and assessments attributable to and levied upon Licensee's Facilities. Licensee agrees not to allow or suffer a lien for any such taxes to be imposed upon Licensee's Facilities without promptly discharging the same, provided that Licensee, if so desiring, will have a reasonable opportunity to contest the validity or amount of the same using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction and to the extent allowed by Laws.

21. DEFAULT

21.1 Default by Licensee. The occurrence of any one or more of the following events shall constitute a default and material breach of this Master License by Licensee:

21.1.1 Failure of Licensee to pay License Fee due hereunder within ten (10) calendar days after written notice from City;

21.1.2 Any failure by Licensee to perform any of the other terms, conditions or covenants of this Master License to be observed or performed by Licensee after thirty (30) calendar days written notice from City;

21.1.3 Licensee becoming insolvent or filing any debtor proceedings, or should any adjudications in bankruptcy be rendered against Licensee, or should Licensee take or have taken against it, in any court pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Licensee's property, and should the same not be discharged within one hundred twenty (120) calendar days thereafter;

21.1.4 Licensee permitting the License Area to become vacant or unoccupied for thirty (30) consecutive calendar days after written notice to Licensee (except for vacancies caused by any *force majeure* or by remodeling, reconstruction, alteration or repairs permitted under this Master License); or

21.1.5 The appointment of a trustee or receiver to take possession of substantially all of the assets of Licensee located at the License Area or Licensee's interest in this Master License or the License Area, where possession is not restored within thirty (30) calendar days.

21.2 Except for the payment of License Fee, if the nature of Licensee's default or breach under this Master License is such that more than thirty (30) calendar days are reasonably required for its cure, then Licensee shall not be deemed to be in default or breach if Licensee commences such cure within such thirty (30) calendar day period and diligently proceeds with such cure to completion.

21.3 Remedies. In the event of a default or breach by Licensee and Licensee's failure to cure such default or breach, City may at any time and with or without notice do any or more of the following:

21.3.1 Re-enter the portion of the License Area giving rise to the Default, remove all persons and property, and repossess and enjoy such License Area.

21.3.2 Terminate this Master License and Licensee's right of possession of the License Area. Such termination shall be effective upon City's giving written notice and upon receipt of such notice; Licensee shall immediately surrender possession of the License Area to City.

21.3.3 Exercise any other right or remedy which City may have at law or equity.

21.4 City's Right to Cure Licensee's Default. Upon continuance of any material default beyond applicable notice and cure periods, City may, but is not obligated to, cure

the default at Licensee's cost. If City pays any money or performs any act required of, but not paid or performed by, Licensee after notice, the payment and/or the reasonable cost of performance shall be due as additional License Fee not later than thirty (30) days after service of a written demand accompanied by supporting documentation. No such payment or act shall constitute a waiver of default or of any remedy for default or render City liable for any loss or damage resulting from performance.

21.5 Waiver of Rights. Licensee waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, in the event Licensee is evicted or City takes possession of the License Area by reason of any default by Licensee.

22. TERMINATION

22.1 This Master License is not a lease; it is a license to use City-owned property. As such, the Parties hereby acknowledge and agree that City, as the licensor, may revoke this Master License at will and at any time during the Term, for any reason, with or without cause, by giving thirty (30) calendar days' written notice to the Licensee. However, City agrees that City will not exercise its right to revoke this Master License at will unless City determines, in its sole discretion, that Licensee is in default of this Master License as set forth in Section 21 or the City determines in accordance with all applicable laws that Licensee's continued use of the License Area adversely affects or poses a threat to public health and safety, constitutes a verified and material public nuisance, or interferes with the City's Streetlights, or utilities. The decision of whether to revoke the Master License when the basis of the revocation is an event of default as set forth in Section 21, shall be in the City's sole and absolute discretion.

22.2 In the event of City's material breach of any material obligation contained in this Master License and City's failure to cure such material breach within thirty (30) calendar days of receiving Licensee's written notice thereof, Licensee may terminate this Master License or license to use a specific License Area upon thirty (30) calendar days' prior written notice to City. Notwithstanding the above, if the nature of City's material breach under this Master License is such that more than thirty (30) calendar days are reasonably required for its cure, then City shall not be deemed to be in material breach if City commences such cure within such thirty (30) calendar day period and diligently proceeds with such cure to completion. Notwithstanding the foregoing, during a Renewal Term and upon one hundred eighty (180) days' written notice to City, Licensee may terminate this Master License or license to use a specific License Area for any reason; provided, however, if Licensee terminates this Master License or license to use a specific License Area under this subsection for any reason other than City's uncured material breach, Licensee shall pay to the City, concurrently with the delivery of its written termination notice, a termination fee equal to twelve (12) months' License Fee in effect as of the date of such termination for the specific License Area(s) affected thereby.

22.3 Termination of use of a specific License Area must be effected by amending the Amendment and removing the location from the Site List and/or License Area Depiction. Upon Licensee's termination of this Master License or removal of any License

Area from the Site List or License Area Depiction during the Term or any exercised Renewal Term, pursuant to the terms of Section 22.1 above, Licensee shall pay to the City that pro-rated portion of License Fee and/or fees specified in this Master License that is unpaid prior to the effective date of termination. Licensee shall be liable for and pay any License Fee owed for the License Area until such time as the Wireless Facilities have been removed from the License Area and the Master License has been amended to remove the location, whichever is later.

22.4 Any termination is subject to the Licensee complying with the surrender obligations of this Master License.

23. CONSTRUCTION

23.1 Licensee is authorized to install Wireless Facilities within the License Area(s) covered by an Amendment only in strict compliance with the plans and specifications approved by the City in that Amendment. All Licensee plans and specifications, and any Wireless Facilities installed, shall comply with all requirements outlined in the Standards and Regulations and all requirements set forth in this Master License.

23.2 All work associated with the construction, installation, operation, maintenance, repair, utility provisioning, and removal of the Wireless Facilities shall be performed at Licensee's sole cost, expense, and liability. This responsibility includes, without limitation, all municipal permit fees, engineering fees, and costs incurred to secure necessary Regulatory Approvals.

23.3 Licensee agrees to take all prudent action to protect the Streetlights and City facilities from any damage or injury caused by any work performed by or on behalf of Licensee regarding the construction, installation, operation, inspection, maintenance, repair, reconstruction, replacement, relocation, or removal of its Wireless Facilities or the failure, deterioration or collapse of such Wireless Facilities.

23.4 In accordance with the California Labor Code (Sections 1770 *et seq.*), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages, if applicable, in the locality in which the work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the work under this Master License. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. If applicable, all parties to the Master License shall be governed by all provisions of the California Labor Code – including, but not limited to, the requirement to pay prevailing wage rates (Sections 1770-7981 inclusive). If applicable, a copy of the prevailing wage rates shall be posted by the Licensee at the job site.

23.5 Without limitation of any other remedy available hereunder or at law or in equity, if Licensee fails to repair or refinish any such damage, City may, at its sole discretion, but not be required to, repair or refinish such damage and Licensee shall

reimburse City of all costs and expenses incurred in such repair or refinishing within thirty (30) calendar days of receipt of invoice from City.

23.6 Prior to the installation of a Wireless Facility, Licensee shall submit to the City and, throughout the Term plus ninety (90) calendar days thereafter, maintain in effect, a Faithful Performance Bond, in the form attached hereto as Exhibit "C," letter of credit or other security ("Security"), in the principal amount of ten thousand dollars (\$10,000) per License Area to ensure and secure faithful compliance with the conditions of this Master License. Alternatively, upon execution of this Master License, and prior to the entering into any Amendment itemizing Streetlights on a Site List, or installation of any Wireless Facility, the Licensee may submit and maintain one Faithful Performance Bond, in the form attached hereto as Exhibit "C," letter of credit or other security, in the principal amount of One Million Dollars (\$1,000,000), to ensure and secure faithful compliance with the conditions of this Master License. The Security shall be in a form acceptable to the City's Real Property Administrator, and shall remain in effect throughout the Term of this Master License plus ninety (90) calendar days thereafter. The purpose of the Security is to provide payment to the City for any and all expenditures incurred by the City under this Master License, including but not limited to costs of repairs and cost of removal of the Wireless Facilities upon expiration or termination of this Master License should Licensee fail to do so as required by this Master License. The Security shall in no way limit the liability or obligations of Licensee or its insurers under this Master License. If the funds represented by the Security become exhausted, Licensee shall immediately provide the City with a new security in the amount necessary to provide full required Security.

23.7 Upon the installation of each Wireless Facility, Licensee shall promptly furnish to City a current list and map that identifies the exact location of each of the Wireless Facilities. This information shall be provided in a format that is compatible with City's geographic information system.

24. FACILITY MAINTENANCE

24.1 At its sole cost and expense, Licensee shall maintain the Wireless Facilities and Licensee Streetlight in a neat, clean, safe condition and free from hazards or risk to the public health, safety or welfare. Licensee shall keep all such infrastructure free from graffiti, dirt, debris, and rubbish at all times, and shall promptly perform all necessary repairs and cosmetic maintenance to match City aesthetics. City may perform maintenance in the event Licensee fails to commence required maintenance within the time provided by City in the notice requesting such maintenance. The cost of any maintenance by the City pursuant to this Section shall be payable as additional License Fee.

24.2 City shall be responsible for all maintenance associated with a City-owned Streetlight and City-owned wiring and equipment necessary to operate the Light Fixture. If Licensee elects to install a Licensee-owned streetlight, City's responsibility shall be limited to operation of the light fixture only. In the interest of the safety of its employees, City shall have the right to temporarily turn off the power to any and all Wireless Facilities if any required maintenance for Light Fixture requires City employees to be within ten (10)

feet of the transmitting antennas, provided however, City provides no less than twenty-four (24) hours' notice of same by calling the phone number identified in Section 32 (except in an emergency, in which case, no notice shall be required). City shall not be required to notify Licensee when maintenance does not interfere with operation of Licensee's Wireless Facilities.

25. INDEMNIFICATION

To the fullest extent permitted by law, Licensee shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim;" collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Master License, any latent or patent defects in design and construction of City-owned Streetlights, Licensee Streetlight, Wireless Facilities, or work thereon conducted under this Master License including, without limitation, defects in workmanship or materials or Licensee's presence or performance of duties on the License Area and/or City-owned Streetlights, Licensee Streetlights (including the negligent and/or willful acts, errors and/or omissions of Licensee, its principals, officers, agents, employees, vendors, suppliers, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

Notwithstanding the foregoing, nothing herein shall be construed to require Licensee to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Master License. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Licensee.

26. INSURANCE

Without limiting Licensee's indemnification of City, and prior to commencement of work under this Master License or any Amendment to the Master License, Licensee shall obtain, provide and maintain at its own expense during the term of this Master License, policies of insurance of the type and amounts described in Exhibit "D," for each City-owned Streetlights, Licensee Streetlight and/or License Area.

27. HAZARDOUS MATERIALS

27.1 From the date of execution of this Master License throughout the Term, Licensee shall not use, store, manufacture or maintain within the License Area(s) any Hazardous Materials except (i) in such quantities and types found customary in

construction, repair, maintenance and operations of Wireless Facilities approved by this Master License, (ii) natural gas, petroleum and petroleum products contained within regularly operated motor vehicles. Licensee shall handle, store and dispose of all Hazardous Materials it brings onto the License Area in accordance with applicable laws.

27.2 For purposes of this Master License, the term “Hazardous Materials” means: (i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.* (“CERCLA”); the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act, Health and Safety Code Sections 78000 *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 *et seq.*; California Health and Safety Code Sections 25280 *et seq.* (Underground Storage of Hazardous Substances); the California Hazardous Waste of Concern and Public Safety Act, Health and Safety Code Sections 25169.5 *et seq.*; California Health and Safety Code Sections 25501 *et seq.* (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water Code Sections 13000 *et seq.*, all as they, from time-to-time may be amended or re-codified, (the above-cited statutes are here collectively referred to as the “Hazardous Substances Laws”) or any other Federal, State or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; (ii) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory, including but not limited to negligence, trespass, intentional tort, nuisance, waste or strict liability or under any reported decisions of a state or federal court; (iii) petroleum or crude oil; and (iv) asbestos.

27.3 Notwithstanding any contrary provision of this Master License, and in addition to the indemnification duties of Licensee set forth in Section 25, Licensee agrees to indemnify, defend with counsel reasonably acceptable to City, protect, and hold harmless the City, its officials, officers, employees, agents, and assigns from and against any and all losses, fines, penalties, claims, damages, judgments, or liabilities, including, but not limited to, any repair, cleanup, detoxification, or preparation and implementation of any remedial, response, closure or other plan of any kind or nature which the City, its officials, officers, employees, agents, or assigns may sustain or incur or which may be imposed upon them in connection with the use of the License Area provided under this Master License, arising from or attributable to the storage or deposit of Hazardous Materials on or under the License Area by Licensee or its agents, employees, or contractors. This Section 27 is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 USC Section 9607(e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City for any claim pursuant to the Hazardous Substance Laws or the common law.

27.4 City agrees that City will not, and will not authorize any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about or within the License Area(s) in violation of any law or regulation. City and Licensee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs arising from any breach of any representation, warranty or Master License contained in this Section 27. This Section 27 shall survive the termination of this Master License. Upon expiration or earlier termination of this Master License, Licensee shall surrender and vacate the License Area(s) and deliver possession thereof to City, in accordance with the terms of this Agreement, free of any Hazardous Materials released into the environment at, on or under the License Area(s) that are directly attributable to Licensee.

28. COMPLIANCE WITH LAWS

Licensee, at its sole cost, shall observe, perform, and comply with all laws, statutes, ordinances, rules, and regulations promulgated by any governmental agency and applicable to the License Area(s), or the use thereof, including all radio frequency safety standards, Americans with Disability Act requirements, applicable zoning ordinances, building codes and environmental laws. Licensee shall not occupy or use the License Area(s) or permit any portion of the License Area(s) to be occupied or used for any use or purpose that is unlawful in part or in whole, or deemed by City to be disreputable in any manner or extra hazardous on account of fire.

29. NOT SUBJECT TO CEQA

This Master License is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3. Further, this Master License is exempt from the provisions of CEQA under Class 3, section 15303. Class 3 exempts the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. This Master License is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment.

30. NOT AGENT OF CITY

Neither anything in this Master License nor any acts of Licensee shall authorize Licensee or any of its employees, agents or contractors to act as agent, contractor, joint venturer or employee of City for any purpose.

31. NO THIRD-PARTY BENEFICIARIES

City and Licensee do not intend, by a provision of this Master License, to create in

any third party, any benefit or right owed by one Party, under the terms and conditions of this Master License, to the other Party.

32. NOTICES AND EMERGENCY NUMBERS

All notices and other communications required or permitted to be given under this Master License, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the Party intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

To City:

City Manager
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

With a copy to:

Real Property Administrator
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

City's emergency contact:

City of Newport Beach
Municipal Operations Department
Phone: 949-644-3055

To Licensee:

Licensee's emergency contact:

Phone: _____

33. CITY BUSINESS LICENSE

Licensee shall obtain and maintain during the duration of this Master License, a City business license as required by the NBMC.

34. TIME IS OF THE ESSENCE

Time is of the essence for this Master License.

35. STANDARD PROVISIONS

35.1 Waiver. The waiver by either Party of any breach or violation of any term, covenant or condition of this Master License, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any License Fee, performance, or other consideration which may become due or owing under this Master License, shall not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, condition, covenant of this Master License or any applicable law, ordinance or regulation.

35.2 Integrated Contract. This Master License represents the full and complete understanding of every kind or nature whatsoever between the Parties hereto related to the subject matter herein, and all preliminary negotiations and licenses of whatsoever kind or nature are merged herein. No verbal license or implied covenant shall be held to vary the provisions herein.

35.3 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Master License and the exhibits attached hereto, the terms of this Master License shall govern.

35.4 Interpretation. The terms of this Master License shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of the Master License or any other rule of construction which might otherwise apply.

35.5 Amendments. This Master License may be modified or amended only by a written document executed by both Licensee and City and approved as to form by the City Attorney.

35.6 Severability. If any term or portion of this Master License is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Master License shall continue in full force and effect.

35.7 Controlling Law and Venue. The laws of the State of California shall govern this Master License and all matters relating to it and any action brought relating to this Master License shall be adjudicated in a court of competent jurisdiction in the County of Orange.

35.8 Exhibits. All exhibits referenced and attached to this Master License are incorporated by reference.

35.9 Equal Opportunity Employment. Licensee represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

35.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Master License, the prevailing Party shall not be entitled to attorney's fees.

35.11 No Damages. Licensee acknowledges that City would not enter into this Master License if it were to be liable for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) under, or relating to, this Master License or any of the matters referred to in this Master License, including, without limitation, any and all plans, permits, licenses or regulatory approvals, and CEQA documents. Accordingly, Licensee covenants and agrees on behalf of itself and its successors and assigns, not to sue City (either in its capacity as licensor in this License Agreement or in its capacity as the City of Newport Beach) for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) or monetary relief for any breach of this License Agreement by City or for any dispute, controversy, or issue between City and Licensee arising out of or connected with this License Agreement or any of the matters referred to in this License Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, CEQA documents, or any future amendments or enactments thereto, the Parties agreeing that declaratory relief, injunctive relief, mandate and specific performance shall be Licensee's sole and exclusive judicial remedies.

35.12 Counterparts. This Master License may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

35.13 Powers to Enter Into Master License. The individuals executing this Master License represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Master License on behalf of the respective legal entities of the Licensee and the City.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Master License to be executed in duplicate on the dates indicated below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**
Date: _____

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Aaron C. Harp
City Attorney

By: _____
Seimone Jurjis
City Manager

ATTEST:
Date: _____

**LICENSEE: <Licensee>, a California
<entity type>**
Date: _____

By: _____
Lena Shumway
City Clerk

By: _____

Date: _____

By: _____

[END OF SIGNATURES]

Attachments:

- Exhibit A: Form of Amendment to Master License with Site List
- Exhibit B: License Fee Schedule
- Exhibit C: Faithful Performance Bond
- Exhibit D: Insurance Requirements

Exhibit "A"
FORM OF AMENDMENT TO MASTER LICENSE WITH SITE LIST

**AMENDMENT NO. ___ TO MASTER LICENSE AGREEMENT
BETWEEN THE CITY OF NEWPORT BEACH AND _____
FOR THE INSTALLATION OF WIRELESS FACILITIES**

THIS AMENDMENT NO. ___ TO MASTER LICENSE AGREEMENT ("Site License Agreement No. ___") is made and entered into as of this _____ day of _____, 20__ ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and _____, a _____ ("Licensee"), and is made with reference to the following:

RECITALS

- A. On _____, 20__, City and Licensee entered into a Master License Agreement ("Master License") allowing Licensee to attach, install, operate, maintain, and remove Wireless Facilities as permits are obtained from the City.
- B. The parties desire to enter into this Amendment No. __, pursuant to Section 5 of the Master License, to itemize specific locations on the Site List, attached hereto as Exhibit 1, to be licensed to Licensee on a nonexclusive basis under the terms and conditions of the Master License.
- C. The parties further desire to enter into this Amendment No. __, pursuant to Section 5 of the Master License, to identify the specific License Area(s) in the License Area Description and Depiction, attached hereto as Exhibit 2, to be exclusively licensed to Licensee for installation of its Wireless Facilities under the terms and conditions of the Master License.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. EXCLUSIVE SITE LIST

This Amendment, the Site List, attached hereto as Exhibit 1, the License Area Description and Depiction, attached hereto as Exhibit 2 and as outlined in Section 5 of the Master License, and the Plans & Specifications, attached hereto as Exhibit 3, shall be effective and incorporated into the Master License once fully executed by the parties.

2. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. ___ to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**
Date: _____

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
City Attorney

By: _____
City Manager

ATTEST:
Date: _____

LICENSEE:
_____,
a _____
Date: _____

By: _____
City Clerk

By: _____

Date: _____

By: _____

[END OF SIGNATURES]

Attachments: Exhibit 1 – Site List
 Exhibit 2 – License Area Description & Depiction
 Exhibit 3 – Plans & Specifications

**EXHIBIT 1
SITE LIST**

**EXHIBIT 2
LICENSE AREA DESCRIPTION & DEPICTION**

**EXHIBIT 3
PLANS AND SPECIFICATIONS**

Exhibit "B"
LICENSE FEE SCHEDULE

Exhibit "C"
FAITHFUL PERFORMANCE BOND

CITY OF NEWPORT BEACH
BOND NO. _____

FAITHFUL PERFORMANCE BOND

The premium charges on this Bond is \$ _____.

WHEREAS, the City of Newport Beach, State of California, has entered into a Master License Agreement with _____ hereinafter designated as the "Principal," a license to install the Wireless Facility described and depicted in Attachment 1 at the designated location and area as further described and depicted in Attachment 2 (the "License Area"), in the City of Newport Beach, in strict conformity with the Master License and any Amendment thereto on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Master License Agreement or any Amendment thereto and the terms thereof require the furnishing of a Bond for the faithful performance of the Master License Agreement.

NOW, THEREFORE, we, the Principal, and _____, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of _____ Dollars and __/100 (\$_____) lawful money of the United States of America, said sum being equal to 100% of the estimated cost of repairs and removal of the Wireless Facilities under the Master License and any Amendment thereto, to be paid to the City of Newport Beach, its successors, and assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, or the Principal's heirs, executors, administrators, successors, or assigns, fail to abide by, and well and truly keep and perform any or all the covenants, conditions, and agreements in the Master License and any Amendment thereto and any alteration thereof made as therein provided on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to its true intent and meaning, or fails to indemnify, defend, and save harmless the City of Newport Beach, its officers, employees and agents, as therein stipulated, then, Surety will faithfully perform the same, in an amount not exceeding the sum specified in this Bond; otherwise this obligation shall become null and void.

As a part of the obligation secured hereby, and in addition to the face amount specified in this Performance Bond, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City, only in the event City is required to bring an action in law or equity against Surety to enforce the obligations of this Bond.

Surety, for value received, stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Master License and any Amendment thereto or to the covenants, conditions, and agreements to be performed thereunder shall in any

way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alterations or additions of the Master License Agreement and any Amendment thereto.

This Faithful Performance Bond shall be extended and maintained by the Principal in full force and effect for the Term of the Master License plus ninety (90) calendar days thereafter.

In the event that the Principal executed this bond as an individual, it is agreed that the death of any such Principal shall not exonerate the Surety from its obligations under this Bond.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20____.

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: _____

By: _____

Aaron C. Harp
City Attorney

**NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED**

Attachments: Attachment 1 – Description & Depiction of Wireless Facility
Attachment 2 – Description & Depiction of License Area

Attachment 1
Description & Depiction of Wireless Facility

Attachment 2
Description & Depiction of License Area

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____,

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

Exhibit "D"

Insurance Requirements

1. Provision of Insurance. Without limiting Company's indemnification of City, and prior to commencement of entry upon the License Area by Company or Company's agents, representatives, consultants, contractors and/or subcontractors, Company shall obtain, provide and maintain at its own expense during the term of this Agreement policies of insurance of the type and amounts described below and in a form satisfactory to City. Company agrees to provide insurance in accordance with requirements set forth here. If Company uses existing coverage to comply and that coverage does not meet these requirements, Company agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Self-Insurance. Notwithstanding the above, Company shall have the right to self-insure in accordance with the coverages required in this Exhibit. In the event Company elects to self-insure, Company shall be obligated to include City as an additional insured, and in addition to the provisions set forth in Sections 4-6, the following provisions shall apply:
 - A. City shall promptly provide Company written notice of any claim, demand, or lawsuit, for which it seeks coverage pursuant to this Section, and provide Company with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, or lawsuit;
 - B. City shall not settle any such claim, demand, or lawsuit without prior written notice to Company; and
 - C. City shall fully cooperate with Company in the defense of such claim, demand, or lawsuit.
4. Coverage Requirements.
 - A. Workers' Compensation Insurance. Company and Company's agents, representatives, consultants, contractors and/or subcontractors, shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California.
 - B. General Liability Insurance. Company and Company's agents, representatives, consultants, contractors and/or subcontractors, shall

maintain commercial general liability insurance, and if necessary excess/umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount of two million dollars and 00/100 (\$2,000,000) per occurrence, four million dollars and 00/100 (\$4,000,000) general aggregate. The policy shall cover liability arising from License Area, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract per coverage under ISO CGL form 00 01 or equivalent.

- C. Automobile Liability Insurance. Company and Company's consultants, contractors and/or subcontractors shall maintain commercial automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Company or all activities of Company's consultants, contractors and/or subcontractors arising out of or in connection with work to be performed on the License Area, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars and 00/100 (\$1,000,000) combined single limit each accident.
- D. Builder's Risk Insurance. During construction, Company shall require that Company's construction contractors and subcontractors maintain Builders Risk insurance or an installation floater as directed by City, covering damages to the work for the improvements being constructed by or on behalf of Company with limits equal to one hundred percent (100%) of the replacement cost value of the work, with coverage to continue until final acceptance of the work by Company and City. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- E. Excess/Umbrella Liability Insurance. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this contract, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all the insurance requirements stated in this contract, including, but not limited to, the additional insured, primary & non-contributory and waiver of subrogation insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Company's or Company's construction contractor's and subcontractor's primary and excess/umbrella liability policies are exhausted.

5. Endorsements: Policies shall contain or be endorsed to contain the following provisions:

- A. Additional Insured Status. City, its City Council, boards and commissions, officers, agents, volunteers and employees are to be included as an

additional insured under all general liability policies with respect to liability arising out of Company's activities ongoing and completed operations related to this Agreement and with respect to use or occupancy of the License Area. City, its elected or appointed officers, officials, employees, agents and volunteers shall be included as an additional insured on any of Company's contractor's and subcontractor's policies.

- B. Primary and Non Contributory. Policies shall be considered primary insurance as respects to City, its City Council, boards and commissions, officers, agents, volunteers and employees as respects to all claims, losses, or liability arising out of the negligent acts or willful misconduct from Company's operations. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.
- C. Liability Insurance. Liability insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- D. Waiver of Subrogation. With the exception of workers' compensation and builder's risk, all insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Company or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. With the exception of workers' compensation and builder's risk, Company hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its consultants, contractors or subcontractors.
- E. Notice of Cancellation. The insurance required by this Agreement shall not be canceled or non-renewed, except after thirty (30) calendar days written notice has been sent to City. It is Company's obligation to ensure that provisions for such notice have been established.

6. Additional Requirements.

- A. In the event City determines that (i) the Company's activities on the License Area creates an increased or decreased risk of loss to the City, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverage be obtained, Company agrees that the minimum limits of any insurance policy required to be obtained by Company or Company's consultants, contractors or subcontractors, may be changed accordingly upon receipt of written notice from City. Such change to insurance requirement herein shall be mutually agreed upon by the parties by amendment to this agreement and be appropriately adjusted upon the agreed terms. With respect to changes in insurance requirements that are available from Company's then-existing insurance carrier, Company shall deposit certificates evidencing acceptable insurance policies with City incorporating such changes within thirty (30) calendar

days of receipt of such notice as per the agreed upon terms. With respect to changes in insurance requirements that are not available from Company's then- existing insurance carrier, Company shall deposit certificates evidencing acceptable insurance policies with City, incorporating such changes, within ninety (90) calendar days of receipt of such notice as per the agreed upon terms.

- B. Company and Company's consultants, contractors and/or subcontractors shall be subject to the insurance requirements contained herein unless otherwise specified in the provisions above or written approval is granted by the City. Company shall verify that all consultants, contractors and/or subcontractors maintain insurance meeting all the requirements stated herein, and Company shall ensure that City is an additional insured on liability insurance policies required from contractors, consultants and/or subcontractors.
- C. For General Liability coverage, contractors, consultants and/or subcontractors shall provide coverage with a format at least as broad as provided by Insurance Services Office form CG 20 38 04 13 and CG 20 37 or an equivalent which shall be submitted to the City for review and approval.
- D. To the extent allowed by law, Company shall give City prompt and timely notice of any claim made or suit instituted arising out of or resulting from Company or Company's agents, representatives, consultants, contractors or subcontractors performance under this Agreement.
- E. Company shall provide certificates of insurance, with original endorsements as required above, to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by City prior to commencement of work or issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.
- F. All required insurance shall be in force on the Effective Date, and shall be maintained continuously in force throughout the term of this Agreement. In addition, the cost of all required insurance shall be borne by Company or by Company's consultants, contractors or subcontractors.
- G. If Company or Company's consultants, contractors or subcontractors fail or refuse to maintain insurance as required in this Agreement, or fail to provide proof of insurance, City has the right to declare this Agreement in default without further notice to Company, and City shall be entitled to exercise all available remedies.
- H. Company agrees not to use the Agreement Area in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance City may have on the License Area or on adjacent premises, or that will cause cancellation of any other insurance coverage for the License Area or adjoining premises. Company further agrees not to keep on the

License Area or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the License Area. Company shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the License Area.