

Attachment C

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 Charter of the City;
- 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. Newport Beach Municipal Code Section 13.22.050 establishes that wireless facilities may be exempt from the City's wireless permit requirements when the applicant has entered into a Master License Agreement;
- E. City Council Policy L-23 establishes the rates for wireless facilities located in the Public Right-of-Way; and
- F. 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 a Wireless Facility. The Amendment form may be modified in the future without amendment to this Agreement. In the event of a discrepancy or inconsistency between the term and conditions of a particular Amendment and this Agreement, the terms and conditions of this Agreement shall govern and control.

1.2 "FCC" means the Federal Communications Commission or successor entity.

1.3 “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.

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

1.5 “NBMC” means the Newport Beach Municipal Code.

1.6 “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.

1.7 “Regulatory Approvals” means licenses, permits, and other approvals necessary from the City, state and federal agencies for Licensee to install, operate, and maintain the Wireless Facilities on the License Area, including any applicable permits relating to Wireless Facilities or encroachments.

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

1.9 “Standards and Regulations” means the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations published by the City’s Public Works Director, as may be amended from time to time.

1.10 “Streetlight” or “City-owned Streetlight” means any streetlight owned and operated by the City within the Public Right-of-Way, including the City Pole, a standard-design concrete, fiberglass, or metal pole owned by the City that features a mast arm for electrolier support and is used for streetlighting purposes, together with the Light Fixture (luminaire), photocell, meter pedestal, pull box, and any other associated City-owned electrical components and structures used in the operation of the streetlight.

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

1.12 “Wireless Facility(ies)” means facilities for the provision of personal wireless services as defined in 47 U.S.C. Section 322(c)(7)(C)(i), as may be amended from time to time.

1.13 “Wireless Facilities Encroachment Permit” means a temporary encroachment permit granted by the Public Works Director to utilize a limited portion of the Public Right-of-Way for the installation of a Wireless Facility pursuant to NBMC Section 13.22.060(E).

2. LICENSE

2.1 Grant of Non-Exclusive License. City grants a non-exclusive license to Licensee to install, operate, maintain, and remove Licensee's own Wireless Facilities within the Public Right-of-Way, pursuant to the terms and conditions of this Master License and any executed Amendments.

2.2 No Authorization Over Private Property. Nothing in this Agreement grants Licensee any right or authority to install, place, maintain, or permit the placement of any Wireless Facilities or support equipment on private property, even if such private property lies within the Public Right-of-Way, unless and until Licensee (i) obtains all approvals and authorizations required from the private property owner, and (ii) secures any required written authorization from the City, including, as applicable, a Wireless Facility Encroachment Permit.

2.3 License Grant is Conditional. The Master License granted herein is subject to the terms, covenants and conditions hereinafter set forth, and Licensee covenants, as a material part of the consideration for this Master License, to keep and perform each and every term, covenant and condition of this Master License.

3. USES

3.1 Use is Only For Wireless Facilities. 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 No Expansion Without Authorization. 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 Safety Signage Authorized. 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 AND APPROVALS

4.1 Regulatory Approvals Required. 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 certificates, permits, entitlements, environmental reviews, studies, and other approvals required by any federal, state, or local authority 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 “Plans and Specifications” attached to the applicable Amendment; (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 Proof of Regulatory Approvals Must be Given to City. Licensee shall provide the City’s Public Works Director 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 Requesting Specific Licensed Areas. Licensee shall submit to the Public Works Director a proposed list of locations (“Site List”) identifying the specific City-owned locations 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 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 Requests Must Comply with Regulatory Approvals. 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 in 4.1 of this Master License.

5.3 Exhibit A is Exemplar Amendment Form. 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 Requests for More Area. 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 Installations only onto Site List. 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 Master License.

5.6 Conditions Allowed. The Public Works Director may impose reasonable condition(s) on Licensed Areas(s) and/or Wireless Facilities approved via an Amendment, deemed necessary or appropriate for the preservation of the public health and safety.

5.7 Time to Commence Work. For any Amendment issued under this Master License, Licensee shall (a) commence the work within one hundred eighty (180) days after the Amendment effective date, and (b) diligently prosecute the work to completion and complete the work no later than one hundred eighty (180) days after the date work commences. If Licensee fails to commence or complete the work by the applicable deadline (as such deadline may be extended in writing pursuant to this Section), the applicable License Area shall, without further notice or action by the City, be automatically removed from the Site List, and the Amendment shall be deemed modified accordingly. Notwithstanding the foregoing, the Public Works Director may, at their sole discretion, extend either or both of the foregoing one hundred eighty (180) day periods upon written request by Licensee. Any extension shall be effective only if granted in writing by the Public Works Director and may be conditioned as the City deems appropriate.

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

6. TERM

6.1 Initial Term. 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 Renewal Terms. 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, 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 Term of Amendments. 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 Initial Term shall be ten (10) years. The term shall automatically extend for up to two (2) successive five (5) year periods (each, an "Amendment Extension Term"), unless either Party delivers a written notice of non-renewal at least thirty (30) calendars 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 Annual License Fee. Licensee shall pay an annual License Fee, as defined in Section 7.3 below, for each License Area identified in the applicable Amendment's Site List. The City Council may amend the License Fee, from time to time, including during the Amendment Initial Term or Amendment Extension Term, and any such amendment shall apply retroactively, to the extent permitted by applicable law. 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 by the Parties). 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 Fee amount covering the period from the License Fee Commencement Date through June 30. Thereafter, the Licensee shall pay the City the annual License Fee for each Amendment on or before July 1 of each License Year as set forth in the License Fee Schedule attached to each Amendment ("License Fee").

7.4 License Fee Adjustments. The License Fee shall adjust each 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. The License Fee shall be adjusted if the Consumer Price Index for the Los Angeles – Long Beach – Anaheim, CA, All Urban Consumers, All Items (CPI-U), 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 March (thus, March 2026, which equals 352.221). 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 Impact of Change of FCC Rules. 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 Master License 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 fee schedule approved by the City Council.

7.6 Rates for Non-Small Wireless Facilities. For non-small Wireless Facilities in the Public Right-of-Way, the annual License Fee shall be determined based on the California Department of General Services ("DGS") published telecommunications lease rates.

7.7 Method of Payment. 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.

7.8 Delinquent Payments. A ten percent (10%) penalty shall be added to the License Fee if not received by City 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.

7.9 Adjustment of License Fee Upon Modification. Except for Small Wireless Facilities (as defined in 47 C.F.R. § 1.6002(l)), modifications to Licensee's Wireless Facilities and/or any License Area(s) may increase the value of this Master License. To the extent any such modification requires an amendment to this Amendment or results in the use of additional License Area, the Parties agree that the License Fee shall be adjusted to reflect the additional area utilized and the then-current DGS rate applicable to the Wireless Facilities. Any such adjustment shall be determined in connection with Licensee's request for City approval of the proposed modification and shall be mutually agreed to by the Parties as a condition precedent to the City's approval of the expanded or modified use.

8. REPLACEMENT OF STREETLIGHTS

8.1 Licensee's Cost to Replace Streetlights. 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 72 Hours to Replace 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 Coordination of Streetlight Removal. If 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 Streetlight 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. Streetlight(s) or Temporary Streetlight(s) and any associated components and equipment must be returned by Licensee to the location designated by the City the same day of removal.

9. CONSTRUCTION

9.1 Strict Compliance with Plans is Required. Subject to Section 4.1, 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 under that Amendment.

9.2 Encroachment Permit Required. Licensee shall obtain a Wireless Facilities Encroachment Permit as provided in Chapter 13.22 of the NBMC before commencing any work in the Public Right-of-Way.

9.3 Coordination of Installation Work. Licensee shall be responsible for coordination of its installation work to avoid any interference with existing utilities, substructures, facilities, or Streetlight operations. Licensee shall be the City's point of contact for all of Licensee's Wireless Facilities installation and except in case of emergency, all communications concerning all engineering, construction, and installation issues relating to Licensee's Wireless Facilities.

9.4 Compliance with Construction and Traffic Laws. During installation, alteration, repair, and maintenance of Wireless Facilities, Licensee must abide by all reasonably adopted and applied City construction regulations, including, but not limited to construction hours, waste management, noise abatement, and traffic management ordinances and regulations. Licensee must pay all parking fees and citation fines incurred by Licensee and its contractors for vehicle parking. The City will not pay or void any citations or reimburse Licensee for traffic citations or fines.

9.5 All Costs Borne by Licensee. 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.

9.6 Professional Work Required. Licensee shall install the Wireless Facilities and perform all other work relating to the Wireless Facilities in a good, safe, and workmanlike manner and in accordance with industry standards. All work within the Licensed Area(s) shall be performed only by properly qualified and trained personnel and, where required by law, by duly licensed contractors.

9.7 Protection of Damage to City Property. Licensee shall protect the Streetlights and City facilities from any damage or injury arising from: (a) any work performed by or on behalf of Licensee in connection with the construction, installation, operation, inspection, maintenance, repair, reconstruction, replacement, relocation, or removal of its Wireless Facilities; or (b) the failure, deterioration or collapse of such Wireless Facilities.

9.8 Failure to Repair. 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.

9.9 Performance Bond. Prior to the installation of any Wireless Facility, Licensee shall submit to the City and, throughout the Term and for ninety (90) calendar days thereafter, maintain in effect a faithful performance bond, in the form attached hereto as Exhibit "B," letter of credit, or other security (collectively, "Security"), in an amount determined by the City's Public Works Director, at their discretion, to ensure and secure Licensee's faithful compliance with the conditions of this Master License, including, without limitation, costs of repairs and costs of removal of the Wireless Facilities upon expiration or termination of this Master License should Licensee fail to do so. The City's Public Work's Director may require, at their discretion, such Security to be provided on a per-License Area basis and/or as a single master Security covering all License Areas. The Security shall remain in effect throughout the Term of this Master License plus ninety (90) calendar days thereafter. 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 or are otherwise drawn down, Licensee shall immediately replenish and/or replace the Security in the amount required by the Public Works Director, to restore the required Security.

9.10 Notice of Completed Installations. 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.

10. ALTERATIONS

Except as expressly authorized by a fully executed Amendment under Section 5, Licensee shall not make or permit any alteration, modification, addition, replacement, upgrade, relocation, or other change to the Licensed Area or to any Wireless Facilities or other equipment, structures, or appurtenances located in, on, attached to, or appurtenant to the Licensed Area (collectively, "Alterations"). Any Alteration shall require (i) an amendment to the applicable Amendment to this Master License identifying and approving the proposed Alteration(s), and (ii) Licensee's compliance with all requirements of Section 4.1, at Licensee's sole cost and expense. Licensee shall not commence any Alteration until such Amendment is fully executed and all applicable Regulatory Approvals are obtained. All Alterations shall be performed in accordance with Section 9.6 above.

11. MAINTENANCE AND REPAIR OBLIGATIONS

11.1 Licensee Maintenance. Licensee shall keep and maintain all Wireless Facilities, including Licensee's Streetlight, in commercially reasonable condition and in accordance with any applicable maintenance requirements required by the Standards and Regulations, Chapter 13.22 of the NBMC, or reasonably imposed by the Public Works Director, including but not limited to, periodic sonic (ultrasonic) testing of Licensee's Streetlight to verify structural integrity and to confirm that the pole is not eroding, corroding, cracked, or otherwise compromised. Licensee shall obtain all required permits and prior approvals from the City for all maintenance work subject to the terms of this Agreement.

11.2 City's Maintenance. City shall only be responsible for the Light Fixture, and any associated City-owned electrical components and structures associated with the operation of the Light Fixture. In the interest of the safety of its employees, City may require Licensee to temporarily power down Licensee's Wireless Facilities where City is conducting activities within any RF compliance area.

11.3 Licensee's Repair Obligations. Licensee shall, at its sole cost and expense and to the satisfaction of City: (a) remove, repair or replace any of its Wireless Facilities or Licensee Streetlights that are damaged or become detached; and/or (b) repair any damage to the Public Right-of-Way, municipal facilities or other property, whether public or private, caused by Licensee, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of the Wireless Facilities or Licensee Streetlight. If Licensee does not remove, repair or replace such damage, the City shall have the option, upon thirty (30) days prior written notice to Licensee, to perform or cause to be performed such removal, repair, or replacement on behalf of Licensee and shall charge Licensee for the actual costs incurred by the City. Notwithstanding the foregoing, if such damage creates an immediate safety hazard, the City may immediately complete such work on behalf of Licensee and will notify Licensee as soon as practicable. Upon the receipt of a demand for payment by the City, Licensee shall, within ten (10) days of such receipt, reimburse the City for such costs. The terms of this provision shall survive the expiration, completion or earlier termination of this Master License Agreement.

11.4 Replacement of Licensee Streetlights. If either Party becomes aware of damage to a Licensee Streetlight, it shall notify the other Party's Emergency Contact as soon as practicable, and the Parties will use reasonable efforts to coordinate any necessary response. Subject to obtaining the requisite approvals from the City, Licensee may, at its sole cost and expense, repair or replace the pole with a like-kind pole and may reinstall its Wireless Facilities after the pole is repaired or replaced. During repair or restoration, City may temporarily install a City Streetlight or install improvements to make the License Area safe pending permanent repair or replacement by Licensee.

12. RELOCATION

Licensee understands and acknowledges that City may require Licensee to relocate one or more of its Wireless Facilities. Upon one hundred eighty (180) days prior written notice to Licensee, Licensee shall, at its sole cost and expense, either (i) relocate such Wireless Facility or (ii) amend the Site List to remove the License Area from the Amendment in accordance with Section 5 herein and remove such Wireless Facility, whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a City or other public agency project; (b) because the Wireless Facility is interfering with or adversely affecting City's facilities and Licensee fails to cure such interference to the City's satisfaction as outlined in Section 14; or (c) to protect or preserve the public health or safety. In any such case, City shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. If Licensee shall fail to relocate or remove any Wireless Facility as requested by the Licensor in accordance with the foregoing provision, City shall be entitled to remove or relocate the Wireless Facilities at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall reimburse the City for the City's actual, reasonable costs and expenses incurred in performing any such removal or relocation work, including any reasonable storage costs for Licensee's property following removal, within thirty (30) days after Licensee's receipt of the City's written demand for payment.

13. UTILITIES

13.1 Separate Meters. The Wireless Facilities shall be separately metered. Licensee shall, at its sole cost and expense, pay for all utility services required to operate the Wireless Facilities, including all ongoing use charges, and shall install, connect (if already available), and maintain such utilities as required by the City, including undergrounding where required. Prior to commencing any utility work in the Public Right-of-Way, Licensee shall obtain an encroachment permit from the City's Public Works Department and submit plans for City review and approval.

13.2 Use of City Electricity. 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, unless it is undeniable that such fees are at least five times higher than the City's actual costs.

13.3 Licensee Responsibility for Power-Related Damage. Licensee's use of City electricity as provided in Section 13.2 is at Licensee's sole risk. Licensee shall be solely responsible for, and shall promptly repair or replace (at Licensee's sole cost and expense) any damage to City property, City equipment, the License Area, or any third-party property caused by or resulting from power surges, spikes, interruptions, backfeed, harmonics, grounding issues, or other electrical disturbances arising out of or related to Licensee's connection to or use of City electricity, use of the License Area, or the installation, operation, maintenance, or malfunction of Licensee's Wireless Facilities or equipment.

14. INTERFERENCE WITH CITY WIRELESS FACILITIES

14.1 Compliance with RF Regulations. 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").

14.2 Correction of RF Interference. 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 the interference is not corrected to City's satisfaction, the Wireless Facilities shall be removed and/or relocated in accordance with Section 12 above. 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.

14.3 Written City Approval Required. 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.

15. EMERGENCY

15.1 City Right to Power Down During Emergency. 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.

15.2 Labeling of Master Power Switch. 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.

15.3 No Effect on Termination of Agreement. 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.

15.4 Declaring Emergency. City shall have the right to determine what constitutes an "emergency situation" pursuant to this Section.

16. 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).

17. 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).

18. 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.

19. 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, as they may be amended from time to time.

20. 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.

21. 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.

22. SURRENDER

22.1 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 Facilities that are 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 12.2.

22.2 Abandonment. At its option, the City may deem any items of Licensee's Wireless Facilities that remain in the License Area after the applicable time period(s) set forth in Section 22.1 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.

23. ASSIGNMENT

23.1 No Assignment Without City Permission. 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 more than fifty percent (50%) 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.

23.2 Process to Request Assignment. 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.

23.3 When Approval Not Required. Notwithstanding Section 23.1 above, Licensee may, without prior approval from time-to-time, do any of the following:

23.3.1 Security Interests. 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

23.3.2 Transfer to Affiliates. Assign its rights hereunder: (i) to any entity which has, directly, or indirectly, a fifty percent (50%) or greater interest in Licensee (a "Parent") or in which Licensee or a Parent has a fifty percent (50%) 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 past, current and future obligations under the Master License.

23.4 Assignments Do Not Release Liability. 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.

23.5 No Third-Party Use Without City Approval. Except for Licensee's engagement of duly qualified contractors and subcontractors solely to perform installation, construction, operation, inspection, maintenance, repair, replacement, relocation, or removal work for the Wireless Facilities, Licensee shall not sublease, license, rent, share, resell, or otherwise grant access to, or permit the use or occupancy of, any Wireless Facilities, Streetlight, or License Area by any third party (including, without limitation, any carrier, operator, tower company, neutral host, or other communications provider), nor permit any colocation or third-party equipment attachment (each, "Third-Party Use"), without the City's prior written approval. Any attempted Third-Party Use without such approval shall be null and void and shall constitute a material breach.

24. TAXES

24.1 Possessory Interest Taxes. 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.

24.2 Payment on Taxes. 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 law. 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 Wireless Facilities, but in no event later than thirty (30) days after receipt by the City.

24.3 Right to Challenge Tax Determination. Licensee shall be responsible for any taxes and assessments attributable to and levied upon Licensee's Wireless Facilities. Licensee agrees not to allow or suffer a lien for any such taxes to be imposed upon City 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 law.

25. DEFAULT

25.1 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:

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

25.1.2 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;

25.1.3 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;

25.1.4 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

25.1.5 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.

25.2 Failure to Cure. 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.

25.3 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:

25.3.1 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.

25.3.2 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.

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

25.4 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. Except as otherwise expressly provided in this Master License with respect to the time for payment, 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.

25.5 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.

26. TERMINATION

26.1 Notice of Termination. 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 25 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 25, shall be in the City's sole and absolute discretion.

26.2 Termination for Cause. 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 Amendment 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.

26.3 Terminating Use of Specific License Area Without Cause. Except as otherwise expressly provided in this Master License, termination of use of a specific License Area for any reason other than City's uncured material breach shall be effective only upon a written amendment to the applicable Amendment executed by the City that removes such location from the Site List and, if applicable, the License Area Depiction. Licensee shall remain liable for, and shall pay, all License Fees and other fees attributable to the applicable License Area through the date Licensee removes the Wireless Facilities from such License Area.

26.4 Surrender Obligations Apply. Any termination is subject to the Licensee complying with the surrender obligations of this Master License.

27. MULTIPLE COMPANIES

The Parties recognize that this Master License contemplates installation and use by multiple entities or companies, other than City, seeking to place Wireless Facilities in or about the License Area(s). Licensee shall use its best efforts to coordinate its activities with those other entities to reduce the costs of all such parties and to avoid interference with each such party's realizations of benefits of this and similar licenses, but in no way shall Licensee sublease or authorize use of Licensee's Streetlight or License Area by another entity/carrier without the City's express written consent. If City deems reasonably necessary, City shall coordinate any such cooperative efforts. City will not enter into a subsequent Master License with another entity to place Wireless Facilities on Licensee's Streetlight or in proximity to the License Area, if Licensee has shown to City's satisfaction, after compliance with this Section, that additional Wireless Facilities are technically incompatible with the operation of the Wireless Facilities under this Master License.

28. 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 actions authorized by this Master License, any breach of the terms and conditions of this Master License, any latent or patent defects in design and construction of Licensee's 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 Licensee's 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. This Section shall survive the termination of this Master License.

29. 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 "C," for each Licensee Streetlight, Wireless Facilities and/or License Area.

30. HAZARDOUS MATERIALS

30.1 Hazardous Materials Prohibited. 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.

30.2 Definition: Hazardous Materials. 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.

30.3 Indemnity for Hazardous Materials. Notwithstanding any contrary provision of this Master License, and in addition to the indemnification duties of Licensee set forth in Section 28, 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 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.

30.4 No Third-Party Hazardous Materials. 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. This Section 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.

31. EMINENT DOMAIN

If all or any part of the License Area is permanently taken in the exercise of the power of eminent domain or any transfer in lieu thereof, the following will apply:

31.1 Area Subject to Taking. As of the date of taking, the affected Amendment will terminate as to (i) the part so taken, and the License Fee under the affected Amendment will be ratably reduced to account for the portion of the License Area taken, or (ii) at Licensee's election, the Amendment as a whole.

31.2 Award From Taking. The City will be entitled to any award paid or made in connection with the taking. Licensee will have no Claim against the City for the value of any unexpired Term of any Amendment or otherwise except that Licensee may claim any portion of the award that is specifically allocable to Licensee's relocation expenses or loss or damage to Licensee's Wireless Facilities.

31.3 Release. The parties understand and agree that this Section is intended to govern fully the rights and obligations of the parties 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 Sections 1265.120 and 1265.130 of the California Code of Civil Procedure (partial termination of lease and court order terminating lease, respectively) and under any similar Laws to the extent applicable to this Master License.

31.4 Temporary Taking. A taking that affects any portion of the License Area for less than 90 days will have no effect on the affected Amendment, except that Licensee will be entitled to an abatement in the License Fee to the extent that its use of the License Area is materially impaired. In the event of any such temporary taking, Licensee will receive that portion of any award, if any, that represents compensation for the use or occupancy of the License Area by Licensee during the Term up to the sum of the License Fees and additional fees payable by Licensee for the period of the taking, and the City will receive the balance of the award.

32. COMPLIANCE WITH LAWS

Licensee, at its sole cost, shall observe, construct, install, operate, and maintain all Wireless Facilities in strict compliance 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. This includes, without limitation, the provisions of the NBMC and all applicable Standards and Regulations, as well as any specific requirements governing the placement, size, quantity, shape, color, camouflage, installation, relocation, modification, and removal of Wireless Facilities. 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.

33. 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.

34. 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.

35. 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.

36. 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 Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Public Works Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

City's emergency contact:

City of Newport Beach
Utilities Department
Phone: 949-644-3011

To Licensee:

Licensee's emergency contact:

Phone: _____

37. CITY BUSINESS LICENSE

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

38. TIME IS OF THE ESSENCE

Time is of the essence for this Master License.

39. STANDARD PROVISIONS

39.1 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.

39.2 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.

39.3 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.

39.4 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.

39.5 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.

39.6 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.

39.7 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.

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

38.9 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.

38.10 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.

38.11 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 Master License 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 Master License by City or for any dispute, controversy, or issue between City and Licensee arising out of or connected with 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, 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.

38.12 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.

38.13 Power 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: _____

By: _____

Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____

Lena Shumway
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____

Seimone Jurjis
City Manager

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

Date: _____

By: _____

Date: _____

By: _____

[END OF SIGNATURES]

Attachments:

Exhibit A: Form of Amendment to Master License with Site List
Exhibit B: Faithful Performance Bond
Exhibit C: 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 and the License Area Description and Depiction attached hereto as Exhibit 2, as outlined in Section 5 of the Master License, shall be effective and incorporated into the Master License once fully executed by the parties.

2. PLANS AND SPECIFICATIONS

Licensee shall construct, install, operate, and maintain the Wireless Facilities within the License Area in strict accordance with the Plans and Specifications attached hereto as Exhibit 3. Any deviation from the Plans and Specifications shall comply with Section 10 of the Master License.

3. LICENSE FEE SCHEDULE

The Licensee shall pay the City the annual License Fee for each License Area on or before July 1 of each License Year as set forth in the License Fee Schedule attached hereto as Exhibit 4.

4. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Master License 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 and Depiction
 Exhibit 3 – Plans and Specifications
 Exhibit 4 – License Fee Schedule

**EXHIBIT 1
SITE LIST**

EXHIBIT 2
LICENSE AREA DESCRIPTION AND DEPICTION

EXHIBIT 3
PLANS AND SPECIFICATIONS

Exhibit 4
LICENSE FEE SCHEDULE

Exhibit "B"
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 and Depiction of Wireless Facility
Attachment 2 – Description and Depiction of License Area

Attachment 1
Description and Depiction of Wireless Facility

Attachment 2
Description and 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 "C"

Insurance Requirements

1. Provision of Insurance. Without limiting Licensee's indemnification of City, and prior to commencement of entry upon the License Area by Licensee or Licensee's agents, representatives, consultants, contractors and/or subcontractors, Licensee 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. Licensee agrees to provide insurance in accordance with requirements set forth here. If Licensee uses existing coverage to comply and that coverage does not meet these requirements, Licensee 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, Licensee shall have the right to self-insure in accordance with the coverages required in this Exhibit. In the event Licensee elects to self-insure, Licensee 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 Licensee written notice of any claim, demand, or lawsuit, for which it seeks coverage pursuant to this Section, and provide Licensee 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 Licensee; and
 - C. City shall fully cooperate with Licensee in the defense of such claim, demand, or lawsuit.
4. Coverage Requirements.
 - A. Workers' Compensation Insurance. Licensee and Licensee'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. Licensee and Licensee'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. Licensee and Licensee'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 Licensee or all activities of Licensee'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, Licensee shall require that Licensee'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 Licensee 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 Licensee 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 Licensee's or Licensee'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 Licensee'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 Licensee'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 Licensee'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 Licensee 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, Licensee 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 Licensee's obligation to ensure that provisions for such notice have been established.

6. Additional Requirements.

- A. Change of Insurance Requirements. In the event City determines that (i) the Licensee'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, Licensee agrees that the minimum limits of any insurance policy required to be obtained by Licensee or Licensee'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 Licensee's then-existing insurance carrier, Licensee 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 Licensee's then- existing insurance carrier, Licensee 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. Verification of Compliance. Licensee and Licensee'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. Licensee shall verify that all consultants, contractors and/or subcontractors maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that City is an additional insured on liability insurance policies required from contractors, consultants and/or subcontractors.
- C. Insurance Form. 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. Notice of Suits. To the extent allowed by law, Licensee shall give City prompt and timely notice of any claim made or suit instituted arising out of or resulting from Licensee or Licensee's agents, representatives, consultants, contractors or subcontractors performance under this Agreement.
- E. Certificates of Insurance. Licensee 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. Continuous Insurance. 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 Licensee or by Licensee's consultants, contractors or subcontractors.
- G. Default for Lack of Insurance. If Licensee or Licensee'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 Licensee, and City shall be entitled to exercise all available remedies.
- H. No Prevention of City Insurance. Licensee 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. Licensee 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. Licensee shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the License Area.