

**MASTER LICENSE AGREEMENT FOR WIRELESS
FACILITIES ON VERTICAL INFRASTRUCTURE IN THE
PUBLIC RIGHTS-OF-WAY**

between

CITY OF MERCED

and

EFFECTIVE DATE: _____

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Schedule 1.....

Schedule 2

**MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON
VERTICAL INFRASTRUCTURE AND UTILITY INFRASTRUCTURE
IN THE PUBLIC RIGHTS-OF-WAY**

This Master License Agreement for Wireless Facilities on Vertical Infrastructure and Utility Infrastructure in the Public Rights-of-Way (this "**Master License**") dated _____ 2021 (The "**Effective Date**") is between the **City of Merced**, a California Charter Municipal Corporation (the "**City**") and _____, _____, a _____ ("**Licensee**").

RECITALS

- A. **WHEREAS**, technological developments in wireless communications, new and reallocated electromagnetic spectrum band licenses and consumer demand for high-speed mobile broadband and other information services have caused wireless service providers to invest in distributed antenna system, distributed network systems and so-called "small cell" deployments that typically utilize smaller equipment placed on existing infrastructure in the public rights-of-way that serve a smaller physical area than as compared to traditional "macro cell" deployments on freestanding towers or rooftops; and
- B. **WHEREAS**, the City owns, as its personal property, certain Vertical Infrastructure and Utility Infrastructure (as defined below) in or on the public rights-of-way within the City's territorial and/or jurisdictional boundaries that may be suitable or useful as support structures for Licensee's Equipment (as defined below); and
- C. **WHEREAS**, Licensee installs, maintains and operates wireless facilities as its principal business, and represents to the City that Licensee holds all federal and State of California Regulatory Approvals to provide wireless broadband services within the geographic area that encompasses the City's territorial and/or jurisdictional boundaries; and
- D. **WHEREAS**, Licensee desires to install, maintain and operate small-cell wireless facilities on the City's Vertical Infrastructure and Utility Infrastructure; and
- E. **WHEREAS**, the parties desire to enter into this Master License to establish a process by which Licensee may request to license from the City individual locations on or in the City's Vertical Infrastructure together with Utility Infrastructure, and also to establish the rates, terms and conditions that will be generally applicable to all Vertical Infrastructure and Utility Infrastructure licensed to Licensee by the City; and

- F. **WHEREAS**, consistent with California law, the City intends, and Licensee acknowledges, that this Master License will be applicable to only the City's Vertical Infrastructure and Utility Infrastructure, and that the City does not intend this Master License or any Site License to require or be construed to require any revenue-generating consideration to the City as a precondition to access to the public rights-of-way for any telephone corporation, as that term is defined in the California Public Utilities Code; and
- G. **WHEREAS**, consistent with federal and California law, the City does not intend this Master License to grant the Licensee any exclusive right to use or occupy the public rights-of-way within the City's territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the City may in its sole discretion enter into similar or identical agreements with other entities, which include without limitation Licensee's competitors; and
- H. **WHEREAS** the City and Licensee desire to expedite the deployment of small cell technology in the City while pending legal challenges to FCC Order, FCC 18-133 are addressed; and
- I. **WHEREAS**, on _____, 2021, the City Council of the City of MERCED adopted Resolution No. _____, which approved the form and material terms for this Master License to be used in connection with the licensing of Vertical Infrastructure and Utility Infrastructure for wireless facilities, and further delegated authority to the City Manager to enter into such agreements.

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

AGREEMENT

1. GENERAL DEFINITIONS

"**Acknowledgment Letter**" means the letter that Licensee submits to the City that indicates the Licensee has obtained all Regulatory Approvals and other requirements more particularly described in Exhibit A-3 (Form of Acknowledgment Letter), and that serves as Licensee's notice to proceed with the installation after the City countersigns the Acknowledgment Letter and delivers it to Licensee.

"Additional Fees" means, collectively, any sums payable by Licensee to the City as the licensor, which includes without limitation any Late Fees, default interest, costs in connection with a request for the City's consent to an assignment or other transfer under Section 20 (Assignment and Other Transfers) and Default Fees under Section 18.3.4; provided, however, that the term excludes any (1) License Fees; (2) Administrative Fees; (3) any other amounts payable to the City by Licensee in connection with reviewing Site License Applications or coordinating and inspecting Equipment installed on the License Area; and (4) any other payments to the City in its regulatory capacity, which includes without limitation cost-based fees for permit issuance.

"Administrative Fees" means collectively, the Master License Administrative Fee (as defined in Section 4.2.1) and any Site License Application Fees (as defined in Section 4.2.2).

"Affiliate" means an entity that directly or indirectly Controls, is controlled by or is under Common Control with Licensee.

"Agent" means a party's agent, employee, director, officer, contractor, subcontractor or representative in relation to this Master License, any Site License or the License Area.

"Approved Plans" means the detailed plans and equipment specifications, which include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed by Licensee and approved by the City in connection with the License Area, as more particularly described in Exhibit A-2 (Licensee's Plans and Specifications) to any approved Site License.

"Broker" means any licensed real estate broker or other person who could claim a right to a commission or "finder's fee" in connection with the license(s) or other real estate rights contemplated or conveyed in this Master License.

"City Attorney" the City Attorney of the City of MERCED.

"City Manager" means the City Manager of the City of MERCED.

"City Property" means any interest in real or personal property owned or controlled by the City, which includes without limitation any and all (1) land, air and water areas; (2) license interests, leasehold interests, possessory interests, easements, franchises and other appurtenant rights or interests; (3) public rights-of-way or public utility easements; and (4) physical improvements such as buildings, structures, infrastructure, utility and other facilities, and alterations, installations, fixtures, furnishings and additions to existing real property, personal property and improvements.

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

"**Commencement Date**" means the date on which a Site License commences, which (A) during the Premium Term is the earlier to occur of: (i) eighteen (18) months from the date that the City executes the City's Acknowledgment Letter pursuant to Section 7.2 of this Master License, or (ii) the date that Licensee commences the installation of Licensee's Equipment in and upon the Vertical Infrastructure or Utility Infrastructure, as the case may be, pursuant to the applicable Site License; and (B) after the Premium Term is the earlier to occur of (i) twelve (12) months from the date the City executes the Acknowledgment Letter pursuant to Section 7.2 of this Master License, or (ii) the date that Licensee commences the installation of Licensee's Equipment in and upon the Vertical Infrastructure or Utility Infrastructure, as the case may be, pursuant to the applicable Site License.

"**Common Control**" means two or more entities that are controlled by a same third entity.

"**Control**" means (1) as to a corporation, stock ownership with the right to exercise more than fifty percent (50%) of the total combined voting power of all classes of stock, issued and outstanding, of the controlled corporation; or (2) as to partnerships and other business association forms, more than fifty percent (50%) ownership of the beneficial interest and voting control of such association.

"**CPUC**" means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or the CPUC's duly appointed successor agency.

"**Default Fee**" means the same as that term is defined in Section 18.5 (Default Fees).

"**Environmental Laws**" means any Law in relation or connection to industrial hygiene, environmental conditions or Hazardous Materials (as defined in this Master License).

"**Equipment**" means antennas, radios and any associated utility or equipment box, and battery backup, transmitters, receivers, amplifiers, ancillary fiber-optic cables and/or wiring, and ancillary equipment used for radio or other wireless communication (voice, data or otherwise) transmission and/or reception, which includes without limitation the means, devices and apparatus used to attach any Equipment to any licensed Vertical Infrastructure, and any ancillary equipment such as wiring, cabling, power feeds or any similar things, any ground based equipment and/or power pedestals need for the operation of Equipment attached to a Vertical Infrastructure, and any signage attached to such Equipment that may be approved by the City or required by Law.

"**Expiration Date**" means the date on which this Master License will automatically expire.

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

"FCC Order, FCC 18-133" means the FCC's Declaratory Ruling and Third Report and Order, FCC 18-133, Released September 27, 2018.

"Hazardous Material" means any material that, due to its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any local, regional, state or federal body with jurisdiction and responsibility for issuing Regulatory Approvals in accordance with applicable Laws to pose a present or potential hazard to human health, welfare or safety, or to the environment. The term "Hazardous Material" as used in this Master License or any Site License will be broadly construed, and includes, without limitation, the following: (1) any material or substance defined as a "hazardous substance" or "pollutant" or "contaminant" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at 42 U.S.C. §§ 9601 *et seq.*) or Section 25316 of the California Health & Safety Code; (2) any "hazardous waste" listed in California Health & Safety Code § 25140; or (3) any petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

"Indemnified City Parties" means the same as that term is defined in Section 13 (Indemnification).

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

"Invitee" means the client, customer, invited guest, tenant, subtenant, licensee, assignee and/or sublicensee of a party in relation to the License Area.

"Late Fee" means a fee that will be charged by the City to Licensee for failure to make timely payment pursuant to the terms set forth in Section 4.3.

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

"License Area" means those certain spaces on the City's Vertical Infrastructure, Utility Infrastructure and other City Property, which includes without limitation any conduits, chases, risers, trays, pipes, vaults, pull boxes, hand holes, identified on the Approved Plans as occupied by the Equipment and licensed to Licensee. The parties may use the term "License Area" to refer to those spaces licensed to Licensee under an individual Site License or to refer to all spaces collectively licensed to Licensee under all Site Licenses in connection with this Master License.

"License Fee" means the annual fee for each licensed Vertical Infrastructure and Utility Infrastructure authorized under any Site License, as specified in Schedule 1 (License Fee Schedule).

"License Year" means any 12-month period that begins on the Commencement Date for the applicable Site License.

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

"NEC" means the National Electrical Safety Code, as may be amended or superseded, published by the Institute of Electrical and Electronics Engineers.

"New Laws" means any federal and state legislative, regulatory, judicial, or other action affecting the rights or obligations of the City or Licensee, or establishing rates, terms or conditions for the construction, operation, maintenance, repair or replacement of Licensee's Equipment on public infrastructure (defined in this Agreement as "Vertical Infrastructure" and "Utility Infrastructure") or in the right-of-way, that differ, in any material respect from the rates, terms or conditions of the Agreement.

"OSHA" means the Occupational Safety and Health Administration of the United States Department of Labor, or OSHA's duly appointed successor agency.

Pre-Approved Equipment Installation" means any Equipment installation design for Licensee's use of a Vertical Infrastructure and/or Utility Infrastructure which has been approved in writing by the City.

"Premium Term" means the first two (2) years of this Master License calculated from the Effective Date.

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

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

"RF" means radio frequency or electromagnetic waves.

"Site License" means the document in the form of Exhibit A (Form of Site License Agreement) that, when fully executed, incorporates the provisions of this Master License and authorizes Licensee to install, operate and maintain Equipment for the Permitted Use on Vertical Infrastructure and/or Utility Infrastructure, as the case may be, identified in the Site License.

"Site License Application" means the same as that term is defined in Section 6.2 (Site License Application).

"Site License Effective Date" means the first day of the month after both the City and Licensee fully execute a Site License. As an illustration, and not a limitation, if the last party to execute signs a Site License on February 2, 2021, the Site License Effective Date would be March 1, 2021.

"Term" means the term of this Master License, as defined in Section 3.1 (Master License Term).

"Utility Infrastructure" means any and all forms of existing power supply, conduit, or other form of infrastructure fixtures or equipment for the delivery of power or communication services (i) approved by the City for use by Licensee and (ii) reasonably related to the operation of a Vertical Infrastructure or otherwise located in the public right of way or other location controlled or owned by City and reasonably capable of being used in connection with a Vertical Infrastructure.

"Vertical Infrastructure" means all poles or similar facilities owned or controlled by the City and located in the public rights-of-way or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control or similar functions, except that "Vertical Infrastructure" shall not include traffic signals.

2. SCOPE OF LICENSE

2.1. Site License Issuance and Effect

Pursuant and subject to the terms and conditions in this Master License, the City, as the Vertical Infrastructure owner, will issue one or more Site Licenses, which will grant Licensee a non-exclusive license to access, use, replace, upgrade and occupy certain space on the Vertical Infrastructure and Utility Infrastructure, as provided herein and the individual Site License(s) signed by the parties pursuant to this Master License for the Permitted Use and to install, maintain and operate the Equipment as shown in the Approved Plans attached to such Site License(s). The license granted herein is revocable only in accordance with the terms and conditions of this Master License. After the City issues a Site License to Licensee, the City shall not grant any third parties any present possessory rights or privileges to use or occupy the same space used or occupied by Licensee as shown in the Approved Plans; provided, however, the City may grant rights or privileges to use other spaces on the same Vertical Infrastructure or

Utility Infrastructure for any other purpose except to the extent expressly provided otherwise in this Master License.

2.2. License Area

2.2.1. Limitations on License Areas

This Master License applies to only Vertical Infrastructure and Utility Infrastructure identified in final and fully executed Site Licenses. This Master License does not authorize Licensee or any other persons or entities to enter on to or use any other City Property, except the License Areas specified in any fully executed Site Licenses. Licensee expressly acknowledges and agrees that the City will not be obligated to issue any Site License or other license to Licensee for any purpose related to any traffic signal or decorative pole, which includes any Vertical Infrastructure or light standard with ornate features or characteristics designed or intended to enhance the appearance of the pole, light standard or other Vertical Infrastructure.

2.2.2. License Area Condition

Licensee expressly acknowledges and agrees to enter on to and use the License Area in its **"as-is and with all faults"** condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the License Area's condition or suitability for Licensee's use. Licensee expressly acknowledges and agrees that neither the City nor its Agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the License Area's physical, structural or environmental condition, the License Area's present or future suitability for the Permitted Use or any other matter related to the License Area.

2.2.3. Licensee's Due Diligence

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

2.2.4. Certified Access Specialist Disclosure

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

2.3. Limitations on Licensee's Interests

2.3.1. Limited Interest Created

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

2.3.2. Limited Rights Created

Any Site License the City approves pursuant to this Master License grants Licensee only a non-possessory, non-exclusive and revocable license to enter on to and use the License Area for the Permitted Use in accordance with the terms and conditions in this Master License and the applicable Site License. Licensee expressly acknowledges and agrees that: (1) neither this Master License nor any Site License will be coupled with an interest; (2) the City retains legal possession and control over all Vertical Infrastructure and Utility Infrastructure for the City's municipal functions, which will be superior to Licensee's rights and interest in the Vertical Infrastructure and Utility Infrastructure, if any, at all times; (3) subject to the terms and conditions in this Master License, the City may terminate a Site License in whole or in part at any time under the terms, conditions, and restrictions set forth in Section 19.3; (4) except as specifically provided otherwise in this Master License, the City may enter into any agreement with third parties to use and/or occupy any Vertical Infrastructure, Utility Infrastructure and/or other City Property; and (5) neither this Master License nor any Site License creates or will be deemed to create any partnership or joint venture between the City and Licensee.

2.3.3. No Impediment or Limitations on City's Municipal Functions

Except as specifically provided otherwise in this Master License, neither this Master License nor any Site License will limit, alter or waive the City's absolute right to use any License Area, in whole or in part, as infrastructure established and maintained for the City's and the public's benefit.

2.3.4. Diminutions in Light, Air or Signal Transmission or Reception

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

3. TERM

3.1. Master License Term

The Term will commence on the Effective Date and automatically expire ten (10) years from the Effective Date, unless earlier terminated in accordance with this Master License.

3.2. Site License Term

Each Site License will commence on its Site License Effective Date and will have an initial term of ten (10) years, unless earlier terminated in accordance with this Master License. The term of each Site License will automatically renew for three (3) consecutive 5-year periods (each a "Site License Renewal Term") unless Licensee provides written notice to the City at least sixty (60) days prior to the expiration of the initial term or the current Site License Renewal Term, of Licensee's intent not to renew the Site License term. In the event that this Master License expires or is terminated, any Site License(s) still in effect shall remain subject to the terms and conditions in this Master License until such Site License(s) expire or are terminated. As an illustration and not a limitation, a Site License entered one year before the Master License expires would have nine years left on its initial term and 3 Site License Renewal Terms, and otherwise remain subject to all the applicable terms and conditions in this Master License. As the parties acknowledge that the Site License Effective Date and the Commencement Date for a Site License may not be the same date, upon written request of either party, the parties shall confirm in good faith the Commencement Date of the applicable Site License.

4. LICENSE FEE AND OTHER PAYMENTS

4.1. License Fee

4.1.1. License Fee Amount

Licensee shall pay an annual License Fee as specified in **Schedule 1** for each licensed Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) authorized under any Site License. Increases to the

annual License Fee on the anniversary of the Commencement Date of a Site License are specified in **Schedule 1**.

4.1.2. License Fee Payment

Licensee shall tender the first License Fee payment within 90 days, without any deduction or setoff for any reason, from the date listed of the Acknowledgment Letter to the City. After the first License Fee payment, on or before the Commencement Date anniversary, Licensee shall pay each annual License Fee (as increased pursuant to Section 4.1.1) in advance without any prior demand, deduction, setoff or counterclaim for any reason, except to account for a partial year in the event this Master License expires or terminates or any abatement rights expressly granted in this Master License. Any amounts for less than a full year or full month will be calculated based on a 360-day year and a 30-day month.

City of MERCED
Attention: Finance Department
Small Cell
678 W 18th Street
MERCED, CA 95340

As a condition to payment of the License Fee, the City shall complete and deliver to Licensee (1) Licensee's standard payment direction form, and (2) IRS W-9 and CA FTB Form 590, or such other tax reporting forms as may be required to be provided by the City to Licensee under Laws.

4.2. Administrative Fees

4.2.1. Master License Administrative Fee

At the time the Master License is fully executed, Licensee shall also deliver to the City a nonrefundable administrative fee equal to **Eight Thousand and 00/100 Dollars (\$8,000.00)** (the "**Master License Administrative Fee**") representing payment in full of Licensee's share of the City's reasonable costs to prepare, negotiate and execute this Master License. The City will not be obligated to execute this Master License until the City receives the Master License Administrative Fee; however, the City will return the Master License Administrative Fee to Licensee if for any reason or no reason, the City does not execute this Master License.

4.2.2. Site License Application Fee

At the time Licensee delivers to the City a Site License Application, Licensee shall pay to the City a non-refundable application fee of One Hundred Dollars (\$100) per Site License Application for each proposed Vertical Infrastructure and One Thousand Dollars (\$1,000) for a replacement Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) (the "**Site License Application Fee**"). After the Premium Term, the Site License Fee shall be equal to the City's published actual and reasonable cost calculated in a competitively neutral and non-discriminatory manner. The City will not be obligated to commence its review for any Site License Application until the City receives the Site License Application Fee for that application.

4.3. Late Charges

In the event that Licensee fails to pay any License Fee, Additional Fee, Administrative Fees or any other amount payable to the City within thirty (30) days after Licensee's receipt of the City's written notice that such amounts are due and unpaid, then thereafter a fee will be charged to Licensee for failure to make timely payment ("Late Fee"). Late Fee amounts will be equal to five percent (5%) of unpaid amounts.

4.4. Default Interest

Any License Fees, Additional Fees, Administrative Fees and all other amounts payable to the City other than Late Fees will bear interest at ten percent (10%) per annum (simple interest) from the due date when not paid within 20 days after due and payable to the City; provided, Licensee is only subject to this interest if the City notifies Licensee in writing of any unpaid amounts and Licensee does not pay within 20 days after Licensee's receipt of such notice. Any sums received shall be first applied towards any interest, then to the late charge and lastly to principle amount owed. Any interest or late charge payments will not alone excuse or cure any default by Licensee.

4.5. Method of Fee Payments to City

Licensee shall pay all License Fees, Additional Fees, Administrative Fees and all other amounts payable to the City in cash or other immediately available funds by either: (1) local check payable to the City of MERCED at the address listed in Section 4.1.2 or (2) electronic wire transfer. Any payment made with a dishonored check will be deemed unpaid.

5. USE

5.1. Permitted Use

Licensee may use a License Area, including approved Vertical Infrastructure and Utility Infrastructure solely for the installation, construction, use, maintenance operation, repair, modification, replacement and upgrade of Equipment for the purpose of providing wireless voice, data, messaging or similar type of wireless service now or in the future *offered* to the public in general using spectrum radio frequencies licensed or authorized by the FCC (the "**Permitted Use**") in compliance with this Agreement, the applicable Site License Agreement, all applicable Laws, and any conditions in any Regulatory Approvals and for no other use whatsoever without the City's prior written consent which the City may withhold in its sole and absolute discretion for any or no reason.

5.2. Prohibition on "Macro Cell" Uses

The City and Licensee intend this Master License and any Site License to cover only wireless facilities that qualify as a "small wireless facility" as defined by the FCC under 47 C.F.R. § 1.6002(*l*), as may be amended or superseded and/or distributed antenna system installations, as defined by the FCC. Licensee expressly acknowledges and agrees that the Permitted Use under this Master License does not include the right to use any Vertical Infrastructure as a support structure for a "macro cell" or a traditional wireless tower typically constructed on private property.

5.3. Prohibition on Nuisances and Illegal Uses

Licensee shall not use the License Area in whole or in part in any unlawful manner or for any illegal purpose. In addition, Licensee shall not use the License Area in whole or in part in any manner that constitutes a nuisance as determined by the City in its reasonable judgment; however, the City acknowledges and agrees that the Permitted Use is not and shall not, in and of itself, be considered a nuisance. Licensee shall take all precautions to eliminate any nuisances or hazards in connection with its uses and activities on or about the License Area.

5.4. Signs or Advertisements

Licensee acknowledges and agrees that its rights under this Master License and any Site License do not authorize Licensee to erect, post or maintain, or permit others to erect, post or maintain, any signs, notices, graphics or advertisements whatsoever on the License Area, except as may be specifically authorized under this Master License, any Site License or as may be required for compliance with any applicable Laws.

6. SITE LICENSES

6.1. City Approval Required

Licensee shall not have any right to use the License Area in whole or in part for any purpose until and unless the City approves a Site License that covers the License Area. Licensee may obtain a Site License only during the Term of this Master License and only after the City approves a Site License Application as provided in this Section 6. Subject to any express limitations in this Master License, the City will not be obligated to subordinate its municipal functions in any manner whatsoever to Licensee's interest under any Site License. The City shall not be obligated to consider or approve any Site License Applications after this Master License expires or is terminated. When the City considers whether to approve or disapprove any Site License Application, the City may consider any matter that affects its municipal functions, which include without limitation:

(1) Licensee's proposed plans and Equipment specifications; (2) compliance with any applicable Laws; (3) impacts on the City's street light, traffic control or other municipal operations; (4) any potential hazards or unsafe conditions that could result from Licensee's installation, operation or maintenance; (5) any potential visual or aesthetic impacts, provided the proposed Equipment is not in conformance with objective design standards adopted by the City; (6) the additional load on the Vertical Infrastructure the proposed Equipment would create; and (7) any municipal plans for the Vertical Infrastructure, other City Property or the public right-of-way in proximity to the subject Vertical Infrastructure. All Utility Infrastructure approved by the City in Approved Plans for Licensee's use with a Vertical Infrastructure for a Site License under this Master License shall be protected with fusing.

6.2. Site License Application

A complete Site License Application must include the following:

- (1) two partially executed duplicate counter parts of a Site License in the form attached as **Exhibit A** to this Master License, together with the following:
 - (a) a fully completed **Exhibit A-1**, which shall contain a summarized list that identifies all Vertical Infrastructure and Utility Infrastructure serving the Vertical Infrastructure, as the case may be, covered under the Site License Application;
 - (b) a fully completed **Exhibit A-2**, which shall contain detailed construction plans for the proposed installation(s), including concealment elements consistent with reasonable City standards and a detailed traffic control plan for all work on and adjacent to City roadways, and an inventory for all proposed Equipment to be installed on the Vertical Infrastructure covered under the Site License Application; and
 - (c) a true and correct copy of **Schedule 1** attached to this Master License;
 - (d) the Site License Application Fee;
- (2) all other information and materials required for a complete application for all Regulatory Approvals issued by the City's departments, which the City may update from time-to-time in accordance with applicable Laws; and
- (3) if the City elects with the prior written approval of Licensee to augment City staff as provided in Section 6.3.3 (City Staff Augmentation), a deposit for the City's estimated costs.

6.3. Site License Application Review Procedures

6.3.1. Site License Application Priority

Licensee expressly acknowledges that the City either already has or may in the future enter into similar master license agreements for its Vertical Infrastructure with other persons or entities, and that Licensee and such third parties may from time-to-time desire to license the same Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) from the City. To promote a fair and competitively neutral process, the City shall implement a first-in-time prioritization process as provided in this Section 6.3.1. The City shall review each Site License Application, which includes without limitation any Site License Applications submitted by other licensees, in the order received. Each Site License Application will be date and time stamped when received by the City, and such stamp shall control the Site License

Application's priority relative to other Site License Applications. In the event that the City receives two Site License Applications for the same Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be), the City will notify Licensee if Licensee's Site License Application for Vertical Infrastructure is lower in priority. The applications with lower priority will be held in abeyance until the higher-priority application is withdrawn, denied or timed-out as provided in this Master License, at which time the City will commence to review the next-highest priority Site License Application for that Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case maybe).

6.3.2. Timeframe for City's Review

- (a) **Pre-Approved Equipment Installations.** The City will review Pre- Approved Equipment Installations within twenty-one (21) days of receipt of a complete Site License Application provided that Pre-Approved Equipment Installations are not submitted in Site License Applications that exceed Twentynine (29) proposed installations per Site License Applications. For Site License Applications for Pre-Approved Equipment Installations which exceed Twentynine (29) proposed installations per Site License Application, Licensee shall provide the City with at least fifteen (15) business days prior notice together with GIS Mapping, Pole Number and approximate street address, for any such Site License Application. Licensee shall use best efforts not to submit successive Site License Applications that would effectively thwart or otherwise circumvent the City's right to the fifteen (15) business day advance notice provided in this Section 6.3.2(a). In the event that Licensee fails to provide the notice required in this Section or submits successive Site License Applications for Pre-Approved Equipment Installations that exceed the Twentynine (29) installation threshold within any 30-day period, the parties shall enter into a written agreement to extend the applicable timeframes under applicable Laws for at least an additional ten (10) business days, unless the City, in its sole discretion, agrees to a shorter extension. The City will review the Site License Applications within the applicable timeframes under applicable Laws, taking into account any tolling periods for such timeframes as provided in applicable Laws, and as modified in this MasterLicense.

- (b) **Non Pre-Approved Equipment Installations.** For non-Pre-Approved Equipment Installations, the City will review at least Twentynine (29) Site License Applications within any consecutive thirty (30) day period. If Licensee files submits more than Twentynine (29) Site License Applications for non-Pre-Approved Equipment Installations within any consecutive thirty (30) day period, then the City shall have an additional ten (10) business days within which to review the Site License Applications. The City will review the Site License Applications within the applicable timeframes under applicable Laws, taking into account any tolling periods for such timeframes as provided in applicable Laws, and as modified in this MasterLicense.

6.3.3. City Staff Augmentation

(a) **Staff Augmentation Generally.** To assist the City review and process Site License Applications in a timely manner, the City shall have the right to select and retain temporary staff members, consultants and/or other independent contractors with qualifications and expertise acceptable to the City ("**Staff Augmentation**"). Licensee shall be responsible for all costs incurred by the City in connection with Staff Augmentation which Staff Augmentation costs are disclosed in writing by the City to and approved in writing by Licensee to the City in advance in Licensee's sole discretion. For any Staff Augmentation which is approved by Licensee upon the City's request, Licensee shall furnish the City with a deposit in an amount reasonably estimated by the City to cover the Staff Augmentation costs for a particular Site License Application. If the deposit is insufficient to cover the City's costs, Licensee shall reimburse the City for the difference between the deposited amount and the total Staff Augmentation costs within 30 days after Licensee receives the City's invoice for reimbursement, together with copies of invoices or other documentation to evidence the City's costs.

(b) Numerical Thresholds for Potential Staff Augmentation.

(i) For Twentynine (29) or less Site License Applications for Pre-Approved Equipment Installations or non-Pre-Approved Equipment Installations in any consecutive thirty (30) day period the City shall not request Staff Augmentation from Licensee.

(ii) For thirty (30) or more Site Applications in any consecutive thirty (30) Day period, the City shall provide written notice to Licensee of estimated Staff Augmentation costs within ten (10) business days of receipt of the Site License Applications. If Licensee disapproves of the Staff Augmentation request, then the City shall review the applicable Site License Applications and the applicable timeframes under applicable Laws, taking into account any tolling periods for such timeframes as provided in applicable Laws, and as modified in this Master License.

6.3.4. Consultation with Other City Departments and Homeowners' Associations

The City, as the licensor under this Master License, may consult with other departments within the City or with any Homeowners' Association (HOA) with authority over a site that is the subject of a proposed Site License to assess whether Licensee's proposed Equipment poses any concerns, which includes without limitation any concerns about aesthetics, historic or environmental impacts, traffic control, pedestrian access and

general right-of-way management. Licensee acknowledges that any consultation with any other City departments or an HOA in accordance with this Section 6.3.4 and any actions or failures to act by the City that may result from such consultations would be an exercise of the City's regulatory authority.

6.3.5. Amendments to Site License Applications

In the event that the City determines for any reason that the Site License Application is incomplete or the Permitted Use at any particular proposed License Area would impede its municipal functions, the City will provide notice to Licensee as soon as reasonably practicable. Licensee will have 30 business days from Licensee's receipt of such notice to amend its Site License Application without any impact on the Site License Application's priority relative to any other applications then under review or later received by the City. Any amendments received after the 30-day period or any other changes Licensee may make to the Site License Application will cause the date and time on which the application was submitted or deemed submitted to be changed to the date and time on which Licensee submitted the proposed changes.

6.3.6. Site License Application Approvals

In the event that the City approves a Site License Application, the City will return one fully executed Site License to Licensee. Such approval may occur before or simultaneous with any approvals or denials for any Regulatory Approvals issued by the City in its regulatory capacity. For any Site License entered into during the Premium Term in the event that Licensee fails to commence construction pursuant to the Site License within eighteen (18) months from the date the City fully executes the Acknowledgment Letter, then the Site License shall automatically expire unless such time period is extended as mutually agreed. For any Site License entered into after the expiration of the Premium Term, Licensee shall commence construction pursuant to the Site License on the later to occur of (i) the time to commence construction, if any, as may be contained in the applicable permit for the construction of the Equipment, and (ii) twelve (12) months from the date the City fully executes the Acknowledgment Letter unless such time period is extended as mutually agreed by the City and Licensee. Otherwise the Site License shall automatically expire. Licensee shall not be entitled to any refund for any fees, which include without limitation the License Fee, paid in connection with a Site License that expires under this Section 6.3.5. Nothing in this Section 6.3.5 is intended to prohibit or prevent Licensee from submitting a new Site License Application for the

same or substantially the same Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) as those covered under a Site License that expired pursuant to this Section 6.3.6.

6.3.7. Site License Application Denials

Subject to applicable state and federal laws, Licensee acknowledges that the City reserves the absolute right to disapprove any Site License Application in whole or in part when the City determines in its sole judgment that the proposed Equipment would unreasonably interfere with the City's municipal functions or create a hazardous or unsafe condition. The City shall provide Licensee with a written denial that states the basis for the denial.

6.3.8. Change of Law; Further Proceedings or Interpretations

(a) If, during the Term of this Master License, any New Laws are adopted, or any applicable federal or state Laws are interpreted or clarified through further regulatory proceedings, orders, rules, regulations, contested case decisions or appeals ~~including, without limitation, FCC Order, FCC 18-133 ("Clarification of Existing Law")~~, the terms of _____ this Section 6.3.8 shall apply.

(b) The City or Licensee may, upon thirty (30) days' written notice to the other, require that the terms of this Master License which are affected by any New Law or Clarification of Existing Law be renegotiated to conform to the New Law or Clarification of Existing Law on a going forward basis for all existing and new Site Licenses.

(c) The City and Licensee shall meet and confer to negotiate in good faith and amend this Agreement to fully and fairly implement the terms of the New Law or Clarification of Existing Law. If within ninety (90) days after delivery of a notice for renegotiation by either party, the City and Licensee are unable to agree upon an amendment to this Master License, either party may send a written notice of impasse ("**Notice of impasse**") to the other. Within thirty (30) days after the date of the Notice of Impasse either party may request mediation or arbitration of the issues through Judicial Arbitration and Mediation Service in MERCED, California, or any other entity offering dispute resolution procedures as may be acceptable to the City and Licensee in writing. Arbitration shall be used if the parties cannot mutually agree to mediation. If the parties agree to mediation, then the cost of the mediation shall be shared equally by Licensee and the City. If arbitration is used, then the arbitrator shall determine as part of the arbitration findings and award if either the Licensee or the City failed to act in good faith to complete an amendment to this Master Lease to fully and fairly implement the terms of the New Law or Clarification of Existing Law, as the case may be. Whichever party the arbitrator finds failed to act in good faith shall be solely responsible for the cost of

the arbitration, including the fees and costs of the arbitrator. If neither party has requested mediation or arbitration within thirty (30) days after the Notice of Impasse, then thereafter, either party may pursue all available remedies at law or in equity, including regulatory or judicial relief.

6.4. Replacement Vertical Infrastructure

In the event that Licensee desires to replace any existing Vertical Infrastructure, or in the event that the City requires Licensee to replace any existing Vertical Infrastructure as a condition on the City's approval for a Site License, Licensee shall: (1) design and/or procure the replacement Vertical Infrastructure to be (a) substantially the same as the existing Vertical Infrastructure to be replaced, (b) consistent with the City's specifications for similar Vertical Infrastructure, and (c) consistent with the City's objective design standards; and (2) install the replacement Vertical Infrastructure at Licensee's sole cost and expense and in accordance with all applicable provisions in this Master License, which includes without limitation Section 7 (Equipment Installation). After Licensee installs any replacement Vertical Infrastructure, the City will have the right to inspect the improvements and installation work and accept, reject and require corrections to such improvements or installation work in accordance with the Approved Plans. Licensee shall make any and all necessary corrections to any replacement Vertical Infrastructure within 60 days after a written notice of rejection by the City. Paying for the cost of the replacement Vertical Infrastructure does not provide Licensee with any ownership interest in the replacement Vertical Infrastructure. Upon Licensee's installation, the City shall be deemed to own the replacement Vertical Infrastructure. Licensee acknowledges and agrees that the City's approval of the Site License will be the only consideration due to Licensee in exchange for transferring title to any replacement Vertical Infrastructure to the City, and Licensee will not be entitled to any additional pecuniary or non-pecuniary consideration.

6.5. Future Maintenance and Repairs, Replacements, Modifications, Additions and Upgrades to Equipment Installed Pursuant to Valid Site License

Without the requirement of obtaining the City's prior consent, Licensee shall have the right to (a) perform routine maintenance and repair of any Equipment installed on a Vertical Infrastructure and/or Utility Infrastructure pursuant to a valid Site License, and (b) perform "like-for-like" replacements of Equipment so long as (i) any such "like-for-like" replacement does not materially alter the visible aesthetic appearance, size, height, and weight of the installed Equipment, and (ii) the resulting installation does not increase the load on the applicable Vertical Infrastructure or the utilization of the Utility Infrastructure beyond the loading or utilization, if any, that was established in the original Site License Application. Any other modification, addition or upgrade to Licensee's Equipment installed on a Vertical Infrastructure and/or Utility Infrastructure pursuant to a valid Site License shall require the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any modification, addition and/or upgrade rights granted to Licensee under this Master License, all work performed by or on behalf of Licensee pursuant to this Master License and/or a Site License shall be subject to all applicable permits and other City approvals required for the protection of public health

and safety, including, without limitation, encroachment permits, excavation permits, traffic control permits and construction permits. In no event shall Licensee be required to submit a new Site License Application for routine maintenance and repair, "like-for-like" replacements, modifications, additions, or upgrades to Equipment installed pursuant to a valid Site License.

6.6 Pre-Approved Equipment Installations

From time to time during the Term, Licensee may propose Equipment installation designs to the City to become a Pre-Approved Equipment Installation upon the City's prior written consent. Any such Licensee proposed Equipment installation designs that become a Pre-Approved Equipment Installation shall not require an amendment to this Master License. Licensee hereby acknowledges that the City considers physical dimensions, coloring and shrouding as concealment elements, and such concealment elements are a material factor in the City's decision to provide its written consent to any Pre-Approved Equipment Installation. Once an Equipment installation design has become a Pre-Approved Equipment Installation for Licensee's use of a Vertical Infrastructure and/or Utility Infrastructure, then Licensee shall be allowed to install an Equipment installation using any such Pre-Approved Equipment Installation without further land use review or approval by the City, subject to space and structural capacity and loading review by the City during the building permit review process. All other municipal reviews and approvals, including the execution of a Site License, building permits and right of way permits, shall apply to the installation of any Pre-Approved Equipment Installation.

7. EQUIPMENT INSTALLATION

7.1. Prior Regulatory Approvals Required

Licensee shall not commence any installation, construction, repair, upgrade, maintenance or modification or other work on or about the License Area until and unless Licensee first obtains all necessary prior Regulatory Approvals required by the City in its regulatory capacity, which includes without limitation any encroachment permits, building permits, excavation permits, water or sewer permits, electrical permits and any other permits or approvals issued by the City. Any installation, construction and other work performed by Licensee or its Agents or Invitees without such Regulatory Approvals will be a default under this Master License in addition to any other liabilities or penalties the City, in its regulatory capacity, may impose on Licensee for the same acts or omissions.

7.2. Acknowledgment Letter as Licensee's Notice to Proceed

After Licensee obtains all necessary prior Regulatory Approvals, Licensee shall tender a partially executed Acknowledgment Letter to the City that includes (i) Licensee's insurance certificates, (ii) insurance certificates of Licensee's contractor, (iii) the License Fee for the first License Year; and (iv) evidence reasonable satisfactory to the City that the required Surety Bond under Section 26.1 of this Master License has been delivered to the City. The City shall use reasonable efforts to review, countersign and deliver the fully executed Acknowledgment Letter to Licensee within ten (10) business days from the date on which the City receives a partially executed Acknowledgment Letter with all required attachments. Licensee shall not commence any work on or about the License Area until and unless Licensee first obtains a fully executed Acknowledgment Letter from the City. Such fully executed Acknowledgment Letter will serve as Licensee's notice that Licensee has the right to proceed with its installation work.

7.3. Installation Work

Licensee shall perform all installation, construction and other work in connection with the License Area in strict compliance with the Approved Plans and in a diligent, good and workmanlike manner.

7.3.1. Changes to Approved Plans Required by Regulatory Approvals

Licensee may amend any Approved Plans when such changes are required to obtain or maintain compliance with Regulatory Approvals necessary to install the Equipment, so long as Licensee obtains the City's prior written consent, which the City shall not unreasonably withhold.

7.3.2. Corrections to Approved Plans

Licensee shall have the obligation to correct any errors or omissions in any Approved Plans consistent with related Regulatory Approvals. Licensee shall immediately send written notice to the City in the event that Licensee discovers any such defects. Any Approved Plans and/or amendments to Approved Plans by the City will not release or excuse Licensee's obligations under this Section 7.3.2.

7.3.3. Alterations to City Property

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

7.3.4. Licensee's Contractors

Licensee shall use only qualified and trained persons and appropriately licensed contractors for all installation, construction and other work performed on or about the License Area. At least five (5) business days before any installation, construction and other work commences on or about the License Area, Licensee shall provide the City with: (1) a schedule with all activities to be performed in connection with the installation, construction and other work; and (2) a comprehensive list with all the names, contractors' license numbers, contact information, and business addresses for all contractors and all subcontractors who will perform the installation, construction and other work.

7.4. Labor and Material Costs

Licensee shall be responsible for all direct and indirect costs (labor, materials and overhead) in connection with designing, purchasing and installing all Equipment in accordance with the Approved Plans and all applicable Laws. Licensee shall also bear all costs to obtain and maintain all Regulatory Approvals required in connection with the installation, which includes without limitation all direct and indirect costs to comply with any approval conditions or mitigation measures that arise from Licensee's proposed installation. Licensee shall timely pay for all labor, materials, Equipment and all professional services related to the Permitted Use or furnished to the License Area at Licensee's direction or for Licensee's benefit.

7.5. Project Managers

The City and Licensee each designate the person listed in this Section 7.5 as its project manager to coordinate Licensee's Equipment design and installation, and serve as each party's respective primary contact person for all design, engineering, construction and installation issues that may arise between the parties in connection with this Master License. If no person is designated by either party prior to the Effective Date, then each party shall designate a person through a written notice promptly following the written request of either party to do so.

City's Project Manager: TBD

Engineering Department
678 W 18th Street
MERCED, CA
209-385-6846
Email: contactengineering@cityofmerced.org

Licensee's Project Manager:

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

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

7.6. Coordination with the City

Licensee must coordinate all its installation, construction and other work on or about the License Area with the City so as to avoid any interference (physical, electronic or otherwise) with any existing utilities, substructures, facilities, City Property and the City's municipal operations.

7.7. Intentionally Deleted.

7.8. Title to Licensee's Equipment and Other Improvements

Except as specifically provided otherwise in this Master License, all Equipment and other improvements installed, constructed or placed on or about the License Area by Licensee or its Agents will be and remain at all times Licensee's personal property. All structural improvements to any Vertical Infrastructure and any replacement Vertical Infrastructure as approved by the City and shown in the Approved Plans except for any fiber installed by or on behalf of Licensee, will become City Property and remain City Property should Licensee vacate or abandon such License Area, unless the City elects in a written notice to Licensee that it does not wish to take title to such structural improvements. Subject to Section 26 (Surrender of License Area), Licensee may remove its Equipment from the License Area at any time after 30 days' written notice to the City.

7.9. Prevailing Wages

7.9.1. Compliance with Prevailing Wage Policies

The services to be provided under the Master License or Site License are subject to prevailing wage rate payment as set forth in California Labor Code § 1771. Accordingly, to the extent that any such services are subject to the prevailing wage rate payment requirements, Licensee and its Agents shall comply with all applicable California Labor Code requirements, including the payment of prevailing wages in connection with the services to be provided to the City hereunder (collectively, "Prevailing Wage Policies"). Licensee shall submit, upon request by the City, certified copies of payroll records to the City and shall maintain and make such records available to the City or the City's duly authorized representative for inspection and copying in a manner consistent with Licensee's obligations under Section 24 (Records).

Licensee shall defend, indemnify and hold the City and its Indemnified City Parties harmless from and against any and all present and future Claims, that arise from or in connection with Licensee's obligation to comply with all Laws with respect to the installation, construction and other work, and Prevailing Wage Policies, which includes without limitation any and all Claims that may be made by Agents or other third parties pursuant to California Labor Code §§ 1726 and 1781, as amended and added by California Senate Bill 966 (Alarcon), and as may be amended or superseded in the future.

Licensee hereby waives, releases and discharges forever the City and Indemnified City Parties from any and all present and future Claims that arise from or in connection with Licensee's obligation to comply with all Laws with respect to the installation, construction and other work and Prevailing Wage Policies. Licensee hereby acknowledges that Licensee is aware of and familiar with the provisions in California Civil Code § 1542 which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him must have materially affected his or her settlement with the debtor.

Licensee hereby waives and relinquishes all rights and benefits which it may have under California Civil Code § 1542, as such relates to the Master License and any Site License. Licensee's obligations under this Section 7.9 will survive the expiration or earlier termination of this Master License and any Site License.

7.9.2. Senate Bill 854 Notice Requirements

As provided in SB 854 (Stats. 2014, Ch. 28): (a) no contractor or subcontractor may be qualified to bid on, be listed in a bid proposal subject to the requirements of Section 4104 of the California Public Contracts Code, or engage in the performance of any contract for public work, unless currently registered with the Department of Industrial Relations ("DIR") and qualified to perform public work pursuant to California Labor Code Section 1725.5 (Cal. Lab. Code § 1771.1(a)); (b) no contractor or subcontractor may be awarded a public works contract unless registered with the DIR to perform public work pursuant to California Labor Code Section 1725.5 (Cal. Lab. Code § 1771.1(b)); and (c) work performed on the project is subject to compliance monitoring and enforcement by DIR (Cal. Lab. Code § 1771.4).

7.9.3. Job Site Notices

Licensee shall post at the job site notices in compliance with Title I of the California Code of Regulations Section 16451.

8. LICENSEE'S MAINTENANCE OBLIGATIONS

8.1. Equipment Maintenance

Licensee shall, at its sole cost and expense, maintain all Equipment installed on the License Area in good condition, reasonable wear, tear and casualty damage excepted, at all times, and shall promptly repair any damage to any Equipment installed on the License Area whenever repair or maintenance may be required, subject to the City's prior approval if required under Section 7 (Equipment Installation). With the exception of administrative encroachment permits for access to a Site, Licensee will not be required to seek the City's prior approval for any Equipment repair, maintenance, replacement or other installation on the License Area when such Equipment appears on the Approved Plans. Licensee must obtain the City's prior written approval for any Equipment repair, maintenance, replacement or other installation that involves larger, different or additional Equipment than as appears on the Approved Plans subject to the paramount provisions in Section 6.5 above. Licensee expressly acknowledges that Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455), as may be amended or superseded, does not apply to this Master License or any Site License. Licensee expressly acknowledges and agrees that Licensee shall not perform any repair, maintenance, replacement or other work authorized under this subsection until and unless Licensee obtains all Regulatory Approvals required for such work.

8.2. Damage to Vertical Infrastructure

8.2.1. Intentionally deleted

8.2.2. Notice to City

If Licensee discovers any damage to the License Area from any cause. Licensee shall promptly give notice to the City that describes damage and the location(s) where the damage occurred. Licensee will not be deemed to have assumed liability for any life-threatening or hazardous conditions by giving such notice. Unless such conditions were caused by or arose in connection with Licensee's or its Agent's or invitee's acts. Omissions or negligence.

8.2.3. Damage Caused by Licensee

In the event that Licensee or its Agents or Invitees cause any damage to any Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be). Licensee must repair such damage within 30 days after Licensee receives notice from City that describes such damage or if the damage cannot reasonably be repaired in such time, then Licensee will have additional time as is, in City's estimation, reasonably required to repair such damage, as long as Licensee has commenced repair and diligently pursues it to completion. In the event that Licensee fails to timely cure the damage, the City may repair the damage at Licensee's expense. Licensee will reimburse the City for all actual and reasonable costs incurred to repair such damage within 30 days after Licensee receives the City's demand for payment, together with copies of invoices or other evidence to document the costs incurred. The City's right to repair any damage and receive reimbursement from Licensee pursuant to this Section 8.2.3 shall be in addition to (and not exclusive of) any legal and equitable remedies the City may have under applicable Laws.

8.2.4. No Right to Repair Vertical Infrastructure

Absent notice from the City with a demand to cure any damage to any Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be), or an authorization to proceed with such work, Licensee is not authorized to make any repairs to any Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) or License Area. Licensee expressly waives all rights it may have under any applicable Laws to make repairs at the City's expense. However, Licensee shall have the right to conduct testing and maintenance activities, and repair and replace damaged or malfunctioning Equipment at any time during the Term.

8.3. Graffiti Abatement

In addition to Licensee's other maintenance obligations under this Master License and any Site License, Licensee shall remove any graffiti or other similar markings from the License Area promptly upon actual notice (but in no event later than five (5) days after Licensee's receipt of written notice from the City of the presence of graffiti at a particular License Area identified in the City's written notice). If the graffiti is not abated by Licensee within five (5) days after Licensee's receipt of the City's written notice to Licensee then the City may, at the City Manager's sole discretion, abate the graffiti at Licensee's expense, under the provisions of the City's Municipal Code Sections 8.36.060 through 8.36.130. The City shall keep an itemized account of all the costs and expenses incurred by the City in abating nuisances under the provisions of this section. If the costs are not paid within thirty (30) days of Licensee's receipt of the City's invoice accompanied by reasonable substantiation then thereafter, City shall have the right to suspend the issuance of any further permits or Site Licenses under this Agreement until the abatement costs are paid in full, or otherwise declare Licensee in default pursuant to of the applicable Site License which is identified by the City to contain graffiti pursuant to Section 18.1 of this Master License.

8.4. Maintenance Work Performance Standards

All work performed by or for Licensee under this Section 8 shall be performed: (1) at Licensee's sole cost and expense; (2) by only appropriately licensed contractors; (3) in a manner and with equipment and materials that will not unreasonably interfere with or impair the City's municipal operations on or about the License Area during any approved installations; and (c) in a manner compliant with all applicable Laws.

8.5. Intentionally deleted

9. UTILITIES

Licensee shall be responsible to secure its own electricity services for its Permitted Use and shall not be permitted to "submeter" from any electrical service provided to the City on any License Area without the City's prior written consent, which the City may withhold in its sole and absolute discretion. Licensee shall timely pay when due all charges for all electricity service furnished to its Equipment on the License Area. Licensee may install or cause to be installed a separate electric meter on the Vertical Infrastructure, or on a ground mounted pedestal or on Licensee's pad mounted equipment cabinet as required by the electric provider for the operation of its equipment.

While the City is not obligated to make its Utility Infrastructure available to Licensee, nonetheless, the City shall make a good faith effort to make its Utility Infrastructure available in connection with each Vertical Infrastructure location identified by Licensee in its Site License Application, and Licensee and the City shall work cooperatively to

allow Licensee to use the City's Utility Infrastructure wherever possible. In the event that Licensee submits a Site License Application to the City for a particular Vertical Infrastructure, but the City is unwilling to allow Licensee to use the City's Utility Infrastructure at such location for Licensee's utilization in connection with the Vertical Infrastructure, then the City and Licensee will work cooperatively to identify an alternate Vertical Infrastructure location where the City would be willing to allow Licensee to utilize, and which provides comparable wireless service coverage and performance acceptable to Licensee.

In connection with Licensee's use of City's Utility Infrastructure on any Vertical Structure, Licensee shall be responsible for, and shall timely pay for the cost of the electrical service furnished to its Equipment on the License Area directly to PG&E, MID or any successor utility which provides electrical service to the City's Vertical Infrastructure.

10. TAXES, ASSESSMENTS AND OTHER IMPOSITIONS

Licensee agrees to pay when due (and prior to delinquency) any and all taxes, assessments, charges, excises and exactions whatsoever, including without limitation any possessory interest taxes, that arise from or in connection with Licensee's use within the License Area or Licensee's Equipment that may be imposed on Licensee under applicable Laws. Licensee shall not allow or suffer any lien for any taxes assessments, charges, excises or exactions whatsoever to be imposed on the License Area or Licensee's Equipment. In the event that the City receives any tax or assessment notices on or in connection with the License Area or Licensee's Equipment, the City shall promptly (but in no event later than 30 calendar days after receipt) forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount directly attributable to Licensee's Equipment. Licensee understands and acknowledges that this Master License and any Site License may create a possessory interest subject to taxation and that Licensee will be required to pay any such possessory interest taxes. Licensee further understands and acknowledges that any sublicense or assignment under this Master License and any options, extensions or renewals in connection with this Master License or any Site License may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this Master License.

11. LICENSEE'S OBLIGATIONS TO MAINTAIN COMPLIANCE WITH LAWS

11.1. Compliance with CPUC General Orders

In addition to all other Laws, Licensee shall conduct all activities on the License Area in accordance with all applicable CPUC general orders, which includes without limitation CPUC General Order 95 and CPUC General Order 128 as those orders may be amended or superseded in the future, and the rules, regulations and other requirements adopted or enacted by the CPUC under such general orders.

11.2. Compliance with Building and Electric Codes

In addition to Licensee's compliance with all other Laws and to the extent not in contravention of any applicable Law, Licensee shall conduct all activities on the License Area in accordance with the applicable requirements in the California Building Code, the California Electric Code, and any applicable local building and electrical code, as those codes exist now or may be amended in the future. To the extent that CPUC General Order 95 does not address small cell wireless installations on Vertical Infrastructure or Utility Infrastructure, Licensee shall comply with City requirements.

11.3. Compliance with RF Exposure Regulations

In addition to Licensee's compliance with all other Laws, Licensee shall maintain compliance with all Laws related to human exposure to RF emissions by the FCC which are based on the recommendations of various federal health and safety agencies including OSHA.

12. PUBLIC WORKS' OPERATIONS

12.1. City's Access to License Area

Except as specifically provided otherwise in this Master License, the City and its Agents have the absolute right to access any License Area in whole or in part at any time without notice for any purpose; however, the City and its Agents shall not touch or interfere in any way with any Equipment. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's or its Agents' access to the License Area, which includes, without limitation, any Equipment removed in an emergency or other exigent circumstances pursuant to Section 12.4 (Emergencies), except to the extent that the damage is caused by the City's or its Agent's negligence or willful misconduct.

12.2. City's Maintenance, Repairs or Alterations to Vertical Infrastructure

The City will: (1) maintain and repair Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) as needed, in the City's sole judgment, for its street light operations and other municipal functions; and (2) correct any immediately hazardous condition. Except as provided in Section 19 (Termination), neither any City work on any Vertical Infrastructure nor any condition on any Vertical Infrastructure will: (a) entitle Licensee to any damages, unless such damages are caused by the City's active negligence or willful misconduct; (b) excuse or reduce any obligation by Licensee to pay any License Fees or Additional Fees or perform any covenant under this Master License or any Site License; or (c) constitute or be construed as a constructive termination of this Master License or any Site License.

12.3. City's Maintenance, Repairs or Alterations to Other City Property

The City may, at any time, alter, add to, repair, remove from and/or improve the License Area in whole or in part for any municipal function, which includes without limitation maintenance and improvements in connection with street light services and compliance with all applicable Laws; provided, however, that the City: (1) makes a good-faith effort to provide prior notice to Licensee's On-Call Representative; (2) allows Licensee's On-Call Representative to observe the City's work; and (3) the City takes reasonable steps not to disrupt Licensee's ordinary operations on the License Area, taking into account any exigencies that may threaten persons or property. The provisions in this Section 12.3 will not be construed to allow Licensee's ordinary operations to impede or delay the City's authority and ability to make changes to the License Areas necessary to maintain street light services, traffic control services, any municipal utility services (to the extent permissible under applicable Laws) or any other municipal functions carried out for the public's health, safety, welfare or benefit.

12.4. Emergencies

In emergencies, and unless expressly provided in applicable Laws, the City's work and operations will take precedence over Licensee's operations, which includes without limitation any Equipment operated on the License Area, and the City may access the License Area in whole or in part as the City deems necessary in its sole and absolute determination and in accordance with this Section 12.4, with or without notice to Licensee. When safe and practicable, as determined by the City, the City will notify Licensee of any emergency or other exigent circumstances that requires the City to remove or replace any Vertical Infrastructure or the Utility Infrastructure serving the Vertical Infrastructure as the case may be, or other City Property and will allow Licensee to remove its Equipment before the City removes or replaces such Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) or other City Property; provided, however, that the City will remove the Equipment from the License Area when in the City's sole determination it would: (1) be unsafe or not practicable to wait for Licensee to perform (or cause to be performed) the work; (2) result in significant delay; or (3) otherwise threaten or compromise public health, safety, welfare or public services. The City will remove any Equipment with reasonable care and store such Equipment for retrieval by Licensee. Licensee shall have the right to reinstall such removed Equipment (or equivalent replacement Equipment) at Licensee's sole expense on the repaired or replaced Vertical Infrastructure including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be, and/or License Area and in accordance with Section 7 (Equipment Installation). Licensee expressly acknowledges that any act(s) taken by the City pursuant to this Section 12.4, which includes without limitation any Equipment removal or storage, will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee's contractual privilege to use the License Area.

13. INDEMNIFICATION

13.1. Licensee's Indemnification Obligations

Licensee, for itself and its successors and assigns shall indemnify, defend and hold the City and its Agents, elected and appointed officials and volunteers (collectively, the **"Indemnified City Parties"**), harmless from and against any and all Claims incurred in connection with or arising in whole or in part from the installation, use, maintenance, repair or removal of the Equipment or Licensee's breach of any provision of this Agreement. Licensee's indemnity obligation provided for in this Section shall not apply to any Claim resulting from the negligence or willful misconduct of the City or other Indemnified City Parties. Licensee's obligations under this Section 13 include, without limitation, all reasonable fees, costs and expenses for attorneys, consultants and experts, and the City's actual and reasonable costs to investigate any Claim. Licensee expressly acknowledges and agrees that (a) it has an immediate and independent obligation to defend any Indemnified City Parties from any Claim that falls within this Section 13, even when the allegations in the Claim are or appear to be groundless, fraudulent or false; and (b) Licensee's obligations under this Section 13 arise at the time any Indemnified City Parties tender such Claim to Licensee and continue until such Claim's final resolution. Licensee's obligations under this Section 13 shall survive this Master License's and any applicable Site License's expiration or termination.

13.2. Licensee's Defense of City

In the event that any Claim is brought against any Indemnified City Parties in connection with any subject matter for which any Indemnified City Parties are indemnified by Licensee under this Master License or any Site License, City shall give Licensee prompt written notice and Licensee shall, at Licensee's sole cost and expense, resist and defend against such Claim with legal counsel that Licensee shall have the right to select provided that the legal counsel must have (1) substantial experience in similar actions or proceedings as that brought against the Indemnified City Parties;

(2) No past disciplinary actions by any United States tribunal or state bar association; and
(3) no actual or potential conflicts of interest with any Indemnified City Parties. Otherwise any other legal counsel which Licensee desires to select shall be subject to the City's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Licensee shall not, without the City's written consent, enter into any compromise or settlement agreement on any Indemnified City Parties' behalf that

(a) admits any liability, culpability or fault whatsoever on any Indemnified City Party's part; or (b) requires any Indemnified City Party to take any action, which includes without limitation any change in the City's policies, or pay any money. Nothing in this Master License shall be construed to limit or preclude any Indemnified City Parties or their respective legal counsel from cooperating with Licensee and participating in any judicial, administrative or other litigation or proceeding.

14. INSURANCE

Prior to any activities by Licensee on the License Area or other City Property, Licensee shall comply with all insurance requirements and other obligations contained in **Exhibit B**. The City shall have the right to amend or replace the insurance requirements and other obligations contained in **Exhibit B** one time during any consecutive sixty (60) month period during the Term of this Master License on 60 days' prior written notice to Licensee.

15. LIMITATIONS ON LIABILITY

15.1. General Limitation on City's Liability

Licensee expressly acknowledges that the City is not responsible or liable to Licensee for any and all Claims that arise in connection with (1) acts or omissions by persons or entities using the sidewalk, street or other areas adjoining, adjacent to or connected with any License Area; (2) any utility service interruption; (3) theft; (4) burst, stopped or leaking water, gas, sewer, steam or other pressurized pipes; (5) fires, floods, earthquakes or other *force majeure*; or (6) any vehicular collision on or about the License Area or other City Property; all except to the extent such events are caused directly and exclusively by the City's gross negligence or willful misconduct. Licensee expressly waives and releases all Claims it may have against the City or its Agents that arise in connection with the events described in this Section 15.1 as may be related to this Master License, any Site License or any acts or omissions on or about the License Area except to the extent such events are caused by the City's negligence or willful misconduct.

15.2. Consequential, Indirect or Punitive Damages

Neither party will be liable under this Master License for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption, loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise. Licensee expressly acknowledges and agrees that the License Fees and Additional Fees payable under this Master License do not take into account any potential liability on the City's part or any Indemnified City Parties' part for consequential or incidental damages. The City would not be willing to enter into this Master License or issue any Site Licenses unless Licensee completely waived any Claims against the City or any Indemnified City Parties, to the fullest extent permitted by applicable Laws, for consequential or incidental damages due to the acts or omissions by the City or its Agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligation placed on Licensee or other waivers contained in this Master License, and as material consideration for this Master License and all Site Licenses (if any), Licensee fully releases, waives and discharges forever any and all Claims against the City for consequential and incidental damages that may

arise from or in connection with this Master License or any Site License, which includes without limitation any lost profits related to any disruption to Equipment, any interference with uses or operations conducted by Licensee under this Master License and/or any Site Licenses, from any cause whatsoever, and whether or not due to the active or passive negligence or willful misconduct by the City or any Indemnified City Parties, and covenants not to sue for such damages the City, the City's departments and all City agencies, officers, directors and employees, and all persons acting by, through or under them. In no event will Licensee be liable to the City for any special, consequential or indirect damages.

15.3. No Relocation Assistance

Neither this Master License nor any Site License creates any right in Licensee to receive any relocation assistance or payment for any reason under the California Relocation Assistance Law (California Government Code §§ 7260 *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601 *et seq.*), as either may be amended or superseded, or any similar Laws upon or after any termination. To the extent that any such Laws may apply, Licensee waives, releases and relinquishes forever any and all Claims that it may have against the City for any compensation from the City except as provided in Section 23 (Condemnation).

15.4. Mutual Personal Liability Waiver

In no event will any City board, agency, member, officer, employee or other Agent be personally liable to Licensee, its successors or assigns, for any default, breach, other nonperformance or sum unpaid sum by the City. In no event will any Licensee board, agency, member, officer, employee or other Agent be personally liable to the City for any for any default, breach, other nonperformance or sum unpaid sum by Licensee.

16. HAZARDOUS MATERIALS

16.1. Hazardous Materials in the License Area

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

16.2. Hazardous Material Release Notice

Licensee shall promptly notify the City if and when Licensee learns or has reason to believe any Hazardous Material Release has occurred in, on, under or about the License Area or other City Property caused by Licensee, its Agents or its Invitees, however, no default may be declared by the City pursuant to this Section 16.2 unless Licensee has actively concealed the Hazardous Material Release after Licensee learns or has reason to believe that the Hazardous Material Release has occurred. Licensee will not be deemed to have assumed liability for any such Release by giving such notice, unless such Release was caused by or arose in connection with Licensee's or its Agent's or invitee's acts, omissions or negligence.

16.3. Licensee's Hazardous Material Indemnification Obligations

If Licensee breaches any obligations contained in this Section 16 (Hazardous Material), or if any act, omission or negligence by Licensee or its Agents or Invitees results in any contamination on or about the License Area or other City Property, or in a Hazardous Material Release from, on, about, in or beneath the License Areas or any other City Property, in whole or in part, or any Environmental Law violation, then Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the City and any Indemnified City Parties harmless, from and against any and all Claims (including damages for decrease in value of the License Area or other City Property, the loss or restriction of the use of usable space in the License Area or other City Property and sums paid in settlement of Claims, attorneys' fees, consultants' fees, and experts' fees and related costs) that arises during or after the Term related to or in connection with such Release or violation; provided, however, Licensee shall not be liable for any Claims to the extent such Release or violation was caused directly and exclusively by the City's gross negligence or willful misconduct. Licensee's indemnification obligation includes all costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought or Released onto the License Area or other City Property by Licensee or its Agents or Invitees and to restore the License Area or other City Property to its condition prior to such introduction or Release, or to correct any Environmental Law violation. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and the other Indemnified City Parties from any Claim that actually or potentially falls within this indemnity provision even if the allegations supporting the Claim are or may be groundless, fraudulent or false, and that said obligation arises at the time such Claim is tendered to Licensee by the Indemnified City Party and continues until the Claim is finally resolved. Without limiting the foregoing, if Licensee or any of its Agents or Invitees causes any Hazardous Material Release on, about, in or beneath the License Area or other City Property, then in any such event Licensee shall, promptly, at no expense to any Indemnified City Party, take any and all necessary actions to return the License Area and/or other City Property, as applicable, to substantially the same condition existing prior to such Hazardous Materials Release on the License Area or other City Property or otherwise abate the Release in accordance with all Environmental

with Licensee, the City will investigate whether it can reasonably and economically mitigate that interference. The City will provide notice to Licensee of the City's determination. If the City determines, in its sole and absolute discretion, that mitigation is reasonably and economically feasible, the City's notice will specify when the City will mitigate the adverse effect. The City's mitigation will effect a cure, and the City will not be liable to Licensee in any other way or be required to take any other measures with respect to the Equipment. If the City determines, in its sole and absolute discretion, that mitigation is not reasonably or economically feasible, Licensee may elect either to: (1) terminate the affected Site License and receive a ratable refund in the License Fee for those Site Licenses terminated after the first License Year; or (2) take steps itself at its own cost to mitigate the adverse effect and continue to operate the Equipment on the License Area, and receive from the City a written waiver from the obligation to pay the License Fee for the first twelve (12) months in the next License Year under the affected Site License to offset the mitigation costs. Licensee agrees that the City's temporary and partial License Fee abatement or waiver under this Section 17.2 will be the only compensation due to Licensee for costs incurred or otherwise arising from the adverse effect as liquidated damages fully compensating Licensee for all Claims that may arise from or be related to the adverse effects. Under no circumstances will the City be required to alter its operations at the identified License Area or provide a replacement License Area to Licensee.

The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

17.3. Interference Caused by City Access

Licensee acknowledges and agrees that it will not be entitled to any License Fee abatement if the City exercises its rights to access, remove and/or store Equipment under Section 12 (Public Works' Operations) unless the City's acts or omissions cause Licensee to be unable to operate Equipment on the License Area for its permitted use for a period of more than 5 days, in which case, subject to proof, License Fees will be abated ratably for the entire period that Licensee is unable to operate any Equipment on any affected License Area calculated from the first day of such City acts or omissions

18. DEFAULT

18.1. Defaults and Cure Periods

The parties agree that any failure to perform or observe any term, condition, obligation or other provision in this Master License or any Site License, beyond the applicable cure period, shall be a default. For any monetary default, the defaulting party shall have 30 days after written notice from the non-defaulting party to perfect a cure. The defaulting party shall not be entitled to any additional time to cure a monetary default. For any non-monetary default, the defaulting party shall have 30 days after written notice from the

Non-defaulting party to perfect a cure; provided, however, that for any non-monetary default that cannot reasonably be cured within 30 days, the defaulting party shall have additional time as is reasonably necessary to perfect the cure if the defaulting party commences to cure the default within the first 30 days after notice and diligently pursues the cure to completion.

18.2. Licensee's Remedies

Except as may be otherwise provided elsewhere in this Master License, Licensee's sole remedies for the City's uncured default will be (1) to terminate the Site License(s) affected by the uncured default on 30 days' prior written notice; and (2) an action for damages subject to the provisions in Section 15 (Limitations on Liability).

18.3 Licensee's Uncured Default and City's Remedies. If Licensee does not cure its default within the applicable cure period in Section 18.1, then thereafter City may elect any of the following remedies:

(a) suspend Licensee's access to the Vertical Infrastructure or Utility Infrastructure to which the default pertains;

(b) terminate the specific Site License Agreement(s) or affected portion thereof covering the Vertical infrastructure(s) or Utility Infrastructure to which the default pertains;

(c) require Licensee's obligation to which the default has been declared to be specifically performed; and/or

(d) continue in effect any applicable Site Licenses to which the default pertains, with the right of the City to enforce all its rights and remedies, which includes without limitation the right to receive all License Fees, Additional Fees, Default Fees and other sums as they may become due and to maintain an action at law against Licensee for damages directly incurred by the City arising directly from Licensee's uncured default.

18.4 City's Uncured Default and Licensee's Remedies. If the City does not cure its default, then thereafter, Licensee may elect to pursue any rights or remedies available to Licensee at law or in equity.

18.5 Default Fees

In addition to all other rights and remedies available to the City, the City may require Licensee to pay an additional fee to offset the City's actual and reasonable administrative cost to enforce compliance with the non-monetary terms of this Master License or any Site License as more particularly described on **Schedule 2** (each a "**Default Fee**"). Licensee shall pay the Default Fee within 30 days after Licensee's receipt of a written demand from the City. If Licensee fails to timely pay the Default Fee or cure the underlying default within the applicable cure period, the City shall have the right (but not the obligation) to send Licensee a follow-up notice and demand for an additional Default Fee that will be due and payable within 30 days. Licensee's obligation to pay Default Fees is separate and distinct from the underlying default. Default Fee payments shall not be deemed to cure the underlying default.

18.6 Cumulative Remedies

Except as otherwise provided in this Master License, all rights and remedies available to the City or Licensee are cumulative, and not a substitute for, any rights or remedies otherwise available to the City or Licensee.

19. TERMINATION

19.1 Master License Termination by Licensee

Licensee may, in Licensee's sole discretion, terminate this Master License on one (1) year's prior written notice to the City.

19.2 Site License Termination by Licensee

A Site License may be terminated by Licensee for any reason or no reason, and without further liability to Licensee, at any time effective upon 90 days' prior written notice to the City.

19.3 City's Termination Rights Due To Material Interference With City Municipal Functions/Threat To Public Health/Safety/Welfare

The City has the right to terminate any or all Site Licenses on 90 days' prior written notice to Licensee if the City determines, in the City's sole reasonable judgment, that Licensee's operations on or about_ the License Area adversely affect or threaten public health and safety, materially interfere with the City's municipal functions or require the City to maintain Vertical Infrastructure or Utilities Infrastructure for an applicable Site License that the City no longer needs for its own purposes. In the event that the City terminates any Site License for reasons unrelated to Licensee's failure to perform its obligations under this Master License, the City shall refund any pre-paid Licensee Fee on a pro-rata basis. In addition, the City shall prioritize Licensee's Site License Application for any Site License to replace the terminated Site License; provided, however, that (1) the City shall prioritize only as many Site License Applications as Site Licenses terminated by the City and (2) the City's prioritization will not affect Licensee's obligations under this Master License.

20. ASSIGNMENT AND OTHER TRANSFERS

20.1. General Restriction on Assignment and Other Transfers

Except as specifically provided in Section 20.3 (Permitted Assignments), Licensee shall not directly or indirectly assign or transfer its interests or rights, whether in whole or in part, in connection with this Master License, any Site License or the License Area without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

20.2. General Assignment and Other Transfer Procedures

20.2.1. Proposed Assignment Notice

In the event that Licensee desires to assign or otherwise transfer any right, title or interest in this Master License or any Site License, whether in whole or in part, and such assignment or other transfer is not a Permitted Assignment, Licensee shall first send written notice to the City (the "**Proposed Assignment Notice**"), which states in detail the proposed terms and conditions for the proposed assignment or other transfer and complete information that the City reasonably requires to fully evaluate Licensee's request and render an informed decision, which includes without limitation, non- confidential financial statements, business track records, references and other information about the proposed assignee or transferee (the "**Proposed Assignee**"). In the event that Licensee does not provide all the such information simultaneously with the Proposed Assignment Notice, the Proposed Assignment Notice shall not be deemed effective until Licensee delivers all such information as the City may reasonably require.

20.2.2. City's Response to Proposed Assignment Notice

The City shall approve or disapprove any request for consent to an assignment or other transfer within 30 days after the City receives a complete Proposed Assignment Notice (the "**Assignment Response Period**"). If the City fails to respond within the

Assignment Response Period, the request for consent will be deemed disapproved. If the City delivers to Licensee written consent to the proposed assignment or other transfer, then Licensee shall have 100 days from such written consent to complete the assignment or other transfer. The City's consent will be deemed to be automatically revoked if Licensee fails to complete the proposed assignment or other transfer within said 100-day period; provided, however, that the 100-day period may be extended to a date certain in a written agreement, which the City shall not unreasonably refuse if the extension is necessitated by circumstances outside Licensee's control.

20.3. Permitted Assignments

20.3.1. General Authorization

The City agrees that Licensee will be permitted to assign or otherwise transfer this Master License and any Site License(s) issued under it without the City's prior consent but with notice to the City as provided below, to: (1) an Affiliate; (2) an entity that acquires all or substantially all Licensee's assets in the market in which the License Area is located (as the "market area" is or may be defined by the FCC); (3) an entity that acquires a Controlling interest of Licensee by a change in stock ownership or partnership interest; (4) an entity Controlled by Licensee; or (5) an entity that is a successor to Licensee either by merger or other consolidation of Licensee (each such assignment or transfer, a **"Permitted Assignment"**).

20.3.2. Conditions on Permitted Assignments

All Permitted Assignments will be subject to all the following conditions: (1) the Proposed Assignee may use the License Area only for the Permitted Use and holds all Regulatory Approvals necessary to lawfully install, operate and maintain Equipment on the License Area; (2) Licensee or its assignee provides the City notice of the Permitted Assignment no later than thirty (30) days following the date of the assignment and assumption of the Master License or the applicable Site Licenses, as the case may be; and (3) Licensee is not in default of its obligations under this Master License beyond any applicable notice and cure period.

20.4. Effect of Assignment or Other Transfer

No assignment or other transfer by Licensee, consent to assignment by the City, or Permitted Assignment under Section 20.3 (Permitted Assignments) will relieve Licensee from any obligation on its part under this Master License or any Site License unless the Proposed Assignee agrees in writing to assume all of Licensee's obligations under the Master License and Site Licenses. Any assignment or other transfer that is not in compliance with this Master License will be void and be a material default by Licensee without a requirement for notice and a right to cure. The City's acceptance of any License Fee, Additional Fee, or other payments from a Proposed Assignee will not be deemed to be the City's consent to such assignment or other transfer, recognition of

any assignee or transferee or waiver of any failure of Licensee or other transferor to comply with this Section 20 (Assignments and Other Transfers).

20.5. Assumption by Assignee or Transferee

Each Proposed Assignee shall assume all Licensee's obligations under this Master License and each assigned Site License. Except for a Permitted Assignment, no assignment or other transfer will be binding on the City unless Licensee or the Proposed Assignee delivers to the City evidence satisfactory to the City that the Proposed Assignee has obtained all Regulatory Approvals required to operate as a wireless communications service provider on the assigned License Area, a copy of the assignment or other transfer agreement and an instrument in recordable form that contains a covenant of assumption by such Proposed Assignee satisfactory in substance and form to the City, consistent with the requirements in this Section 20 (Assignment and Other Transfers). However, the failure or refusal by a Proposed Assignee to execute such instrument will not release such Proposed Assignee from its liability as set forth in this Section. Except for a Permitted Assignment as provided in Section 20.3 (Permitted Assignments), Licensee shall reimburse the City on demand for any reasonable costs that the City incurs in connection with any proposed assignment, which includes the costs to investigate the acceptability of the Proposed Assignee and legal costs incurred in connection with considering any requested consent. The City agrees that its right to reimbursement under this Section will be limited to **Two Thousand Dollars and 00/100 Dollars (\$2,000.00)** for each request.

21. DAMAGE OR DESTRUCTION OF LICENSE AREA

21.1. City's Rights after Damage or Destruction

21.1.1. City's Election to Repair or Replace Vertical Infrastructure

Within 30 days after the date on which the City discovers damage or destruction on or about any Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be), the City will give Licensee notice of the City's decision as to whether to repair or replace the damaged Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) and its good faith estimate as to the time the City will need to complete the work. To clarify, Licensee is not responsible for any damage or destruction not caused by Licensee or outside of Licensee's control. If the City's time estimate exceeds 30 days, or if the City cannot complete the work within 30 days after the date that the City specifies in its notice, or if the City elects not to do the work, then Licensee will have the right to terminate the affected Site License(s) immediately upon written notice to the City.

21.1.2. City's Election to Remove Vertical Infrastructure

If the City elects to remove, rather than repair or replace, any damaged Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) licensed to Licensee, then the applicable Site License will automatically terminate on the last day of the month in which the removal occurs.

21.1.3. City's Election to Remove Equipment

If the acts by third parties or other *force majeure* circumstance outside the Licensee's or its Agent's or Invitee's control destroys or damages any Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be), License Area or other City Property to such an extent that, in the City's reasonable determination, the Equipment on the Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be), License Area or other City Property cannot be operated, the City and/or Licensee may decide to terminate the affected Site License on 30 days' notice to the other party. Upon such termination, Licensee shall remove the Equipment from the damaged Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) within 90 days of such notice.

21.2. Licensee's Rights after Termination

After any termination of a Site License pursuant to Section 22.1 (City's Rights After Damage or Destruction), the City will: (1) refund any pre-paid License Fee in connection with the terminated Site License on a pro-rata basis determined by the number of months left in the current License Year at the time such termination occurs, unless the termination occurs in the first 12 months after the Commencement Date; and (2) prioritize Licensee's Site License Application for one replacement Site License for each such Site License terminated by the City.

21.3. Licensee's Statutory Waiver

The parties understand, acknowledge and agree that this Master License fully governs their rights and obligations in the event that any licensed Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) becomes damaged or destroyed, and, to the extent applicable, the City and Licensee each hereby waives and releases the provisions in California Civil Code §§ 1932(2) and 1933(4), as either may be amended or superseded.

22. CONDEMNATION

22.1. Permanent Takings

In the event that any person or entity with the power to condemn permanently takes any License Area, in whole or in part, or in the event that the City transfers any License Area in whole or in part to such entity in lieu of eminent domain, the City must make a good-faith effort to provide 60 days prior written notice to Licensee of any proposed taking and the following provisions will apply:

22.1.1. Termination Rights after Condemnation

Any affected Site License will automatically terminate as to the part taken or transferred on the date the permanent taking or transfer occurs. At the same time, the License Fee under the affected Site License will be ratably reduced to account for the reduction in License Area. Notwithstanding the forgoing, Licensee shall have the right to terminate any Site License upon 30-days written notice to the City if Licensee determines in its sole discretion that any such condemnation (or other transfer in lieu of condemnation) will interfere with Licensee's operations.

22.1.2. Award

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

22.1.3. No Statutory Right to Terminate

The parties understand, acknowledge and agree that this Section 23.1 (Permanent Takings) is intended to fully govern the parties' rights and obligations with respect to a permanent taking for which just compensation is due. Licensee and the City each hereby waives and releases any right to terminate this Master License in whole or in part under California Code of Civil Procedure §§ 1265.120 and 1265.130, as both may be amended or superseded, and under any similar Laws to the extent applicable to this Master License and any Site License(s).

22.2. Temporary Takings

The City must provide at least 60 days prior written notice to Licensee of any City- initiated taking that affects any License Area, in whole or in part, for less than 90 days and such temporary taking will have no effect on the affected Site License, except that Licensee will be entitled to terminate any Site License or a pro-rata abatement in the applicable License Fee to the extent that such temporary taking materially impairs Licensee's ability to use the License Area for more than 10 days or interferes with Licensee's operations.

23. RECORDS

23.1. City Audit Rights of Licensee's Accounting Records

Licensee shall maintain in accordance with Licensee's standard record retention policies, the following records in electronic format: accounting records that contain the amount and payment date for all License Fees paid to the City pursuant to this Master License and any Site Licenses. To determine whether Licensee has fully and accurately paid all License Fees and other sums payable to the City under this Master License and any Site License, the City, or its designee, will have the right one time in any consecutive five (5) year period during the Term of the Master License and so long as litigation is not pending between the City and Licensee arising from or related to this Master Agreement, to inspect and audit Licensee's accounting records pertaining to this Master License at one of Licensee's offices in the State of California during regular business hours on thirty (30) business days' advance written notice to Licensee. Such written notice from the City must identify with specificity the period for

which the City wishes to conduct its audit. Licensee shall have the right to have employees and its Agents physically present at all times that the City, its employees or Agents are conducting any such audit and representatives of the City shall comply with Licensee's standard accounting policies and procedures pertaining the City's auditing of Licensee's accounting records which are considered by Licensee to be proprietary and confidential. In the event that any City audit concludes that Licensee failed to pay License Fees and other sums by more than ten percent (10%) of the aggregate amount of License Fees and other sums due under this Master License for the period identified by the City in is written notice to Licensee then, Licensee shall, within 30 business days after Licensee's receipt of a written invoice from the City, pay (i) all outstanding sums and (ii) reimburse the City for the City's reasonable, actual and documented costs and expenses to conduct the audit. Notwithstanding the foregoing, if the audit reveals that Licensee failed to pay License Fees and other sums by less than ten percent (10%) of the aggregate amount of License Fees and other sums due under this Master License for the period for which the City notified Licensee, then Licensee shall remit any underpayment within 15 days after Licensee's receipt of a written demand from the City, and the City shall reimburse Licensee within 15 business days of the City's receipt of Licensee's invoice for Licensee's reasonable, actual and documented costs and expenses to supervise and otherwise participate in the City's conduct of the audit. If the City's audit reveals that Licensee has overpaid its License Fees and other sums due to the City under the Master License, then the City shall reimburse Licensee for any such overpayment within 15 days of the City's receipt of Licensee's invoice together with Licensee's supervisory and participation costs identified in the preceding sentence.

23.2. Equipment Inspections and Audits

The City has the right (but not the obligation) to inspect the License Area and the Equipment to evaluate Licensee's compliance with this Master License, any Site License and all applicable Laws; however, the City shall not touch or interfere in any way with any Equipment, except as otherwise allowable herein. In the event that any such inspection or evaluation concludes that Licensee installed Equipment without proper authorization or that ten percent (10%) or more sites were not installed in substantial compliance with the Approved Plans or all applicable Laws, the City shall send written notice of such to Licensee along with documentation of substantial non-compliance ("Non-Compliance"). After receipt of the Non-Compliance, Licensee shall have 30 business days to review and request additional documentation that may be reasonably required to confirm the validity of the City's Non-Compliance claim. If the Non-Compliance is undisputed, Licensee shall reimburse the City for the reasonable, actual and documented costs and expenses to conduct the investigation or evaluation of Non-Compliance, which shall not exceed \$5,000 and shall only be reimbursed once every 5 years.

23.3. Estoppels

Licensee, at any time throughout the Term and on not less than 30 business days' following Licensee's receipt of written notice from the City, shall execute, acknowledge and deliver to the City or its designee, an estoppel certificate for the requested Site License with the following statements: (i) that Licensee has accepted the License Area (or, if Licensee has not done so, that Licensee has not accepted the License Area in whole or in part and specifying the applicable License Areas and reasons for non- acceptance); (ii) the Commencement Date; (iii) the Effective Date and Expiration Date of this Master License; (iv) that the Master License is in full force and effect and whether or not the Master License and the Site License has been modified and, if so, the manner in which they were modified; (v) whether any defenses currently exist against any action to enforce Licensee's obligations under this Master License (and, if so, specifying the same); (vi) whether Licensee believes that the City failed to perform any obligations under this Master License or the Site License (and, if so, specifying any obligations that Licensee believes that the City has failed to meet); (vii) the dates, if any, on which the License Fees and Additional Fees have been paid; and (viii) any other information that may be reasonably required by the City pertaining to the status of the requested Site Licenses.

24. RULES AND REGULATIONS

At all times throughout the Term, Licensee shall fully and faithfully comply with any and all non-discriminatory and reasonable rules, regulations and instructions that the City may from time-to-time establish and/or amend with respect to the License Area as long as they are provided in advance to Licensee and not inconsistent with the terms of this Master License, any Site License or applicable Law.

25. SURRENDER OF LICENSE AREA

25.1. Licensee's Removal and Restoration Obligations

No later than sixty (60) days after this Master License or any Site License expires or terminates, as the case may be, Licensee shall (1) peaceably remove its Equipment from the License Areas affected by the expiration or termination; (2) restore any such License Areas and other City Property affected by the removal to the condition that existed immediately before Licensee installed its Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted; and (3) surrender such License Areas to the City free and clear from any debris, hazards, liens and encumbrances caused by Licensee. Subject to the approval of the City Manager, the City may grant an additional thirty (30) days for Licensee to fulfill its obligations as

set forth in this Section 26.1. The obligations under this Section 26.1 will survive this Master License's or any Site License's expiration or termination.

25.2. Abandonment

At its option, the City may deem any Equipment to be abandoned that remains on any Vertical Infrastructure, Utility Infrastructure, License Area or other City Property for more than 60 days after this Master License or any applicable Site License expires or terminates. In any case, the City may dispose of abandoned Equipment in any lawful manner, at Licensee's sole cost. Licensee agrees that California Civil Code Sections 1980 et seq., as may be amended or superseded, and similar Laws addressing abandoned property by residential or commercial tenants do not apply to any abandoned Equipment.

25.3. Hold Over

If Licensee fails to surrender the License Area under a particular Site License as required in this Master License, and the City consents to Licensee's holdover, the Term will be automatically extended for such Site License on a month-to-month basis for up to one (1) year on the same terms and conditions except that the License Fee shall automatically increase by one hundred twenty-five percent (125%) over the then-current License Fee. Any further month to month holdover after one (1) year will be subject to a License Fee increase of 150% over the License Fee in effect at the start of the holdover. Any holdover without the City's consent will be a default by Licensee and will entitle the City to exercise any or all rights and remedies.

26. Surety Bond

26.1. Surety Bond Amount

Prior to any installation, construction or other work performed by Licensee pursuant to this Master License or any Site License, Licensee shall furnish the City with a surety bond in the amount equal to **Two Thousand and 00/100 Dollars (\$2,000.00) per small wireless facility installation** (the "**Surety Bond**") as security to provide recourse for the City (at its option) in the event that Licensee defaults on its obligations to remove its Equipment from any License Area for a terminated or expired Site License or to perform its restoration obligations as set forth in Section 25.1 under this Master License. Such bond shall be with a company and in a form reasonably satisfactory to the City Manager and the City Attorney.

26.2. Bond Amount Replenishment

In the event that the City applies or uses the Surety Bond, in whole or in part, to cure any default by Licensee under Section 26.1, then Licensee shall replenish the Surety Bond to \$2,000 within thirty (30) business days following Licensee's receipt of written notice from the City that the City has applied or used the Surety Bond and the City requires the replenishment of the Surety Bond in accordance with this Section 26.2. The City's replenishment notice shall include a complete copy of Section 27.1 and Section 27.2 of this Master License to be considered an effective replenishment notice to Licensee. The City may, in the City's reasonable judgment, require Licensee to increase the Surety Bond amount from time-to-time if the City determines that Licensee has been habitually placed in default of Site Licenses by the City in connection with Licensee's performance of its removal and restoration obligations under Section 26.1 of this Master License and therefore the City warrants additional security to ensure Licensee's performance of its Section 26.1 obligations.

26.3. Bond Application

Licensee agrees that the City may use the Surety Bond, in whole or in part, to remedy any failure by Licensee to perform any term, covenant or condition in Section 26.1 of this Master License. In the event that the City uses the Surety Bond in whole or in part, the City will not be deemed to have waived any rights under this Master License, or legal or equitable rights whatsoever. Licensee expressly waives any rights it may have under California Civil Code § 1950.7, as may be amended or superseded, or any similar Laws and agrees that the City may retain from the Surety Bond any portion reasonably necessary to compensate the City for any foreseeable or unforeseeable loss or damage caused by Licensee's, its Agents' or invitee's acts or omissions.

27. Miscellaneous Provisions

27.1 Notices

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

TO CITY:

**City of MERCED
Attention: Director of Public Works
678 W 18th Street
MERCED, CA 95340**

**With a required copy
to:**

**City of MERCED
Attention: City Attorney
678 W 18TH Street
MERCED, CA 95340**

**With a required copy
to:**

**City of MERCED
Attention: City Manager
678 W 18TH Street
MERCED, CA 95340**

TO LICENSEE:

**With a required copy
to:**

All notices, demands or other correspondence in connection with this Master License shall be deemed effective upon delivery or refusal of delivery. Telephone , facsimile and email information are provided for convenience and for couriers who may require such information, and any notice given solely through electronic means will not be deemed to be effective notice. Any copies required to be given constitute an administrative step for the parties' convenience and not actual notice. The parties may change the notice addresses above from time-to-time through written notice to the addresses above or the then-current notice address.

27.2 Waivers

No failure by either the City or Licensee to insist that the other strictly perform any obligation, term, covenant or condition under this Master License or to exercise any rights, powers or remedies in connection with the other party's failure to strictly perform such obligation, term, covenant or condition no matter how long the failure to insist on such performance or exercise such rights, powers or remedies, will be deemed to waive any default for non-performance. No behaviors, patterns or customs that may arise between the parties with respect to their performance required under this Master License will be deemed to waive any rights, powers or remedies the parties' may have to insist on strict performance. Neither Licensee's payment nor the City's or its Agents'

acceptance of any License Fees, Additional Fees or any other sums due to the City or its Agents under this Master License during any such default will be deemed to cure any such default, waive the City's right to demand material compliance with such obligation, term, covenant or condition or be deemed to be an accord and satisfaction for any Claim the City may have for further or additional sums. Any express waiver by either the City or Licensee in connection with any default or obligation to perform any provision, term, covenant or condition under this Master License will: (i) be limited to the specific default or performance for which the express waiver is granted; (ii) not be deemed to be a continuing waiver; and (iii) not affect any other default or performance no matter how similar or contemporaneous such other default or performance may be. The City's or Licensee's consent given in any specific instance in connection with or pursuant to this Master License will not relieve the City or Licensee from the obligation to secure the other's consent in any other or future specific instances, no matter how similar or contemporaneous the request for consent may be.

27.3 Integration; Amendments

This Master License constitutes the entire agreement and understanding between the parties, and supersedes any and all prior agreements and understandings, whether written or oral, with respect to the subject matter covered in this Master License. This Master License and any Site Licenses (and any default in connection with this Master License or any Site Licenses) may not be orally changed, waived, discharged, altered, modified, amended or terminated. This Master License and any Site Licenses (and any default in connection with this Master License or any Site Licenses) may not be changed, waived, discharged, altered, modified, amended or terminated, except by a written instrument signed by both parties.

27.4 Interpretation

The parties acknowledge and agree that the following interpretive rules will be applicable to this Master License and any Site License:

27.4.1 General

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

27.4.2 Joint and Several Liability

In the event that the City consents to enter into this Master License with more than one Licensee, which consent the City may withhold or condition in the City's sole and absolute discretion, the obligations and liabilities imposed on Licensee under this Master License will be joint and several among the multiple Licensees to this Master License.

27.4.3 Captions and Other Reference Material

The section captions in this Master License and the table of contents have been included for the parties' convenience and reference and neither the captions nor the table of contents in no way define or limit the scope or intent of any provision in this Master License.

27.4.4 Time

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

27.4.5 Inclusive Words and/or Phrases

Inclusive terms and/or phrases, which includes without limitation the terms and/or phrases "including," "such as" or similar words or phrases that follow any general or specific term, phrase, statement or matter may not be construed to limit the term, phrase, statement or matter to the stated terms, statements or matters, or the listed items that follow the inclusive term or phrase, whether any non-limitation language or disclaimers, such as "including, but not limited to" and/or "including without limitation" are used or not. Rather, the stated term, phrase, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within such term, phrase, statement or matter given its broadest interpretation.

27.5 Successors and Assigns

Except as may be expressly provided in this Master License, the conditions, covenants, promises and terms contained in this Master License will bind and inure to the benefit of the City and Licensee and their respective successors and assigns.

27.6 Brokers

The parties represent to each other that neither has had any contact, dealings or communications with any Broker in connection with this Master License, whose commission, if any, would be paid pursuant to a separate written agreement between such Broker and such party with which such Broker contracted. In the event that any Broker perfects any claim or finder's fee based upon any such contact, dealings or communications, the party to such written contract with such Broker shall indemnify the

other party from all Claims brought by such Broker. This Section 28.6 will survive this Master License's expiration or earlier termination.

27.7 Governing Law; Venue

This Master License must be construed and enforced in accordance with the laws of the State of California and the MERCED Municipal Code, without regard to the principles of conflicts of law. This Master License is made, entered and will be performed in the City of MERCED, County of Merced, State of California. Any action concerning this Master License must be brought and heard in the California Superior Court for the County of Contra Costa or the United States District Court, Northern District of California if federal law applies.

27.8 Litigation Fees and Costs

In the event the City or Licensee prevails in an action to enforce its rights under this Master License or individual Site License, the prevailing shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

27.9 Recording

Licensee acknowledges and agrees that: (1) this Master License and any Site License affects the City Property; (2) Licensee shall not have the right to record this Master License, any Site License, any memorandum or any short-form agreement in relation to this Master License or any Site License; and (3) Licensee shall, at Licensee's sole cost and expense, remove any document or other instrument recorded against the City's title to any City Property promptly upon the City's request or demand. Licensee may not record any document or instrument in connection with this Master License or any Site License without the City's prior written consent, which the City may withhold in the City's sole and absolute discretion.

27.10 No Third-Party Beneficiaries

Neither this Master License nor any Site License is intended to (and shall not be construed to) give any third party, which includes without limitation Licensee's customers or any other third-party beneficiaries, any right, title or interest in this Master License, any Site License or the real or personal property(ies) that may be affected by the same.

27.11 Survival

All terms, provisions, covenants, conditions and obligations in this Master License and any Site License will survive this Master License's or the subject Site License's expiration or termination when, by their sense or context, such provisions, covenants, conditions or obligations: (1) cannot be observed or performed until this Master License's or any Site License's expiration or earlier termination; (2) expressly so survive; or (3) reasonably should survive this Master License's or any Site License's expiration or earlier termination. Notwithstanding any other provision in this Master License or any Site License, the parties rights to enforce any and all indemnities, representations and warranties given or made to the other party under this Master License, any Site License or any provision in this Master License or any Site License will not be affected by this Master License or any Site License expiration or termination.

27.12 Severability

If any provision in this Master License, any Site License or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (1) such provision or its application to such person, entity or circumstance will be deemed severed from this Master License or any Site License; (2) all other provisions in this Master License, any Site License or their application to any person, entity or circumstance will not be affected; and (3) all other provisions in this Master License, any Site License or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by Law, except to the extent that such enforcement would (a) be manifestly unreasonable or manifestly inequitable under all the circumstances or (b) undermine one or both parties' fundamental purpose in entering this Master License.

28.13 Jointly Drafted

This Master License has been jointly negotiated and, although formulated at the outset by counsel for the City, the Master License has been reviewed by counsel for Licensee, and each such counsel has participated in the preparation of the final Master License. The language of this Master License shall be construed as a whole according to its fair meaning and not strictly for or against any party, and it is agreed that no provision hereof shall be construed against any party hereto by virtue of the activities of that party or such party's attorneys.

[END OF MASTER LICENSE - SIGNATURE PAGE APPEARS ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Licensee executed this Master License on the Effective Date:

The City:

City of Merced,
A California Charter municipal corporation

By: _____
Matthew Serratto
Mayor

Date: _____

Licensee:

By: _____

Name: _____

Title: _____

Date: _____

Approved As To Form:

By: _____
Kimberly Flores
Interim City Attorney

Date: _____

Approved By City Council
Resolution NO. _____

ATTEST:

By: _____
Jennifer Levesque
Assistant City Clerk

Date: _____

[END OF SIGNATURE PAGE- EXHIBITS & SCHEDULES BEGIN ON NEXT PAGE]

EXHIBIT A

FORM OF SITE LICENSE AGREEMENT

(Appears behind this coversheet- 4 pages)

SITE LICENSE NO. [INSERT NUMBER IN CONSECUTIVE ORDER]

Pursuant to that certain Master License Agreement for Wireless Facilities on Vertical Infrastructure in the Public Rights-of-Way ("Master License") between the City of MERCED, a California municipal corporation (the "**City**") and _____ ("**Licensee**"), Licensee submits to the City two partially executed counterparts of this Site License, together with all the materials listed below, as its Site License Application in accordance with Section 6 under the Master License:

1. **Exhibit A-1**, which contains a summarized list that identifies all Vertical Infrastructure and Utility Infrastructure covered under this Site License Application;
2. **Exhibit A-2**, which contains detailed construction plans for the proposed installation(s) and an inventory for all proposed Equipment to be installed on the Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) covered under the Site License Application;
3. a true and correct copy of **Schedule 1** attached to the Master License
4. a copy of the acknowledgment Letter with receipt showing first License Fee payment to the City of Merced.
5. all other information and materials required for a complete application for all Regulatory Approvals issued by the City's departments, which the City may update from time-to-time in accordance with applicable Laws; and
6. if Staff Augmentation by the City has been approved in writing as provided in this Master License, a deposit for the City's estimated Staff Augmentation costs.

Licensee acknowledges that: (1) this Site License will not be effective until the City returns a fully executed copy to Licensee; and (2) Licensee will not have the right to access or install Equipment on the License Area until after Licensee has: (a) submitted a complete Acknowledgment Letter to the City with all information and funds required; (b) Submitted insurance information to the City as specified in **Exhibit B** to the Master License; and (c) the City has provided notice to proceed by returning to Licensee a countersigned copy of the Acknowledgment Letter.

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

[END OF SITE LICENSE - SIGNATURES APPEAR ON NEXT PAGE]

THE CITY:

City of MERCED,
a California Charter municipal
corporation

By: _____

Name: _____

Its: _____

Date: _____

LICENSEE:

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT A-1

**VERTICAL INFRASTRUCTURE & UTILITY INFRASTRUCTURE LOCATIONS
/ LICENSE AREA**

Site License No.

[Licensee to list all proposed Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) requested in this Site License Application]

EXHIBIT A-2

LICENSEE'S PLANS AND SPECIFICATIONS

Site License No.

[Licensee to attach all plans and specifications, including a traffic control plan for each site, for all Equipment proposed to be installed at all proposed Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be)]

EXHIBIT A-3

FORM OF ACKNOWLEDGMENT LETTER

[Licensee to complete and submit after Regulatory Approvals obtained]

[insert date]

[insert addressee information]

RE: Site License No.

Dear City Manager:

This letter will confirm the following: (1) that Licensee has obtained all the Regulatory Approvals required for the Permitted Use under this Site License, and (2) the Site License Effective Date is _____, 20__. The initial term of ten (10) years, expires on _____, 20__, unless earlier terminated in accordance with the Master License. The initial term will automatically renew for three (3) consecutive 5-year periods (each a "Site License Renewal Term") (unless Licensee provides written notice to the City at least sixty (60) days prior to the expiration of the initial term or the current Site License Renewal Term, of Licensee's intent not to renew the Site License term.

This letter also confirms that Licensee has submitted all required insurance information to the City and the Surety Bond required under Section 26.1 of the Master License. A check for the full License Fee for the first License Year of this Site License is attached.

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

Sincerely,

By: _____

Name: _____

It's: _____

Enc.

copies of all permits issued by the city departments

- Licensee's Insurance certificates
- Contractor's insurance certificates
- First License Year's License Fee
- Surety Bond As Required By Section 27.1 of Master License

SITE LICENSE NO. APPROVED:

By: _____
 [Name]
 City Manager

Date: _____

EXHIBIT B

LICENSEE'S INSURANCE OBLIGATIONS

1. **General.**

A. Prior to performing work under this Agreement, Licensee shall furnish City a certificate of insurance on a standard insurance industry ACORD form. The insurance coverage required must be issued by an insurance company licensed, authorized or permitted to transact business in the State of California, possessing a current A.M. Best, Inc. rating of A-VII or better, and evidenced coverage shall be reasonably satisfactory to City.

B. Licensee shall, and shall require any of its contractors while working hereunder to obtain and maintain substantially the same coverage as required of Licensee with reasonable and prudent limits, procure and maintain, until all of their obligations have been discharged the insurances set forth below.

C. The insurance requirements set forth in no way limit the indemnity covenants contained in this Agreement.

D. City in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee and its contractors, and Licensee is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2. **Scope and Limits of Insurance.** Licensee shall provide coverage with limits of liability stated below.

A. **Commercial General Liability-Occurrence Form.** Licensee must maintain Commercial General Liability insurance with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$4,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

B. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired, and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 **disease** for each employee; \$1,000,000 disease-policy limit.

D. Builders' Risk/Installation Floater Insurance. Builders' Risk/Installation Floater Insurance or self-insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than City, has an insurable interest in the property required to be covered.

(a) The Builders' Risk/Installation Floater insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by City.

(b) The Builders Risk/Installation Floater insurance must include as named insureds, City, Licensee, and all tiers of contractors and others with an insurable interest in the Work

(c) The Licensee is responsible for payment of all deductibles under the Builders' Risk/Installation Floater insurance policy.

3. Additional Policy Provisions Required.

A. Miscellaneous Provisions.

(1) Licensee's required commercial general and auto liability insurance coverage must be primary insurance with respect to City, its officers, officials, and employees. Any insurance or self-insurance maintained by City, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

(2) Licensee's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) The policies must contain a severability of interest clause and waiver of subrogation against City, its officers, officials, and employees, for losses arising from work performed by Licensee for City.

(4) Licensee is required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of one (1) year following completion and acceptance of the work. Licensee must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this period evidencing the insurance requirement and, including the required Additional Insureds set forth herein.

(5) If a Certificate of Insurance is submitted as verification of coverage, City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

(6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide the City with thirty (30) days prior written notice of cancellation of any required coverage that is not replace. Such notice shall be sent directly to

City of MERCED
Attention: Director of Support Services
678 W 18th Street
MERCED, CA 95340

B. City as Additional Insured. The above-referenced policies shall, excluding workers compensation and employers liability include the City, its officers, officials, and employees as an additional insured as their interest may appear under this Agreement with respect to liability arising out of activities performed by Licensee. Licensor's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Licensor, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Licensor, its employees, agents or independent contractors; and, (iii), not exceed Licensee's indemnification obligation under this Agreement, if any.

4. Option to Self-Insure

Notwithstanding the forgoing, and provided Licensee maintains an equity balance of at least One Hundred Fifty Million Dollars (\$150,000,000) ("Minimum Equity Balance"), Licensee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Licensee elects to self-insure its obligation under this Agreement to include Licensor as an additional insured, the following conditions apply: (i) Licensor shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like 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, lawsuit, or the like; (ii) Licensor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and (iii) Licensor shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like. Within thirty (30) days of receipt of City's written request for same, which request must be accompanied by this Section 4, Option to Self-Insure, and not be made by the City to Licensee more than one (1) time in any consecutive twelve (12) month period during the Term of this Master License, Licensee shall cause an authorized representative of Licensee or Licensee's ultimate parent company to certify to the City that as of the most recent unaudited financial statement of Licensee, Licensee maintains the Minimum Equity Balance required hereunder for the right to self-insure any of the required insurance hereunder.

The right to self-insure hereunder is limited to Licensee and any Affiliate of Licensee which is under the ultimate control to provided that any such Affiliate of Licensee must maintain the Minimum Equity Balance. Otherwise the right to self-insure required coverages under this Master License is prohibited unless the City in its sole discretion otherwise approves of the party seeking to self-insure required coverages.

SCHEDULE 1

**LICENSE FEE
SCHEDULE**

1. **Premium Term**

During the Premium Term, the Licensee Fee payable for Licensee's Equipment located in City's right-of-way (including Licensee's use and occupancy of all Vertical Structure, Utility Infrastructure, appurtenant equipment and facilities in connection with each Site License) shall be as follows:

A. Year 1 of MLA Term

Seven Hundred Fifty Dollars (\$270) per Site License.

B. Year 2 of MLA Term

Seven Hundred Sixty-Five Dollars (\$270) per Site License.

The License Fee shall not be prorated for any partial year during the Premium Term (for example, if Licensee licenses a Vertical Infrastructure pursuant to a completed Site License six (6) month prior to the end of the Premium Term, then Licensee shall pay \$765 as the License Fee for that Site License for the last year of the Premium Term.

2. **After Premium Term**

In Year 3 of MLA Term, the Licensee Fee payable for all of Licensee's then-existing and future Licensee's Equipment located in City's right-of-way (including Licensee's use and occupancy of all Vertical Structure, Utility Infrastructure, appurtenant Equipment and facilities in connection with each Site License) shall be the greater of:

(i) \$270 or

(ii) City's Cost, defined as City's objectively reasonable, actual costs directly attributable to Licensee's deployment of its Equipment in City's right-of-way calculated in a competitively neutral, non-discriminatory manner, consistent (A) with the FCC Order, FCC 18-133 and (B) any New Laws or Clarification of Existing Laws, as the case may be, after City's Cost has been calculated pursuant to a cost study which has been reviewed, adopted and approved by City Council ("Cost Approval").

(b) In the event the City believes its costs resulting from Licensee's access to City's rights-of-way and attachment of small cell facilities to City-owned assets exceed \$270, the City may within two years of the Effective Date, complete a cost study to establish a reasonable approximation of City's objectively reasonable, actual costs in providing such access, which cost study shall be reviewed and approved by the City Council before being used as the basis for revising the License Fee. City shall promptly notify Licensee when a copy of City's cost study is available for public inspection and shall provide a copy of such City's cost study at no additional charge to Licensee ninety (90) days before the cost study is presented to the City Council for adoption or approval. Licensee shall have ninety (90) days to review and provide input to the City. Before presenting the cost study to the City Council, the City shall work in good faith with Licensee to resolve any concerns raised by Licensee within such ninety (90) day period. After the cost study has been reviewed and approved by the City Council ("Cost Approval"), the parties shall amend this Master License to memorialize a new rate based on the cost study ("Cost-Based License Fee") which shall go into effect on a prospective basis, provided such Cost-Based License Fee is reasonable, consistent with applicable federal and state Laws, rules, regulations, orders or similar requirements adopted by a governmental authority with jurisdiction over the subject matter hereof and is applied to similarly situated carriers on a non-discriminatory basis."

(c) Notwithstanding any other terms and conditions of this Agreement, the terms of applicable Law, or the terms of any New Law or Clarification of Existing Law, the Parties for themselves and their permitted successors and assigns, do hereby agree that the License Fees under this Master License shall apply during the Premium Term.

3. Implementation of City's Cost Approval/City's Costs.

If City's Cost Approval is not accomplished before the second anniversary of the Effective Date, then the Licensee Fee shall become \$270 and shall increase annually at the rate of Two Percent (2%) in accordance with Section 4 of this **Schedule 1** until such time, if at all, that City's Cost Approval is accomplished by the City. If City's Cost Approval is accomplished within such two-year period and the amount of City's Costs exceeds the License Fee then paid by Licensee to the City, then City's Cost-Based License Fee shall take effect on the next adjustment date of the License Fee provided in Section 4 below, provided such Cost-Based License Fee is reasonable, consistent with applicable federal and state Laws, and is applied to similarly situated carriers on a non-discriminatory basis. Notwithstanding the foregoing, in no case shall the Cost-Based License Fee exceed \$1,000 per small wireless facility.

4. Increases To Initial Annual License Fee For New Site Licenses Signed Under Master License

Commencing on the third (3rd) anniversary of the Effective Date of the MLA, and each anniversary of the Effective Date during the Term of this Master License, the initial annual License Fee for a Site License entered into during the Term of this Master License shall increase by Two Percent (2%) over the initial annual License Fee under this Master License for the immediately preceding year.

5. Increases to License Fee For Site Licenses

Commencing on the third (3rd) anniversary of the Commencement Date of any Site License entered into pursuant to this Master License, and annually thereafter during the initial term and any Site License Renewal Term, the annual License Fee shall increase by two percent (2%) over the annual License Fee for the immediately preceding License Year, except that in the one year that City's Cost-Based License Fee first takes effect, if at all, there shall be no two percent (2%) increase if City's Cost-Based License Fee is more than two percent (2%) of the License Fee paid by Licensee to the City in the immediately preceding Lease Year.

5. Most Favored Nations After End of Premium Term

The City hereby represents and warrants as of Effective Date of this Master License, and covenants and agrees from and after the Effective Date of this Master License, that none of the rates or fees offered to any other entity for a Master License for the deployment of small cell technology in the City involving a Premium Term, or a similar agreement designed to advance the deployment of small cell technology in the City while pending legal challenges to FCC Order, FCC 18-133 are addressed, is or will be more favorable than the License Fee under this Master License. Additionally, if at any time, City agrees to a rate or fee that is more favorable than the License Fee under this Master License for the deployment of small cell technology in the City, then Licensee shall be entitled under this Master License to such rate or fee on and after the date such rate or fee becomes effective.

SCHEDULE 2

DEFAULT FEE SCHEDULE		
VIOLATION	INITIAL NOTICE	EACH FOLLOW-UP NOTICE*
unauthorized installations	\$500	\$500
failure to make required repairs within the prescribed time period under the Master Licensee following Licensee's receipt of written notice from the City of the need to make required repairs	\$300	\$500
insurance violations	\$500	\$500

*By mutual agreement, the City shall not issue a follow-up Default Fee Notice to Licensee more than one (1) time in any consecutive thirty (30) day period, or until the expiration of the applicable cure period under the Site License to which the alleged violation applies, whichever date is later to occur.