

**(MASTER) UTILITY POLE LEASE AGREEMENT**

This UTILITY POLE LEASE AGREEMENT (“Lease”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between CITY OF ANAHEIM, a municipal corporation and charter city (“CITY” or “ANAHEIM”) and [INSERT ENTITY NAME], [INSERT ENTITY TYPE, a \_\_\_\_\_ corporation / limited liability company] (“LEASEE”), each individually a “Party” and together the “Parties”.

**RECITALS**

WHEREAS, the City of Anaheim owns and operates certain electric utility poles located in the City of Anaheim, Orange County, California; and

WHEREAS, LEASEE desires to lease space on the Utility Poles in order to place and maintain its communications facilities (“LEASEE’s Facilities”) on such Utility Poles, and ANAHEIM has agreed to lease, under the conditions set forth below, space on the Utility Poles for the placement of LEASEE’s Facilities.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants provided in this Lease, the Parties agree as follows:

**SCOPE OF AGREEMENT**

1. Subject to the provisions of this Lease, ANAHEIM hereby leases to LEASEE, and LEASEE hereby leases from ANAHEIM, an identified portion of the space within the communications grade of the Utility Poles for the placement of LEASEE’s Facilities as set forth in Exhibit A which is attached hereto and incorporated herein by reference. The Utility Poles identified in Exhibit A may be added to, amended, or deleted as agreed to in writing by the Parties. In the instance of ANAHEIM, the Public Utilities General Manager or designee has the

authority to approve such additions, modification, and deletions to Exhibit A. This Lease shall be non-exclusive and is subject to existing leases by ANAHEIM of space on its Utility Poles, which are the subject of this Lease.

2. No use of the Utility Poles by LEASEE or payment of any rent or other charges required under this Lease shall create or vest in LEASEE any easements, ownership, or other property rights of any kind or nature what-so-ever in the Utility Poles other than the rights granted under this Lease. This Lease does not convey and shall not constitute an assignment of any of ANAHEIM's rights to use the public or private property upon which the Utility Poles are located to LEASEE.

3. The purpose of this Lease is to facilitate installation of LEASEE Facilities, which shall only be used by LEASEE to carry communications traffic for the benefit of LEASEE and its customers. Any attachments to the Utility Poles required by LEASEE in connection with installation of LEASEE's Facility shall be made pursuant to written requests submitted by LEASEE to CITY. Notwithstanding the foregoing, LEASEE may attach a service drop wire so long as LEASEE seeks approval from CITY within forty-five (45) days after making the attachment. In addition, maintenance work where wires are replaced with wires of the same or lesser size and weight shall not require CITY's prior approval. Maintenance work that increases the size or weight of replacement conductors or increases loading on the poles will require CITY's prior written approval.

Those requests shall be accompanied by engineered make-ready work, drawings, calculations, and/or other required submittals of the complete Utility Pole and wind loading calculations. The CITY will review the application, including such make-ready work, drawings,

calculations, and/or other required submittals of the complete Utility Pole, wind loading and other applicable calculations and submittals, including those required by the Southern California Joint Pole Committee (“Joint Pole Authority” or “JPA”), following receipt of a complete submittal and notify LEASEE of its decision to approve, deny, or request additional information. The City’s review and approval of LEASEE’s application shall conform to the timing and other requirements set forth in applicable law, including Sections 9510-9520 of the Public Utilities Code or successor statute. LEASEE shall pay the CITY within thirty (30) days from its receipt of CITY’s invoice for such charges, including field investigations, design and engineering fees, which are due to the CITY. Cross arms greater than five feet (5’) will not be permitted at the communication Grade.

Prior to installation of LEASEE’s Facilities, LEASEE shall notify CITY of such intended installation date and shall obtain all permits and approvals required by all applicable public authorities and private entities for such installation, including but not limited to, Right-of-Way Construction Permit(s) from the CITY’s Public Works Department for all work to be done within the public rights-of-way. All submittals to the Public Works Department shall conform with the latest telecommunication system plan review and permit procedures. In performing such installation, LEASEE: (i) shall ensure that the communication grade down guys and grounding for LEASEE’s Class C circuits on the Utility Poles comply with Section 40 requirements (all at the sole cost and expense of LEASEE) ; and (ii) shall not, with respect to Utility Poles solely owned by ANAHEIM (“D-All Poles”), install any LEASEE Facilities which are incompatible with the CITY’s use of the Utility Poles, with the nature and extent of any such incompatibility to be determined by the CITY in the CITY’s sole determination and

good-faith discretion.

4. This Lease will not in any manner limit or hinder the CITY's right to maintain the Utility Poles and/or its right to operate its facilities in such a manner as to best enable it to fulfill its own service requirements.

5. Intentionally Left Blank.

6. Nothing contained in this Lease shall be construed: (i) to compel ANAHEIM to construct, reconstruct, retain, extend, place or maintain its Utility Poles for use by LEASEE unless those Utility Poles are needed for the CITY's own service requirements, or (ii) as a limitation on or against the CITY with respect to any previous agreement made or entered into by the CITY or any agreement which it may, in the future, enter into with other parties.

7. The provisions of this Lease are subject to, and the Parties shall at all times observe and comply with, all applicable laws, ordinances, and regulations, including Sections 9510-9520 of the Public Utilities Code, the CITY's Charter, Municipal Code, and Electric Rates, Rules and Regulations, as amended from time-to-time, and all ANAHEIM resolutions or ordinances of general applicability which affect the Parties' rights and obligations under this Lease.

#### **TERM OF LEASE**

8. This Lease shall be for a term of ten (10) years, unless it is earlier terminated by either Party in accordance with the provisions herein, and shall commence on the Effective Date. Thereafter, the Lease shall automatically be renewed on each successive fifth anniversary date of the Effective Date for three (3) successive five-year terms (each a "Renewal Term") by LEASEE

on the same terms and conditions as set forth herein for a total term not-to-exceed twenty-five (25) years unless LEASEE notifies the CITY of its intention not to renew the Lease not less than three (3) months prior to commencement of a succeeding Renewal Term.

### **RELOCATION**

9. CITY reserves the right to remove, replace, reconfigure (modification of the pole without removal or relocation of the pole), or relocate any Utility Pole as the CITY may elect in its sole discretion. CITY shall immediately notify LEASEE if such actions are proposed. In the event the CITY elects to take any such action, within ninety (90) days of receipt of notice from CITY, LEASEE shall, at its option:

- (i) remove LEASEE's Facilities and / or relocate them (at LEASEE's sole cost and expense) to the relocated / reconfigured Utility Pole, to Leasee's own underground facilities, or to other available above-ground facilities; or
- (ii) rearrange its attachment on such Utility Pole to accommodate CITY's use of such space or capacity (at Leasee's sole cost and expense).

If, however, CITY elects to remove its Utility Poles entirely, within the vicinity of any Utility Poles that are the subject of this Lease, this Lease shall terminate after LEASEE has been given reasonable time (not to exceed 180 days) to relocate its Facilities (as may be specified by applicable ANAHEIM ordinances or resolutions), at LEASEE's sole cost and expense. If LEASEE fails to relocate its LEASEE's Facilities within the specified time, the CITY, in its sole discretion, may take the actions set forth in Section 19.

### **CONSTRUCTION AND MAINTENANCE**

10. No later than thirty (30) days prior to LEASEE's installation of LEASEE's

Facilities, LEASEE shall provide the CITY with a copy of its construction drawings (including any excess cable storage requirements) and installation schedule for the CITY's approval. Such approval may be withheld if the CITY, in its sole discretion, determines that the proposed construction does not meet all applicable laws and construction standards and practices or may adversely impact the CITY's operations, the Utility Poles' integrity or other nearby structures. Approval of the drawings, cable storage requirements, and schedule shall be coordinated with the CITY's Public Utilities Department located at 201 S. Anaheim Blvd., Suite 701, Anaheim, California 92805 [Phone No. (714) 765-5137]. In the event the CITY determines that rearrangement of the existing facilities on the Utility Poles is required before LEASEE's Facilities can be accommodated, CITY will advise LEASEE in writing of the estimated make-ready fees and charges (including field investigation, construction, design and engineering fees) for such rearrangement work (the "Make Ready Cost Estimate"). LEASEE shall be required to only pay for such costs required solely to accommodate LEASEE's attachments, and shall not be required to pay for costs associated with curing pre-existing violations of specifications caused by other parties in order to accommodate LEASEE's attachments. If LEASEE accepts the Make Ready Cost Estimate, CITY shall commence its work described in the Make Ready Cost Estimate. After the CITY completes such work, CITY shall invoice LEASEE the actual and reasonable costs of such work, including JPA and associated costs. LEASEE shall pay CITY within thirty (30) days from its receipt of CITY's invoice for such fees and charges. Prior to LEASEE's installation of LEASEE's Facilities, LEASEE shall apply to the CITY's Department of Public Works for a Right-of-Way Construction Permit for all work to be done within the CITY's right-of-way. The CITY's approval of any drawings, cable

storage requirements, or schedule, or the issuing of any permits, pursuant to this Section 10, shall not in any way impart liability to the CITY, increase liability of the CITY, nor relieve the LEASEE of any duties, liabilities, responsibilities, or obligations.

11. LEASEE shall, at its own expense, during the term of this Lease, install, repair, and maintain LEASEE's Facilities in a safe condition reasonably acceptable to the CITY so as not to conflict or interfere with the facilities placed by the CITY or other parties. Further, LEASEE's Facilities shall be placed and maintained in accordance with the requirements and specifications set forth in Section 40. In the event that LEASEE contracts for, or subcontracts for, any of LEASEE's Facilities installation, repair, maintenance, or work under this Agreement, LEASEE shall ensure that any such contractor, subcontractor, or other person performing on behalf of LEASEE shall fully abide by, and perform in accordance with, all requirements placed on LEASEE in this Section 11 and elsewhere in this Lease. In connection with the foregoing, it is anticipated that each Party may, from time to time, conduct field audits in order to (i) update databases of utility pole records and (ii) audit LEASEE's compliance with the requirements set forth herein. The Parties agree to cooperate in sharing results of such audits.

12. In the event of an emergency:

(1) The CITY's work shall take precedence over any operations on the Utility Poles;

(2) Should LEASEE discover any emergency conditions or emergency situation in its survey of the Utility Poles, LEASEE shall cease work and immediately notify the CITY at its Public Utilities Department [Phone No. (714) 765-3300] of any emergency conditions or emergency situation related to the jointly-owned utility poles, Utility Poles, or

ANAHEIM's power lines, street lights, cross-arms, or LEASEE's Facilities.

(3) CITY shall immediately notify LEASEE at its National Operations Center number [INSERT: \_\_\_\_\_] of any emergency condition or emergency situation related to the jointly-owned utility poles, Utility Poles, or LEASEE's Facilities.

13. If any part of LEASEE's Facilities are not placed, repaired, and/or maintained in accordance with the terms and conditions in this Lease including, but not limited to, Section 40, and LEASEE has not corrected the condition within thirty (30) days after receipt of a written notice from the CITY, then the CITY may, at its option, correct the condition without risk, exposure, or liability to ANAHEIM and notify LEASEE in writing prior to performing such work. However, in the event such condition(s) pose an immediate threat to the health or safety of CITY employees or the public, interfere with the performance of CITY service, or pose an immediate threat to the physical integrity of the CITY's facilities, the CITY may, in its sole and exclusive discretion, perform such work, without increasing CITY's or diminishing LEASEE's, risk, exposure, or liability under this Agreement and take any action that is reasonably necessary without first giving written notice to LEASEE. As soon as practicable thereafter, CITY will advise LEASEE in writing of the work performed or the action taken. LEASEE shall be responsible for all reasonable costs and expenses incurred by CITY associated with any work or action performed by CITY or its contractors pursuant to this Section or ANAHEIM's Electric Rates, Rules and Regulations and shall reimburse the CITY within thirty (30) days from its receipt of the CITY's invoice.

#### **RENT**

14. (a) Leasee's Facilities located within one (1) foot of usable space shall be



deemed a single attachment, and overlashed attachments shall be deemed to occupy the same space as the underlying attachment. Annual Lease payments shall be due and payable in advance upon each anniversary of the Effective Date of the Lease until the Lease has terminated or expired. The Public Utilities General Manager is hereby authorized, on behalf of the CITY, to administer the provisions of this Section.

(b) In the event the CITY terminates this Lease before the expiration of any year for which the annual Lease payment has been paid, the CITY shall refund to LEASEE the prorated amount of the Lease payment for the unexpired portion of such year.

(c) The annual Lease payment per attachment shall be as set forth per Exhibit B.

### **INSURANCE**

15. Without limiting the CITY's right to indemnification, LEASEE shall, at its own expense, maintain throughout the term of this Lease insurance coverage as follows (which requirements may be revised by the CITY's Risk Manager, if requested by LEASEE and if he determines such revision is in CITY's best interest):

(a) Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability (in a form at least broad enough to support LESSEE's indemnification obligations to CITY, as set forth in this Lease), Personal Injury Liability, Products/Completed Operations Liability, Independent Contractors Liability, and Broad-Form Property Damage, in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence, written on an occurrence form. Such insurance may be satisfied through a combination of primary and excess liability coverage and shall be on a form, by policy language or endorsement, satisfactory to CITY, such that this coverage will respond in full for any third-

party liability actions brought against CITY for injury, or alleged injury, to any agent, representative or employee of LEASEE, or any agent, representative or employee of any contractor or subcontractor of LEASEE, to the same extent that such coverage would respond to a claim brought by a disinterested third party. Such liability coverage shall also include a waiver of subrogation in favor of CITY and its employees.

(b) Comprehensive Automobile Liability coverage, including owned, non-owned and hired autos, in an amount no less than Five Million Dollars (\$5,000,000.00) per occurrence, combined single limit, written on an occurrence form, including coverage, as applicable, for mobile equipment. Such insurance may be satisfied through a combination of primary and excess liability coverage. Such coverage shall contain a waiver of subrogation in favor of CITY and its employees.

(c) Workers' Compensation Insurance as required by California statutes. Such coverage shall contain a waiver of subrogation in favor of CITY and its employees.

(d) LEASEE shall provide to CITY certificates by each company insuring LEASEE confirming that LEASEE has the insurance (including all applicable provisions) required by this Section 15. Each required insurance policy shall provide that:

(1) Insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to all insureds.

(2) Such insurance shall be primary to, and not contribute with, any insurance or self-insurance as may be maintained by CITY.

(e) LEASEE shall also ensure that any contractor and/or subcontractors with which LEASEE has contracted for performance of work pursuant to this Lease maintains

insurance coverage with the same terms, conditions and limits as, in a form that includes, but is not limited to, support of LEASEE's indemnification obligations to CITY under this Lease.

(f) Each required insurance policy (except policies for Workers' Compensation Insurance) shall add, by endorsement, CITY, its officials, agents, employees, representatives, and volunteers as additional insureds.

(g) In addition to any other remedies CITY may have if LEASEE fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option, terminate this Lease; provided, however, termination of this Lease is an alternative to other remedies CITY may have and is not the exclusive remedy for any such failure. Nothing in this Lease shall be construed as limiting in any way the extent to which LEASEE may be held responsible for payments of damages to persons or property resulting from the acts, omissions, operations or activities of LEASEE or any agent, representative, or employee of any contractor or subcontractor of LEASEE.

### **RELEASE AND INDEMNITIES**

16. LEASEE hereby agrees to indemnify, defend, and hold harmless the CITY, and its officials, officers, and employees from and against any and all claims, demands, expenses, damages, judgments, defense costs, or liability of any kind or nature (hereinafter in this Section 16, "Claims") (including but not limited to Claims brought against the CITY by the employees or dependents, heirs, assigns or survivors of employees of LEASEE or LEASEE's agents, representatives, customers, contractors, or subcontractors) presented against the CITY arising out of or in connection with LEASEE's (including its employees', agents', representatives', contractors', and subcontractors') performance or work under this Lease, or otherwise related to

LEASEE's placement of equipment on the CITY's property, excluding only such Claims as have been determined, by a court of competent jurisdiction, to have arisen out of the active negligence or willful misconduct of the CITY.

17. The obligations in Section 16 shall survive the termination of this Lease.

### **TERMINATION**

18. LEASEE shall have the right to terminate this Lease at any time during the Lease term; provided that (i) any such termination shall become effective on a day which is immediately prior to an anniversary of the Effective Date, and (ii) LEASEE provides written notice of such termination to the CITY at least ninety (90) days prior to the intended effective date of such termination.

19. Notwithstanding the provisions of Section 9 hereof, if at any time LEASEE fails or refuses to perform any of the covenants or conditions contained in this Lease, and such failure or refusal shall continue for thirty (30) days after receipt of written notice by LEASEE from the CITY, then CITY, at its election and upon ten (10) days additional advance written notice to LEASEE, may terminate this Lease. Notwithstanding the foregoing sentence, if LEASEE's effort to cure begins within thirty (30) days and LEASEE diligently pursues such cure to completion and if, despite such diligent efforts, LEASEE is unable to cure within thirty (30) days, then LEASEE's right to cure shall be extended beyond thirty (30) days for so long as LEASEE diligently proceeds to do so, not to exceed one hundred and eighty (180) days unless a longer time is needed and agreed to in writing by ANAHEIM.

The Public Utilities General Manager or designee is authorized to terminate the Lease, on behalf of the CITY, as stated herein.

20. Subject to applicable law, upon expiration or termination of this Lease for any reason, LEASEE shall remove LEASEE's Facilities within ninety (90) days. In the event LEASEE fails to remove LEASEE's Facilities within such ninety (90)-day period, LEASEE's Facilities shall be deemed abandoned and the CITY, in its sole discretion and without risk, exposure, or liability, may remove and dispose of LEASEE's Facilities and LEASEE shall reimburse the CITY for all costs and expenses associated with such removal and disposal.

21. Termination or expiration of this Lease shall not affect liabilities and obligations incurred by either Party prior to the effective date of such termination or expiration.

### **ASSIGNMENT**

22. Neither Party shall assign, transfer, convey or otherwise delegate any of its rights, or obligations under this Agreement without the other Party's advanced written consent, which such consent shall not be unreasonably withheld or delayed. In addition, LEASEE shall not assign this Lease to any third party unless the following conditions have been met: (i) the assignee third party assumes in writing all rights, duties, liabilities and obligations of the assignor LEASEE under this Lease; and (ii) the assignee third party meets the then-existing credit rating requirements of CITY.

LEASEE shall not sublease its rights to the physical space on CITY's Utility Poles under this Lease without the express prior written approval and consent of the CITY. Any attempted sublease in violation of this Section shall be void. ANAHEIM, in its sole discretion, may require an additional one-time charge equal to three (3) years of annual Lease payments for the Utility Poles for attachments reasonably shown to have been made without authorization.

Notwithstanding the foregoing, the Parties agree that the intent of this Section 22 is to permit LEASEE to sublease or license capacity on Leasee's Facilities attached to CITY's Utility Poles, and not to permit third parties to make attachments to or physically access CITY's Utility Poles.

**NOTICES**

23. Any notice required by this Lease shall be made by facsimile confirmed by certified mail (return receipt requested), in writing by certified mail (return receipt requested), or delivered in person or by overnight delivery to the Parties at the following addresses ("Notice information"):

**ANAHEIM:** City of Anaheim  
Attention: City Clerk  
200 S. Anaheim Blvd., Second Floor  
Anaheim, California 92805  
Telephone: (714) 765-5166  
Facsimile: (714) 765-4105

**With a COPY to:** City of Anaheim, Public Utilities Department  
Attention: Public Utilities General Manager  
201 S. Anaheim Blvd., Suite 1100  
Anaheim, California 92805  
Telephone: (714) 765-4157  
Facsimile: (714) 765-4138

**Emergency Contact:** **City of Anaheim**  
Attention: Utilities System Operator  
Telephone Number: (714) 765-3300

**LEASEE:** (INSERT - LEASEE NAME)  
(INSERT – ADDRESS)  
(INSERT - CITY, STATE, ZIP CODE)  
Attention: (INSERT - NAME, TITLE)  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a COPY to: (INSERT - LEASEE NAME)  
(INSERT – ADDRESS)  
(INSERT - CITY, STATE, ZIP CODE)  
Attention: (INSERT - NAME, TITLE)  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Emergency Contact:** **LEASEE** \_\_\_\_\_  
Attention: (Name or Title)  
Telephone Number: \_\_\_\_\_  
Cell Phone Number: \_\_\_\_\_  
Pager: \_\_\_\_\_

**National Operations Center:** \_\_\_\_\_

Notices shall be deemed given upon receipt in the case of personal delivery, five (5) days after deposit in the mail, or the next day in the case of overnight delivery. Either Party may from time to time designate any other address for Notice information purpose by written notification to the other Party in the manner set forth above.

**DISPUTES**

24. If any dispute or claim arises out of changes in law as set described in Section 38 and/or the interpretation, performance, or breach of this Lease, the Parties agree that upon the written demand of either Party, they will meet within two (2) weeks of such demand to attempt in good faith to resolve the dispute. That meeting will be attended by representatives of both Parties having the authority to resolve the dispute. In the instance of ANAHEIM, that representative will be the Public Utilities General Manager or designee.

25. With the exception of actions for injunctive relief or which must be filed

to preserve a Party's rights, the Parties agree to conduct the meeting described above before either Party commences an action in any court of law concerning disputes or claims arising out of this Lease.

#### **ATTORNEYS' FEES**

26. In the event of litigation concerning this LEASE, each Party shall bear its own costs and attorneys' fees.

#### **GENERAL PROVISIONS**

27. **LIENS AND ENCUMBRANCES:** LEASEE shall not create or allow to be created any lien or encumbrance, including, without limitation, tax liens, mechanics liens, or other liens or encumbrances with respect to work performed or equipment furnished, in connection with the installation, repair, maintenance or operation of LEASEE's Facilities.

28. **FEES AND TAXES:** LEASEE shall be solely responsible for the payment of all lawful fees and the payment of any utility charges in connection with the exercise of LEASEE's right, title, and interest in and to LEASEE Facility and the rendering of services under this Lease. Notwithstanding the foregoing however, LEASEE shall not be responsible for any income tax incurred by CITY as a result of this Lease.

29. **GOVERNING LAW:** This Lease shall be governed by and construed in accordance with the laws of the State of California, including Sections 9510-9520 of the Public Utilities Code. Any action concerning or arising out of this Lease shall be filed in a court of the State of California having jurisdiction of the subject matter, and venue shall be in the County of Orange, State of California.

30. **SEVERABILITY:** In the event that any one or more of the clauses, covenants or



provisions contained in this Lease should be held to be unenforceable under any Federal, State or ANAHEIM law, statute, code, administrative or regulatory rule, such invalidity or unenforceability shall not affect the remainder of this Lease, which shall remain in full force and effect.

31. **BINDING EFFECT:** This Lease shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

32. **WAIVER:** A waiver by either Party of any breach of any term, covenant or condition in this Lease shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition in this Lease.

33. **ENTIRE UNDERSTANDING:** This Lease contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations agreements or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Lease, which are not fully expressed herein.

34. **NO THIRD-PARTY RIGHTS:** Nothing in this Lease shall be deemed or otherwise construed as granting any rights, benefits or interests to any individual, entity or body who / that is not a party to this Lease.

35. **HEADINGS:** The headings of the various sections in this Lease are for convenience only, and are not intended to be any part of the body of this Lease, nor are they intended to be referred to in construing the provisions of this Lease.

36. **ADVISE OF COUNSEL; INTERPRETATION:** Each Party acknowledges that it has had the benefit of advice of competent legal counsel with respect to its decision to enter this Lease. The provisions of this Lease shall be interpreted to give effect to their fair meaning and

shall be construed as prepared by both Parties.

37. INDEPENDENT CONTRACTOR: Each Party is an independent contractor and not an employee of the other Party. Nothing contained in this Lease shall be construed to establish a partnership, joint venture, group, pool, or agency relationship between the CITY and LEASEE.

38. CHANGES IN LAW: The Parties acknowledge that the subject of wireline and wireless communication facilities in the context of utility pole attachments has been addressed and continues to be addressed by federal and California authorities. If, during the term of this Lease, a law is adopted, amended, or repealed and is made binding upon the CITY and is applicable to this Lease, the Parties agree to negotiate in good faith an amendment to this Lease (or a new lease, as the case may be) within three (3) months after a Party receives the other Party's request to negotiate an amendment to this Lease or a new lease, as the case may be, pursuant to the provisions of Section 25 to accommodate such change in law.

39. EFFECTIVE DATE: The Effective Date of this Lease shall be the latest date of execution hereinafter set forth opposite the names of the signators hereto. In the event LEASEE fails to set forth a date of execution opposite the name(s) of LEASEE's signator(s), LEASEE hereby authorizes the CITY, by and through its representative, to insert the date of execution by LEASEE's signator(s) as the date said Lease, as executed by LEASEE, is received by the CITY.

40. Work and Safety Requirements. This Section contains *minimum* requirements and specifications governing LEASEE's use and occupancy of, or work performed on or about, CITY's Utility Poles and any other such equipment owned by CITY.

Where applicable, LEASEE's Facilities shall be placed, installed, and maintained in

accordance with the requirements and specifications of the rules and regulations of the California Public Utilities Commission, including General Order No. 95 (G.O. 95), General Order No. 128 (G.O. 128), the National Electrical Code (N.E.C.), the National Electrical Safety Code (N.E.S.C.), the rules and regulations of the California Occupational Safety and Health Act (Cal/OSHA), all of which are incorporated herein by reference in this Section 40, and of any governing authority having jurisdiction over the subject matter. Where a difference in specifications may exist, the more stringent specification, requirement, and/or rule shall apply.

All requirements of the National Electrical Safety Code (N.E.S.C.) referred to in this License Agreement shall mean the current edition of such code, and shall include any additional requirements of any generally applicable Federal, State, County, or Anaheim Municipal Code or other regulatory body, agency, or other governing authority having jurisdiction over the subject matter, including the California Public Utilities Commission, where applicable, as well as the additional requirements mutually agreed upon by LEASEE and CITY. Reference to either the Safety Code, or to N.E.S.C., shall have the same meaning. Revisions to the requirements referenced in this Section 40 shall take effect as required by the governing body prescribing such requirements.

LEASEE's Facilities shall be structurally and aesthetically compatible with ANAHEIM's facilities in accordance with Site Plan drawings mutually agreed upon by LEASEE and CITY. If LEASEE's Facilities are not compatible with CITY's facilities, LEASEE (at LEASEE's sole cost and expense) shall remove any such non-compatible Licensee Facilities upon the reasonable request of CITY.

Upon completion of work, LEASEE shall remove all of its tools, unused materials, wire

clippings, cable sheathing, and any other similar type materials and/or matter.

LEASEE's Facilities shall be firmly secured and supported to the Utility Poles to the satisfaction of CITY's authorized representative.

All of LEASEE's Facilities shall be plainly identified with a firmly affixed tag of a type and wording satisfactory to CITY.

LEASEE shall require and ensure that all of its work crews and foremen (by whatever name called), or any of its contractors and subcontractors: (i) are familiar with all power line rules, requirements, regulations, standards and guidelines under G.O. 95, G.O. 128 and N.E.S.C.; (ii) survey the area in which work is to be performed before commencing work, and make a determination that the required work can be completed safely; (iii) survey the area in which work is to be performed before commencing work, and make a determination that any electrical power lines and related equipment are in conformance with G.O. 95, G.O. 128, and N.E.S.C. prior to commencing work; and (iv) proceed with such work only upon making such determinations. If the foreman and/or work crew determines that such work cannot proceed safely, or if such electrical power lines and related equipment are not in compliance with either G.O. 95, G.O. 128; or N.E.S.C., LEASEE shall immediately stop work and notify CITY of such condition, in detail, and shall not commence work at such location until so directed by CITY. It is understood and agreed by LICENSEE that there is no instance in which it is safe or proper for a LEASEE worker and or crews (whether working for or on behalf of LEASEE), or a crew's or worker's equipment, to come within three (3) feet of, or in actual contact with, the electrical current from an energized electrical power line. Consequently, any such close or actual contact by LEASEE (or LEASEE's crews, employees, agents, representatives, contractors or subcontractors, or the crews, employees,

agents, or representatives of such contractors, or subcontractors) shall be deemed an unsafe act, or failure to act, under the meaning of this Lease. In addition to any other remedies available to CITY under this Lease, failure of LEASEE to conduct its work in compliance with the requirements of this section shall constitute an immediate breach of this Lease.

[Signatures to follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed on the dates hereinafter respectively set forth.

CITY OF ANAHEIM, a municipal corporation

By: \_\_\_\_\_

Public Utilities General Manager

DATE OF EXECUTION:

\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Linda N. Andal, City Clerk

“CITY”

[INSERT ENTITY NAME], a [INSERT ENTITY TYPE, a \_\_\_\_\_ corporation]

DATE OF EXECUTION:

\_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“LEASEE”

APPROVED AS TO FORM:  
MICHAEL R.W. HOUSTON,  
CITY ATTORNEY

\_\_\_\_\_  
By: [Name]  
[Title]  
Date: \_\_\_\_\_

## **EXHIBIT A**

The specific locations and utility pole numbers for ANAHEIM's Utility Poles are inserted behind this page.

## EXHIBIT B

### Annual Pole Lease Charges

Fiscal Year (July 1 – June 30)	Pole Lease Charge
2012/13	\$15.04
2013/14	\$15.34
2014/15	\$15.64
2015/16	\$15.96
2016/17	\$16.28
2017/18	\$16.60
2018/19	\$16.93
2019/20	\$17.27
2020/21	\$17.62
2021/22	\$17.97
2022/23 through 2036/37	To be determined