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Staff Report

Date: July 25, 2017

To: City Council

From: Valerie J. Barone, City Manager

Reviewed by: Victoria Walker, Director of Community and Economic Development

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Subject: **Considering adoption of Resolution No. 17-58 approving wireless Master License Agreement form and authorizing the City Manager to execute Master License Agreements and to issue licenses for City-owned poles in the public right-of-way.**

Pursuant to CEQA Guidelines Section 15378 and Public Resources Code Section 21065, the adoption of a Master License Agreement is not a “project” under CEQA; and, in the alternative, is exempt under Section 15061(b)(3) as there is no potential that the agreement will have a significant effect on the environment.

Report in Brief

Over the past year, a number of wireless providers have expressed a desire to deploy new wireless communications facilities located in the public rights-of-way on City-owned structures, such as utility poles, light posts, and traffic signals. The requests are due to increasing consumer demand for wireless capacity and faster speed and are anticipated to drastically increase in the near term. To provide a consistent and comprehensive response to these requests, staff developed a Wireless Master License Agreement (“MLA”), in which the City may enter into a master agreement with a wireless provider to install new wireless communication facilities on City-owned poles, subject to individual Pole Licenses to be issued by the City Manager.

Recommended Action

Adopt Resolution No. 17-58 (Attachment A), approving the wireless Master License Agreement form and authorizing the City Manager to execute the Master License Agreement and to issue individual Pole Licenses as part of the Master License Agreement (Exhibit A to Attachment A, Resolution No. 17-58).

Background

A number of wireless providers have approached the City desiring to deploy new small cell facilities within the City right-of-way, which would provide enhanced wireless services throughout the community. A “small cell” antenna and equipment are typically placed on existing infrastructure located within the public rights-of-way, such as a steel signal, traffic signal or street light. The providers are experiencing increased customer demand, particularly with respect to data capacity and speed. Examples abound of the rapidly expanding use of wireless capacity throughout the country, including the provision of real time bus information via the internet, improvements to traffic management systems, improved emergency personnel response to 911 calls, expansion of the smartphone market, and the growing use of wireless sensors and monitoring in utility distribution, parking meters, home security, shipping logistics, and the potential deployment of autonomous vehicles (taken together, these developments are commonly referred to as the “Internet of Things”).

Because of this increasing data consumption, wireless providers are seeking rapid investment in the necessary infrastructure to meet not only current data demands but to prepare for consumer deployment of fifth generation wireless systems (5G) technology sometime around the year 2021 (see Attachment 3). Unlike in the past, when wireless communications facilities sites tended to be leased on private property, wireless providers are now more interested in locating new facilities within public rights-of-way. Wireless providers noted that new locations for wireless installations on private property are limited and more difficult to negotiate and permit. Given the increasing cost and frequent public concern and resulting delay associated with leases on private property, the wireless providers sought out alternatives to allow continued expansion, leading them to advocate for less expensive and more streamlined deployment on utility poles and other City-owned structures in the City’s rights-of-way. The City owns approximately 8,200 poles in the right-of-way. According to 5bars, a small cell management services company, the City can expect to see approximately 203 small cells installed within the next five years. This equates to a ratio of roughly 1 small cell per carrier for every 600 people.

The California Public Utilities Commission (“CPUC”) historically determined that wireless providers are a utility and, therefore, have all the rights of use of the public rights-of-way as any other utility. The public rights-of-way have existing infrastructure, such as utility poles, traffic signals, and street lights, which can support wireless infrastructure. Currently, the City does not have an agreement to manage the new

requests, which leaves the City without a consistent and streamlined approval process for the scale of small cell site expansion that is anticipated.

Various types of antennas are required to deliver wireless coverage and capacity. A “macro cell” is used for larger coverage, with a radius of several miles. Macro cell facilities are typically located on freestanding towers, faux tree poles, tall buildings, water tanks, etc. These are the types of cell sites that have been traditional until very recently.

Now, wireless providers are proposing to place a single “small cell” antenna and equipment on existing infrastructure located within the public rights-of-way. Typically, a small cell antenna is attached to a steel signal pole and powered by the electrical system serving that traffic signal or street light. Small cells are placed in locations that are heavily populated and need additional network capacity, such as downtowns and around heavily used traffic corridors. The small cell antennas are usually deployed in areas that cannot be effectively served by a traditional macro cell, or areas that may have coverage but not enough capacity. A small cell is not intended to replace macro cell sites, but to fill in areas that do not have sufficient capacity. A small cell antenna size is approximately six cubic feet. The associated equipment is 21 cubic feet. Not included in the aforementioned size limitations: electric meters and pedestals, concealment elements, demarcation boxes, grounding equipment, transfer switches, cut-off switches, vertical cable runs, fiber or coax not exclusively used to provide service to the small cell.

Some small cell antennas are being installed on wood poles owned by Joint Pole Associations or PG&E, and the City has limited discretion over such installations. However, some small cells antennas are also proposed on City-owned utility poles, light posts, and traffic signals where the City can financially benefit by entering into a lease with a wireless provider.

Another type of small cell site is the Distributed Antenna System (“DAS”). A DAS installation consists of multiple low power antennas that are connected by fiber-optic lines to the wireless carrier’s hubs. DAS facilities distribute wireless network coverage, providing for more efficient management of wireless cellular telephone and data capacity in heavily-trafficked areas. DAS facilities have the ability to provide more consistent wireless coverage to customers in indoor and outdoor spaces where geographical or other limitations might otherwise prevent a more traditional cell tower installation. The DAS installation can also provide coverage solution in areas with challenging terrain, or in high-use areas like arenas, stadiums and convention centers. When combined, macro cell, small cell, and DAS facilities are deployed as part of a connected network. Macro cell sites are not included as part of the proposed Master License Agreement; however, staff is also updating the City’s regulations for all wireless communications facilities. The proposed regulations will be tentatively reviewed separately by the Council in September.

Staff recently met with AT&T, Mobilitie, and Extenet wireless providers to discuss small cell antenna proposals. AT&T is proposing nine locations on traffic signal sites, and 17 locations on PG&E wood utility poles site (see Attachment 3). The City is currently processing ten applications for Extenet for small cells. Mobilitie is also proposing multiple locations throughout Concord but has not yet submitted applications. Examples of small cell sites are shown in the photo simulations, included as part of Attachment 4.

Analysis

Anticipating an increase in applications for small cell facilities in the public rights-of-way, staff recommends the Council approve a standardized MLA and authorize the City Manager or her designated representative to enter into agreements with wireless providers to install new small cell facilities on City-owned utility poles, light posts, and traffic signals. The goal of an MLA is to align the City's available infrastructure assets with wireless provider's demand for access, develop uniform and predictable processes for evaluating individual pole license applications, maintain the City's municipal functions related to public health and safety, establish maintenance requirements and standards for the licensee, and preserve the community's aesthetic characteristics.

General Overview of the MLA and Pole License Approach

The proposed MLA would not grant any rights to use an individual City pole. Rather the MLA merely establishes the procedures, terms and conditions under which licensees may request individual pole licenses. The MLA is a comprehensive document that contains uniform terms and conditions applicable to all wireless facilities installed on City-owned poles. Individual pole licenses identify the licensed pole and contain detailed exhibits for the site plans, permits, fee schedules, insurance documentation, and other materials that are unique to each site. When the City grants a pole license, that pole license (together with all the plans, equipment specifications and fee schedules) would become integrated with the MLA.

The MLA format remains essentially the same regardless of licensees. Multiple wireless providers can each have a separate MLA with the City that entitles them to obtain pole licenses on a first-come first-serve basis for a ten year period. This creates essentially one set of rules for all potentially interested parties that reduces the administrative burden on the City and promotes a level playing field among competitive licensees.

The wireless providers would benefit from licensing existing City-owned infrastructure to install small cell facilities by reducing costs associated with negotiating individual pole licenses and by accelerating the deployment of advanced wireless facilities with a streamlined process. The City would benefit as well by (1) establishing a more robust wireless broadband networks available to the City's residents and businesses; (2)

maintaining greater control over aesthetics and potential liability from wireless facilities on City-owned poles; and (3) receiving license revenues.

Pole License Application and Review Process

To obtain a pole license, the licensee would submit an application to the City for approval. This application is **not** the same as an application for an administrative permit, minor use permit, encroachment permit, or other regulatory entitlement. Rather, the application would be similar in nature to an application to lease space from a property owner. There is a formal process with minimum requirements and a nominal fee per application to recoup the City's costs to consider the request, but the decision is not a regulatory one subject to any appeals.

The decision to enter into an MLA with a particular licensee, or to grant any pole license under an effective MLA, would be handled in the City Manager's office. The attached resolution delegates authority to the City Manager or her designee to enter into future MLAs so long as the MLA substantially conforms to the template agreement approved by the City Council. Any material changes to the MLA would require City Council approval. Given the anticipated number of facilities that will be deployed, this delegation of authority will significantly reduce the burden on City resources to prepare reports and resolutions for each individual licensing decision.

The City would retain the right to approve or deny any license for an individual pole that would interfere with the City's municipal functions or its proprietary interests. The City also retains the absolute right to refuse any pole licenses on decorative poles or other structures that the City finds inappropriate as a support structure for wireless equipment. Staff intends to work collaboratively with the wireless industry to establish informal guidelines to put the licensees on notice about what would or would not be acceptable and promote greater certainty of approval.

The MLA would not completely replace the City's regulatory review process. Rather, it would delineate clear lines between actions the City takes as the owner of the pole and those it takes as a regulator. Once the City approves the pole license, the licensee would separately seek and obtain the required regulatory approvals from the Planning Division, Engineering Division, and/or Public Works Department. After the licensee provides proof that it obtained the required permits, the City would issue a notice to proceed with the proposed installation. The notice also serves as a memorandum to mark the date on which the license fee will be payable to the City. In order to ensure that the licensee only installs the equipment that has been approved by the City, the licensee would be required to attach as-built construction drawings as exhibits to the subject pole license.

Legal and Regulatory Background

California municipalities derive from the California Constitution their authority to regulate business activity and property uses in order to protect public health, safety and welfare. This *regulatory* authority is commonly referred to as the “police power” and is subject to certain state and federal limitations. However, municipalities may also act as market participants in the purchase, sale, lease, license or other grant or transfer of property rights. A municipality that seeks to grant a license is acting in its *proprietary* capacity.

Under California law, certain telephone corporations—among them, the wireless providers that have approached the City to install small cell facilities on City-owned poles—have a statewide franchise to install telephone lines and facilities in the public rights-of-way. To this extent, municipalities are constrained in their *regulatory* capacity to restrict telephone corporations’ access to the public rights-of-way. In addition, federal law limits municipal regulatory authority in the public rights-of-way by requiring local approval of certain collocations and modifications to existing wireless facilities. The City’s proprietary authority is limited to the structures that it owns in the public rights-of-way and does not extend to the streets themselves.

Currently, neither federal nor state law limits or restricts municipalities, in their *proprietary* capacity, to negotiate the terms and conditions by which a wireless provider may attach to municipal-owned infrastructure.

Given the regulatory landscape, the City could exert greater control over small cell deployments by incentivizing providers to install facilities on City-owned infrastructure through streamlined approval process that increases certainty and time-to-market. The City has a significant amount of infrastructure assets in the public rights-of-way but does not yet have an agreement with each interested provider to manage new pole attachment requests and leaves the City without a consistent and streamlined approval process for the scale of expansion that is anticipated.

Accordingly, any proprietary relationship with the providers would be only in connection with pole or other infrastructure that the City owns. Telephone corporations would not need any license agreement from the City for new poles or installations on third-party poles, such as PG&E utility poles.

California Senate Bill 649

On February 17, 2017, Senator Hueso introduced SB 649, which further reduces local authority discretion by eliminating consideration of the aesthetic and environmental impacts of “small cells” on public property (see Attachment 3). The proposal prohibits local discretionary review of small cell facilities including equipment collocated on existing structures or located on new “poles, structures, or non-pole structures,” including those within the public right-of-way and buildings. The proposal preempts adopted local land use plans by mandating that small cells be allowed in all zones as a use by-right, including residential zones, and proposes a limit to the annual charge of

\$250 for each small cell attached to city vertical infrastructure. On March 24, 2017, Mayor Hoffmeister sent a letter, on behalf of the full Council, in opposition to the bill due to local government's elimination of discretionary review, limited ability to apply design standards and mandatory leasing of public property. The State Senate voted in favor of the bill, which is now under consideration by the State Assembly. On June 21, 2017, the Mayor sent a letter to State Assemblyman Tim Grayson, again on behalf of the Council, citing concerns regarding capping lease rates, loss of ability to negotiate franchise agreements, aesthetics, health and safety issues, loss of decision making authority over city property not in the public right-of-way and prevailing wages. The Assembly is tentatively scheduled to review the bill in late July, with a proposed effective date of January 1, 2018.

Under SB 649, as currently drafted, existing agreements that were signed before the bill's passage would remain effective, subject to any termination provisions included in the executed agreement. Accordingly, staff included language in the agreement that provides that termination of the MLA may be made under two scenarios: 1) at any time (after an opportunity to cure any breach) for cause; or, 2) by giving five years' notice by the licensee to terminate.

If SB 649 passes, staff anticipates that the substantial terms of the proposed MLA will be in compliance with the new law, with the exception of any restrictions imposed by the state on the rate of the licensing fees for each pole site; the bill currently limits the City's fee to \$250 per small cell.

License Charges

For those MLA agreements signed before the effective date of SB 649, license charges for individual poles would be based on the fair market value for installations, subject to a range set in the attached resolution of between \$1,500 and \$2,500 per pole per year, with a 3% escalation clause.

In setting the range, staff considered the various fees charged for pole installations in other cities. For example, larger cities that already have similar programs in place, such as San Francisco, Los Angeles, and San Diego, currently receive between \$2,000 and \$4,000 per small cell facility per year per pole. Other cities, such as Anaheim, set their license fee much lower (approximately \$100 per year pole) as an incentive to use their infrastructure. Local public utilities, such as in Pasadena, also receive significantly less because they are subject to rate regulation under California law.

Once Council approves the attached resolution with the MLA template, the City Manager would negotiate the Pole License Charge Schedule within this range with each licensee.¹ The Schedule establishes the license charge due in each year for any pole

¹ The City Manager would also be given the authority to negotiate the amount of any surety bonds required or any additional fees charged as indicated in the attached proposed MLA.

licenses issued under that MLA. This obviates the need to renegotiate the license charge if a licensee wants to add more pole licenses midway through the term, because the parties simply refer to the schedule and find the license charge applicable to pole licenses in that year.

Revenue generated from the leasing of City-owned poles would be placed in the City's General Fund.

In addition to a Pole License Charge, wireless providers will be responsible for paying a Master License Administration Fee and a Pole License Administrative fee, which initially will be calculated based upon the hourly staff rate. Staff will monitor the time associated with each request and recommend a standardized fee to the Council at a future meeting.

As noted above, the State Assembly, as part of SB 649, is currently evaluating limitations to fees between \$100-\$850 per small cell facility per year or possibly a cap of \$250, which will limit the revenue generated by MLAs entered into after January 1, 2018. However, as discussed earlier, for those MLAs signed before SB 649 would take into effect, staff believes that the Pole License Charge Schedule negotiated before January 1, 2018 would remain into effect due to the "grandfather" provision of the bill

Benefits of a Master License Agreement

In summary, the following are the benefits and risks of utilizing an MLA:

Benefits:

- Generate license fee revenue of potentially several thousand dollars per year, per licensed City-owned pole.
- Provide the processes and work flow management structure required to manage and review the anticipated increase in small cell requests on City-owned poles.
- Aid in the City's ability to manage the anticipated increasing application requests.
- Improve wireless service and technology for the community.
- Provide better service to businesses and residents.
- Foster robust wireless broadband services and technologies for the community to better serve residents and businesses and attract economic development opportunities, increase competition, and lower prices.
- Provide better wireless infrastructure to government entities, including Police Department, City Hall, the Corporation Yard, the Senior Center, Willow Pass Recreation Center, the Golf Course, and the Concord Pavilion.
- Create a streamlined permit review process, thereby reducing staff time.

- Maximizes overall control over communications infrastructure in the public rights-of-way at a time when there are increasingly strict limitations on local regulatory authority;
- Supports business attraction and retention through support of quality cell service within Concord.

The MLA is crafted to provide incentives to manage antenna deployments in ways that balance local aesthetics with public health and safety while also providing the benefits of these new technologies to City's residents and businesses. The language in the MLA is the groundwork for how the City will interface with a Licensee, but it does not authorize the installation of antennas and equipment outright. The wireless provider that has entered into an MLA with the City would still need to apply for a permit (individual lease) to install wireless installations on a given City-owned utility pole.

After a Licensee files a permit application to install a small cell facility on a City-owned pole, the Engineering Division, Planning Division and Public Works Department would collaborate on the review of the proposed improvements. The Engineering Division would assess structural feasibility and issue permits; the Planning Division would focus on compliance with aesthetics and zoning regulations; and the Public Works Department would address any maintenance issues in the public right-of-way.

Infrastructure & Franchise Meeting

On April 10, 2017, the Council Committee on Infrastructure & Franchise ("I&F") met and reviewed an overview of technical and legislative framework for Wireless Communications Facilities regulations and an overview of a MLA. A presentation was made to I&F by the consultant, Tripp May with Telecom Law Firm, who showed images of various types of small cells in the right-of-way in other jurisdictions. One representative from AT&T, Ken Mintz, commented that an MLA is already in place in San Francisco, San Jose, and Oakland. Creation of an MLA would allow companies such as AT&T to connect to fiber feeds in the City as well.

I&F was in favor of a MLA as it allows expedited administrative review. The Committee requested the MLA outline design criteria, specify the small cell facility must be painted to match the pole, and indicate a process to remove obsolete apparatus and update older poles with newer street lighting technology. The Committee also discussed opportunities to encourage extending fiber throughout the community as part of this process. The Committee directed staff to draft an MLA and bring to the City Council for review.

Public & Stakeholder Outreach

On May 8, 2017, the City held a public and stakeholder meeting to share draft WCF regulations with residents, business owners, and stakeholders. Public outreach was

done through Nextdoor social networking service and the City website. Additionally, stakeholders were notified through email. Tripp May presented the legal framework and key elements of the agreement. In general, stakeholders were positive with staff approach with a strong preference to develop clear distinct regulations for small cells. Since the release of the draft regulations, the City received written communication from T-Mobile, Mobilitie, Verizon, and AT&T (Attachment 5). Staff reviewed all comments and incorporated recommended changes as appropriate.

Financial Impact

Establishing the framework for an MLA will require a one-time consultant fee, staff time, and public hearing process. Once the MLA is established, the City will be able to collect reoccurring revenue from the licensee to supplement the general fund. Charges for each Pole License will be negotiated by the City Manager or her designee within the range established in the attached Resolution.

Environmental Determination

Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA"), the adoption of a Master License Agreement is not considered a "project" pursuant to CEQA Guidelines Section 15378 and Public Resources Code Section 21065. The adoption of this type of an agreement is not the sort of activity that may cause a direct or reasonably foreseeable indirect physical change to the environment. In the alternative, the MLA is exempt pursuant to Section 15061(b)(3) "Review for Exemptions" of the CEQA Guidelines in that there is no potential that the agreement may have a significant effect on the environment. Moreover, any site-specific future projects subject to the Master License Agreement would necessitate further environmental review on a case by case basis. Accordingly, no further environmental review is required.

Public Contact

The City Council Agenda was posted. In addition, staff notified wireless communication providers via email of this meeting.

Attachments

1. Resolution No. 17-58 (including Exhibit A – Master License Agreement)
2. AT&T PowerPoint, dated March 17, 2017
3. APA California Legislative Alert, dated June 19, 2017
4. Public Comments

BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

**A Resolution Approving Form Wireless Master
License Agreement and Authorizing City Manager to
Execute Wireless Master License Agreements and
Issue Pole Licenses for City-Owned Poles in the Right
of Way**

Resolution No. 17-58

WHEREAS, technology developments and demand for high-speed mobile data service and capacity has extended beyond the capabilities of traditional macro-cell wireless communications facilities. To meet this demand, wireless providers have accelerated their small cell and distributed antenna system deployments in the public rights-of-way and the City has a clear incentive to develop public-private agreements that manage these accelerated deployments in a way that balances local aesthetics and public health and safety while also deriving the benefits of these new technologies for the City's residents to the greatest extent practicable; and

WHEREAS, wireless providers are in the business of installing, maintaining and operating wireless communication facilities and typically installs, maintains and operates its wireless communications facilities on existing vertical infrastructure in the public rights-of-way; and

WHEREAS, the City owns as its personal property, approximately 8,200 existing poles within the public right-of-way that are potentially suitable for installing wireless communications facilities within the City's jurisdiction and has a duty under California law to derive appropriate value from the City's property; and

WHEREAS, wireless providers desire to install, maintain and operate wireless communications facilities on the City's poles in the public rights-of-way and these wireless providers are willing to compensate the City for the right to use the City's poles for wireless communications purposes; and

WHEREAS, the City prepared a form Master License Agreement and associated Pole License form (attached as Exhibit A) to be used by the City and certain wireless providers for the requested installation, maintenance and operations of wireless communication facilities on City poles in the public rights-of-way; and

1 **WHEREAS**, consistent with California state law, the City intends the Master License
2 Agreement and any issued Pole License to be applicable only to City-owned Poles, and does not
3 intend the Master License Agreement or any issued Pole License to require any consideration as a
4 precondition for any telephone corporation's access to the public rights-of-way permitted under
5 California Public Utilities Code § 7901; and

6 **WHEREAS**, consistent with all applicable Laws, the City does not intend the Master License
7 Agreement or any issued Pole License to grant any particular wireless provider the exclusive right to
8 use or occupy the public rights-of-way within the City's territorial and/or jurisdictional boundaries,
9 and the City may enter into similar or identical agreements with other entities, which include without
10 limitation to any business competitors of a wireless provider who has entered into the Master License
11 Agreement; and

12 **WHEREAS**, the City desires to authorize certain wireless providers access to individual City-
13 owned poles based on a comprehensive and uniform Master License Agreement and associated Pole
14 License form, attached as Exhibit A, and pursuant to all the applicable permits issued by the City to
15 protect public health and safety; and

16 **WHEREAS**, on April 10, 2017, the City Council Committee on Infrastructure & Franchise
17 ("I&F") held a publically noticed meeting to review the technical and legislative framework for
18 wireless communications facilities regulations and an overview of the proposed Master License
19 Agreement and associated Pole License; and

20 **WHEREAS**, on May 8, 2017, staff conducted a stakeholder meeting to review and obtain
21 comments from residents, business owners and wireless providers about the proposed Master License
22 Agreement; and

23 **WHEREAS**, the City Council, after giving all public notices required by state law and the
24 Concord Municipal Code, held a duly noticed public hearing on July 25, 2017 on the proposed Master
25 License Agreement; and

26 **WHEREAS**, at such public hearing, the City Council considered all oral and written
27 information, testimony, and comments received during the public review process, including
28

1 information received at the public hearing, the oral report from City staff, the written report from City
2 staff dated July 25, 2017, materials, exhibits presented, and all other information that constitutes the
3 record of proceedings on which the City Council has based its decision are maintained in the offices
4 of the City Clerk's Office ("Project Information"); and

5 **WHEREAS**, said the approval of a form Master License Agreement and associated Pole
6 License form is not considered a "project" pursuant to the California Environmental Quality Act of
7 1970, as amended, and implementing state CEQA Guidelines, Title 14, Chapter 3 of the California
8 Code of Regulations (collectively "CEQA"), Section 15378 and Public Resources Code Section
9 21065 as the adoption of the form agreement and license is not the sort of activity that may cause a
10 direct or reasonably foreseeable indirect physical change to the environment. In the alternative, the
11 approval of the form Master License Agreement and associated Pole License form is exempt pursuant
12 to Section 15061(b)(3) of the CEQA Guidelines in that there is no potential that the agreement and
13 license approval may have a significant effect on the environment. Moreover, any site specific future
14 projects approved based on the Master License Agreement and associated Pole License form would
15 necessitate further environmental review on a case by case basis; and

16 **WHEREAS**, on July 25, 2017, the City Council, after consideration of all pertinent documents
17 and testimony, declared their intent to approve the form of the Master License Agreement and
18 associated Pole License, and delegated the authority to the City Manager or her designee to execute
19 future Master License Agreements, to issue Pole Licenses, and to negotiate the Pole License Charge
20 Schedules in the range of \$1,500 to \$2,500 for each pole each year, with an escalation rate of three
21 percent each year.

22 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**
23 **RESOLVE AS FOLLOWS:**

24 **Section 1.** The recitals above are true and correct and are incorporated herein by reference.

25 **Section 2.** The City Council approves the form Master License Agreement, including the Pole
26 License form, (attached as Exhibit A) for the installation of wireless communications facilities on
27 City-owned Poles and authorizes the City Manager or her designee the authority to execute said
28

1 Master License Agreement and issue any approved Pole License(s) pursuant to the Master License
2 Agreement. The City Manager is also authorized to negotiate the Pole License Charge Schedule for
3 each Master License Agreement, to be set in the range of \$1,500 to \$2,500 for each pole each year,
4 with an increase of three percent each year.

5 **Section 3.** This resolution shall become effective immediately upon its passage and adoption.

6 **PASSED AND ADOPTED** by the City Council of the City of Concord on July 25, 2017, by
7 the following vote:

8 **AYES:** Councilmembers -

9 **NOES:** Councilmembers -

10 **ABSTAIN:** Councilmembers -

11 **ABSENT:** Councilmembers -

12 **I HEREBY CERTIFY** that the foregoing Resolution No. 17-58 was duly and regularly
13 adopted at a regular meeting of the City Council of the City of Concord on July 25, 2017.

14
15
16 _____
Joelle Fockler, MMC
City Clerk

17 **APPROVED AS TO FORM:**

18
19 _____
Susanne Meyer Brown
City Attorney

20
21 Exhibit A: Master License Agreement for Wireless Facilities on City Poles in the Right-of-Way
22
23
24
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**MASTER LICENSE AGREEMENT FOR
WIRELESS FACILITIES ON CITY POLES IN THE RIGHT-OF-WAY**

between

CITY OF CONCORD, A CALIFORNIA MUNICIPAL CORPORATION

and

[INSERT LICENSEE NAME], A [INSERT CORPORATE FORM]

Effective Date: **[insert]**

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

This MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON CITY POLES IN THE RIGHT-OF-WAY (“**Master License**”) dated [date] (the “**Effective Date**”) is between the CITY OF CONCORD, a California municipal corporation (the “**City**”) and [insert licensee name], a [insert licensee corporate form] (the “**Licensee**”).

BACKGROUND

- A. **WHEREAS**, technology developments and demand for high-speed mobile data service and capacity has extended beyond the capabilities of traditional macrocell wireless communications facilities. To meet this demand, wireless providers have accelerated their small cell and distributed antenna system (“**DAS**”) deployments in the public right-of-way and the City has a clear incentive to develop public-private agreements that manage these accelerated deployments in a way that preserves local aesthetics and public health and safety while also deriving the benefits of these new technologies for the City’s residents to the greatest extent practicable; and
- B. **WHEREAS**, Licensee is in the business of installing, maintaining and operating wireless communication facilities and typically installs, maintains and operates its wireless communications facilities on existing vertical infrastructure in the public right-of-way; and
- C. **WHEREAS**, the City owns as its personal property a number of existing Poles within the public right-of-way that are potentially suitable for installing wireless communications facilities within the City’s jurisdiction and has a duty under California law to derive appropriate value from the City’s property assets for the public good; and
- D. **WHEREAS**, Licensee desires to install, maintain and operate wireless communications facilities on the City’s Poles in the public right-of-way and Licensee is willing to compensate the City for the right to use the City’s Poles for wireless communications purposes; and
- E. **WHEREAS**, consistent with California state law, the City intends this Master License and any Pole License to be applicable only to City-owned Poles, and does not intend this Master License or any Pole License to require any consideration as a precondition for any telephone corporation’s access to the public rights-of-way permitted under California Public Utilities Code § 7901; and
- F. **WHEREAS**, consistent with all applicable Laws, the City does not intend this Master License to grant the Licensee any exclusive right to use or occupy the public rights-of-way within the City’s territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the City may enter into similar or

identical agreements with other entities, which include without limitation Licensee's competitors; and

- G. WHEREAS**, the City desires to authorize Licensee's access to individual City-owned poles based on a comprehensive and uniform Master License according to the terms and conditions set forth in this Master License Agreement, any applicable Pole License, and pursuant to all the applicable permits issued by the City to protect public health and safety; and
- H. WHEREAS**, on July 25, 2017, the City Council of the City of Concord adopted Resolution No. 17-58, which approved the form and material terms for a Master License Agreement for Wireless Facilities on City Poles in the right-of-way to be used in connection with the licensing of Poles and other City-owned property for wireless communications facilities, and further delegated authority to the City Manager to enter into such agreements.

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

AGREEMENT

1. GENERAL DEFINITIONS

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

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

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

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

"CPUC" means the California Public Utilities Commission established in the California Constitution, Article XII, Section 5, or its duly appointed successor agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“RF Compliance Report” means a report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the

controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

2. SCOPE OF LICENSE

2.1. License Area

2.1.1. Pole License Issuance and Effect

Subject to the terms and conditions in this Master License, the City will issue to Licensee one or more Pole Licenses, which will grant Licensee a contractual privilege to use the space on the subject Pole approved for the Equipment, which includes any conduits, pull boxes or other City Property specifically identified in the Approved Plans attached to the Pole License (individually for each licensed Pole and collectively for all licensed Poles, the “**License Area**”). Any approved Pole License will become effective on the first day of the month following the date on which both the City and Licensee execute such Pole License. After the City approves a Pole License, the City will not license any space on the licensed Pole to any third party (other than the City’s Agents and/or Invitees for equipment used in connection with the City’s municipal functions) who desires to use that specific Pole for the Permitted Use.

2.1.2. Limitations on License Areas

This Master License applies to only Poles identified in final and fully executed Pole Licenses. This Master License does not authorize Licensee or any other persons or entities to enter on to or use any other City Property, except the License Areas specified in any Pole Licenses. Furthermore, neither this Master License nor any Pole License authorizes or confers any rights in Licensee or any other persons or entities to use any portions of the public rights-of-way, or any improvements or other personal property within the public rights-of-way owned by any third parties. Licensee expressly acknowledges and agrees that the City has the absolute right to deny for any or no reason, and will not be obligated to issue, any Pole License or other license to Licensee for any purpose related to the following poles:

- (1) any decorative Pole, which includes any Pole or light standard with ornate features or characteristics designed or intended to enhance the appearance of the Pole or light standard;
- (2) any Pole in or near a residential district or residential use;
- (3) any Pole in any area with undergrounded utilities when the Licensee does not propose to install the non-antenna equipment (other than the electric meter as may be required by Licensee’s utility provider) underground;
- (4) any wood Pole; provided, however, that the City may, in its sole discretion and on a case-by-case basis, allow Licensee to replace, at Licensee’s

sole cost and expense, an existing wood Pole with a steel or concrete Pole for purposes of installing, maintaining and operating Licensee's Equipment.

2.2. Limitations on Licensee's Interests

2.2.1. Limited Interest Created

Licensee expressly acknowledges and agrees that (1) Licensee does not have any rights to use or possess interest or rights in any Pole for any purpose whatsoever until and unless the City issues a Pole License for such Pole; and (2) it is the parties' intent that neither this Master License nor any Pole License issued pursuant to this Master License creates or will be deemed to create any leasehold, easement, franchise or any other possessory interest or real property interest whatsoever in the License Area. In the event that there is a determination that ad valorem, privilege or other taxes or assessments are to be levied as a result of this Master License or Pole License, Licensee shall be obligated to pay any such possessory interest taxes as set forth in paragraph 12 below.

2.2.2. Limited Rights Created

Any Pole License the City approves pursuant to this Master License grants to Licensee only a non-possessory and revocable license to enter on to and use the License Area for the Permitted Use. Licensee expressly acknowledges and agrees that (1) neither this Master License or any Pole License will be coupled with an interest; (2) the City retains legal possession and control over all Poles for the City's operations, which will be superior to Licensee's interest at all times; (3) subject to the terms and conditions in this Master License, the City may terminate a Pole License in whole or in part at any time; (4) except as specifically provided otherwise in this Master License, the City may enter into any agreement with third parties in connection with use and occupancy of Poles and other City Property; (5) Licensee has no ownership rights in any Pole whatsoever; and (6) neither this Master License nor any Pole License creates or will be deemed to create any partnership or joint venture between the City and Licensee.

2.2.3. No Impediment to Municipal Uses

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

2.3. Diminutions in Light, Air and Signal

In the event that any existing or future structure diminishes any light, air or signal propagation, transmission or reception, whether erected by the City or not, Licensee shall not be entitled to any reduction in any License Charge, Additional Fees or any

other sums payable to the City under this Master License or any Pole License, and the City shall have no liability to Licensee whatsoever and such diminution will not affect this Master License, any Pole License or Licensee's obligations except as may be expressly provided in this Master License.

2.4. License Area Condition

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

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

2.4.2. Licensee's Due Diligence

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

2.4.3. Certified Access Specialist Disclosure

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

3. TERM

3.1. Master License Term

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

3.2. Pole License Term

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

4. LICENSE CHARGE; OTHER PAYMENTS

4.1. License Charges

4.1.1. Commencement Date

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

4.1.2. Acknowledgment Letter

For each Pole License approved by the City pursuant to Section 6.4.4 (Pole License Application Approval), Licensee shall deliver to the City a letter in the form shown in Exhibit A-3 to the Pole License (the “**Acknowledgment Letter**”) within approximately 10 business days after Licensee obtains all Regulatory Approvals necessary for the Permitted Use on any License Area. The parties intend the Acknowledgement Letter to: (1) confirm the Commencement Date; (2) tender or confirm payment by wire transfer of the License Charge for the first License Year; (3) provide the City with copies of all Regulatory Approvals for the Equipment on each licensed Pole; and (4) confirm that Licensee has submitted all information required in Section 18 (Insurance) under this Master License. Upon written notice to Licensee, the City shall have the right to correct the Commencement Date stated in Licensee’s Acknowledgement Letter after the City examines the Regulatory Approvals if, in the City’s reasonable determination, the Commencement Date stated on the Acknowledgment Letter is incorrect or inaccurate. The City’s reasonable determination in connection with this Section 4.1.2 will be final for all purposes under this Master License. The City will use reasonable efforts to deliver a countersigned Acknowledgement Letter to Licensee within approximately ten business days after the City receives the partially executed Acknowledgment Letter with all required attachments and enclosures from Licensee. The fully executed

Acknowledgment Letter will be Licensee's notice to proceed with its installation. The date on which the City countersigns the Acknowledgement Letter will be the effective date for the subject Pole License.

4.1.3. License Charge Amount

Licensee shall pay to the City an annual charge at the rate specified in the License Charge Schedule attached to each Pole License (the "**License Charge**"). The License Charge Schedule shall be the schedule shown in Schedule A-4. The License Charge Schedule will reflect the annual License Charge adjustments as provided in Section 4.1.4 (Annual License Charge Adjustments). Licensee shall pay each annual License Charge in advance without any prior demand, deduction, setoff or counterclaim for any reason, except to account for a partial year in the event that (1) the Commencement Date falls on a date other than January 1; (2) this Master License expires or terminates; or (3) any other abatement rights expressly granted in this Master License becomes effective. Any amounts for less than a full year or full month will be calculated based on a 360-day year and a 30-day month.

4.1.4. Annual License Charge Adjustments

Each year throughout the Term on January 1 (each an "**Adjustment Date**") the License Charge will be increased 3% over the License Charge payable in the immediately previous year. The adjustment provided in this Section will be effective even if the first License Year was for less than a full calendar year.

4.1.5. License Charge Due Date

Licensee shall pay the License Charge for the first year at the same time Licensee delivers the Acknowledgement Letter without any deduction or setoff for any reason. Thereafter, Licensee shall pay the annual License Charge by January 1 in each year throughout the Term. As an illustration, and not a limitation, if the Commencement Date for a Pole License falls on June 1, then the License Charge due in the first License Year will be prorated 50% (to account for the six-month difference between January and May) and will be due on the Commencement Date. The full License Charge for the second License Year, and each subsequent year thereafter, will be due on January 1.

4.2. Administrative Fees

4.2.1. Master License Administrative Fee

At the time Licensee delivers to the City a partially executed counterpart to this Master License, Licensee shall pay to the City a nonrefundable administrative fee equal to the amount adopted pursuant to City Resolution 78-6042 (Fees and Charges for Various Municipal Services), as may be amended or superseded, (the "**Master License Administrative Fee**"), which the parties agree approximately represents the City's reasonable costs to review and execute this Master License. The City will not be

obligated to execute any Master License until the City receives the Master License Administrative Fee. In the event that no Master License Administrative Fee is adopted at the time Licensee delivers to the City a partially executed counterpart of this Master License, then the Master License Administrative Fee shall be subject to the hourly rates for City staff services established by City Resolution 78-6042, as may be amended or superseded.

4.2.2. Pole License Administrative Fee

At the time Licensee delivers to the City a Pole License Application, Licensee shall pay to the City a nonrefundable administrative fee equal to the amount adopted pursuant to City Resolution 78-6042 (Fees and Charges for Various Municipal Services), as may be amended or superseded, (the “**Pole License Administrative Fee**”), which the parties agree approximately represents the City’s reasonable costs to review each Pole License Application. The City will not be obligated to commence its review for any Pole License Application until the City receives the Pole License Administrative Fee. In the event that no Pole License Administrative Fee is adopted at the time Licensee delivers to the City a Pole License Application, then the Pole License Administrative Fee shall be subject to the hourly rates for City staff services established by City Resolution 78-6042, as may be amended or superseded. The parties to this Master License Agreement collectively refer to the Master License Administrative Fee and the Pole License Administrative Fee as “**Administrative Fees**.”

4.3. Late Charges

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

4.4. Default Interest

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

4.5. Additional Fees

The parties to this Master License define “**Additional Fees**” to collectively mean any sums payable by Licensee to the City in its proprietary capacity as the licensor, which includes without limitation any late charges, default interest, storage of Equipment costs incurred by the City, costs in connection with a request for the City’s consent to an Assignment under Section 16.2 (Proposed Assignment Procedures) and Default Fees

under Section 25.2.4; provided, however, that the term excludes any (1) License Charges; (2) Administrative Fees; (3) any other amounts payable to the City by Licensee in connection with the City's review of Pole License Applications or coordinating and inspecting Equipment installed on the License Area; and (4) any payments made to the City in its regulatory capacity.

4.6. Payment Procedures

Licensee shall pay all License Charges, Additional Fees, Administrative Fees and all other amounts payable to the City in cash or other immediately available funds by (1) local check payable to the City Manager's Office, 1950 Parkside Drive, M/S 01A, Concord, CA 94519 or (2) electronic wire transfer to an account specified by the City. Any payment made with a dishonored check will be deemed unpaid. The parties may change the payment address from time-to-time by written notice.

4.7. Estimated Charges and Fees

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

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

Licensee _____

City _____

5. USES

5.1. Permitted Use

Licensee may use the License Area solely for the installation, operation and maintenance of Equipment for transmission and reception of wireless communications signals (the "**Permitted Use**") in compliance with all applicable Laws and any conditions in any Regulatory Approvals and for no other use whatsoever without the City's prior written consent, which the City may withhold in its sole and absolute discretion for any or no reason. Licensee may sublicense or otherwise allow its Invitees to use capacity on

Licensee's Equipment; provided, however, that any such third parties shall not be permitted to perform any physical work on any Pole without the City's prior written consent, which the City may reasonably withhold or condition as the City deems necessary to protect the Pole or public health safety and/or welfare.

5.2. Prohibition on "Macro Cell" Uses

The City and Licensee intend this Master License and any Pole License to cover only "small cell" and/or distributed antenna system installations, as those terms are commonly understood to mean small, low-power, low-elevation, unobtrusive wireless facilities intended to cover relatively small geographic areas. Licensee expressly acknowledges and agrees that the Permitted Use under this Master License does not include the right to use any Pole as a support structure for a "macro cell" or a traditional wireless tower typically constructed on private property. The City may, in its sole and absolute discretion, approve "macro cell" facilities on its Poles on a case-by-case basis.

5.3. Prohibition on Illegal Uses or Nuisances

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

5.4. Signs or Advertisements

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

6. POLE LICENSES

6.1. City Approval Required

Licensee shall not have any right to use the License Area in whole or in part for any purpose until and unless the City approves a Pole License. Subject to any express limitations in this Master License, the City will not be obligated to subordinate its municipal functions or proprietary interest in any manner whatsoever to Licensee's interest under any Pole License. When the City considers whether to approve or disapprove any Pole License Application, the City may consider any matter that affects its municipal functions or proprietary interests, which include without limitation: (1) Licensee's proposed plans and Equipment specifications; (2) compliance with any applicable Laws; (3) impacts on the City's street light operations; (4) any potential hazards or unsafe conditions that could result from Licensee's installation, operation or maintenance; (5) any potential visual or aesthetic impacts, which includes without

limitation whether any alternative locations or configurations would be more aesthetically desirable or appropriate in the City's sole discretion; (6) the additional load on the Pole the proposed Equipment would create; and (7) any municipal plans for the Pole or right-of-way in proximity to the Pole.

6.2. Design Guidelines

The parties agree that the installation configurations more particularly described and depicted in **Exhibit B** (the "**Design Guidelines**") will be presumptively approvable by the City. The City may update and amend the Design Guidelines from time-to-time, and may substitute such updated or amended Design Guidelines for the current Exhibit B upon written notice to Licensee; provided, however, such updated or amended Design Guidelines shall not apply retroactively unless required by Laws. The City shall consult in good faith with Licensee before any update or amendment to the Design Guidelines becomes effective. Nothing in this Section 6.2 is intended to limit or affect the City's rights to disapprove any Pole License Application pursuant to Section 2.1.2 (Limitations on License Areas), Section 6.1 (City Approval Required), Section 6.4.5 (City's Right to Disapprove) or any other provision in this Master License that expressly reserves the City's right to disapprove any Pole License Application.

6.3 Pole License Application

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

6.4. Pole License Application Review Procedures

The City will review complete Pole License Applications in a reasonably prompt manner, taking into account the nature and scope of each Pole License Application and/or the particular Poles requested in such Pole License Application, and in the chronological order (date and time) in which a complete Pole License Application is submitted or deemed submitted. Except as specified otherwise in this Master License, the City will not prioritize any application or licensee over any other application or licensee. Licensee acknowledges that (1) the City will not be obligated to prioritize Pole License Application review over its municipal functions; (2) the City's staff and budget considerations will impact the City's ability to review and process Pole License Applications; and (3) the City will not be obligated to act on any Pole License Application within any specific timeframe.

6.4.1. Incomplete Pole License Applications

The City will not be obligated to review or approve any incomplete Pole License Application. In the event that Licensee submits an incomplete Pole License Application,

the City may, with or without notice to Licensee, suspend its review for that incomplete Pole License Application until Licensee delivers all required elements for a complete Pole License Application. In addition, the City may suspend all pending Pole License Application, whether complete or incomplete, reviews when Licensee fails to timely submit any Pole License Administrative Fee. The date and time when Licensee submits the missing elements will be deemed the date and time that Licensee submitted the Pole License Application.

6.4.2. Required Changes to the Pole License Application

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

6.4.3. Consultation with Other City Departments

The City may consult with other departments within the City to assess whether Licensee's proposed Equipment poses any concerns, which includes without limitation any concerns about aesthetics, historic or environmental impacts, traffic control, pedestrian access and general right-of-way management. Licensee acknowledges that any consultation with any other City departments in accordance with this Section 6.4.3 and any actions or failures to act by the City that may result from such consultations would be in the City's proprietary capacity as the Pole owner and not an exercise of the City's regulatory authority.

6.4.4. Pole License Application Approval

In the event that the City approves a Pole License Application, the City will return one fully executed Pole License to Licensee. Licensee acknowledges and agrees that the City's decision to approve or disapprove any Pole License Application is not, and will not be deemed to be, a regulatory determination subject to any administrative appeal, but is an exercise of the City's proprietary authority over its Poles as its personal property. In the event that Licensee fails to commence construction pursuant to the Pole License within one year from the date the City fully executes the Acknowledgment Letter, the Pole License shall automatically expire unless the City Manager grants a written extension that may not exceed one additional year. Licensee shall not be entitled to any refund for any fees, which include without limitation the License Charge, paid in connection with a Pole License that expires pursuant to this Section 6.4.4. Nothing in this Section 6.4.4 is intended to prohibit or prevent Licensee from submitting a new Pole

License Application for the same or substantially the same Poles as those covered under a Pole License that expired pursuant to this Section 6.4.4.

6.4.5. City's Right to Disapprove

Licensee acknowledges that the City reserves the absolute right to disapprove any Pole License Application in whole or in part when the City determines in its sole judgment that the subject Pole Location or proposed Equipment would interfere with the City's municipal functions or proprietary interests or create a hazardous or unsafe condition. In addition, Licensee acknowledges that the City reserves the absolute right to disapprove any license within a Pole License Application when the subject Pole would involve above-ground equipment (other than the antenna and any required electric meter) in a residential district or in close proximity to a residential use.

6.4.6. Federal and State Regulations Inapplicable

Licensee expressly acknowledges and agrees that all requirements, limitations or other restrictions in any Laws applicable to the City in its regulatory capacity (which may include without limitation 47 U.S.C. § 332(c)(7); 47 U.S.C. § 253; 47 U.S.C. § 1455; 47 C.F.R. § 1.40001; California Public Utilities Code §§ 7901 or 7901.1; California Government Code §§ 50030, 65850.6, 65964 or 65964.1; and any judicial or administrative interpretations in connection with any such Laws) do not apply to the City's review or determination in connection with any Pole License Application submitted pursuant to this Master License. Without any limitation on the generality of the preceding sentence, and for only the purposes in this Master License and any Pole License, the City and Licensee expressly acknowledge and agree that any Equipment installed pursuant to this Master License or any Pole License will not be considered or interpreted as "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), and any Pole or replacement Pole on which such Equipment is installed will not be considered or interpreted as a "tower" or a "base station" as used in 47 U.S.C. § 1455 or 47 C.F.R. § 1.40001 *et seq.*

7. EQUIPMENT INSTALLATION

7.1. Approved Plans and Equipment Specifications

Licensee must submit detailed plans and equipment specifications as Exhibit A-2 to any Pole License Application, which must include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed in connection with the License Area. Licensee acknowledges that Exhibit A-2 to any approved Pole License will be deemed to be the "**Approved Plans**" and that Licensee will be permitted to install only the Equipment and other improvements shown on such Approved Plans.

7.1.1. Site Identification Required

On each licensed Pole, Licensee must install one identification plate in strict compliance with the size, material, form and substance as shown on the Approved Plans. The identification plate must include Licensee's corporate name and telephone number at which Licensee's On-Call Representative can be reached at all times (24 hours per day and 7 days per week). Licensee must replace the identification plate within 48 hours in the event that any information on such plate changes.

7.1.2. Changes Required for Regulatory Approvals

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

7.1.3. Corrections to Approved Plans

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

7.2. Prior Regulatory Approvals Required

Licensee shall not commence any work at the License Area until Licensee obtains all necessary Regulatory Approvals, which includes without limitation, a Use Permit from the City's Planning Division, an encroachment permit, construction or building permit, electrical permit, or a Right of Way Permit from the City's Engineering Division and any other permit obtained through any other City department, and tenders full and complete copies of each Regulatory Approval to the City. The City's consent or refusal to consent to any Pole License issued by the City in its proprietary capacity as the Pole owner will not be deemed to be any approval or denial in connection with any Regulatory Approval issued by the City in its regulatory capacity as a municipal government.

7.3. Installation; Strict Compliance with Approved Plans

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

7.3.1. Alterations to City's Property

Neither Licensee nor its Agents or Invitees may remove, damage or in any manner alter any City Property without prior written consent from the City and any other City agencies with jurisdiction over the subject City Property. The City may withhold its consent in its sole and absolute discretion, and may reasonably condition its consent in each instance based on scope and nature of the proposed alterations. Licensee shall immediately notify the City if any removal, damage or other alteration occurs to City Property for any reason and through any cause.

7.3.2. Licensee's Contractors

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

7.4. Labor and Materials Costs

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

7.5. Project Managers

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

City's Project Manager:

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

Address: _____

Licensee's Project Manager:

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

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

7.6. Coordination with the City

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

7.7. Fiber-Optic Cables

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

7.8. Prevailing Wages

The services to be provided under the Master License or Pole License are or may be subject to prevailing wage rate payment as set forth in California Labor Code Section 1771. Accordingly, to the extent that such services are subject to the prevailing wage rate payment requirements, Licensee shall comply with all California Labor Code requirements pertaining to “public works,” including the payment of prevailing wages in connection with the services to be provided 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 for inspection and copying during regular business hours at a location within the City of Concord.

Licensee shall defend, indemnify and hold the City harmless and its officers, officials, employees, volunteers, agents and representatives (collectively, “Indemnitees”) from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys’ fees and costs) (collectively, “Claims”), arising out of or in any way connected with Licensee’s obligation to comply with all laws with respect to the work of improvements or Prevailing Wage Policies, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781, as amended and added by Senate Bill 966.

Licensee hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Licensee’s obligation to comply with all laws with respect to the work of improvements and Prevailing Wage Policies. Licensee is aware of and familiar with the provisions of California Civil Code Section 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.”

As such relates to the Master License and Pole License, Licensee hereby waives and relinquishes all rights and benefits which it may have under California Civil Code Section 1542. The obligations of Licensee under this Section 3.B shall survive the termination of this Master License or Pole License.

7.9. Title to Licensee’s Equipment and Other Improvements

Except as specifically provided otherwise in this Master License, all Equipment and other improvements installed, constructed or placed on or about the License Area by Licensee or its Agents or Invitees will be deemed and remain at all times Licensee’s personal property. All structural improvements to any Pole, any replacement Pole and

any underground fiber optic cables, all as approved by the City and shown in the Approved Plans, will become 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 23 (Surrender of License Area), Licensee may remove its Equipment from the License Area at any time after 30 days' written notice to the City.

8. PUBLIC WORKS OPERATIONS

8.1. City's Access to License Areas

Except as specifically provided otherwise in this Master License, the City and its Agents have the right to access any License Area in whole or in part at any time without notice for any purpose. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's or its Agents' access to the License Area, which includes any Equipment removed in an emergency or other exigent circumstances pursuant to Section 8.4 (Emergencies), except to the extent that the damage arises directly and exclusively from the gross negligence or willful misconduct of the City or its Agents and not contributed to by the acts, omissions or negligence of Licensee, its Agents or Invitees. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's gross negligence or willful misconduct and not contributed to by Licensee's or its Agents' or Invitees' acts, omissions or negligence.

8.2. Repairs, Maintenance and Alterations to Poles

The City and/or the City's Public Works Department will: (1) maintain and repair Poles as needed, in its sole judgment, for its street light operations and other municipal functions; (2) correct any immediately hazardous condition. Except as provided in Section 26 (Termination), and excluding conditions that arise from the City's or its Agents' gross negligence or willful misconduct, neither any City work on any Pole nor any condition on any Pole will: (a) entitle Licensee to any damages; (b) excuse or reduce any obligation by Licensee to pay any License Charges or Additional Fees or perform any covenant under this Master License; or (c) constitute or be construed as a constructive termination of this Master License or any Pole License.

8.3. Repairs, Maintenance and Alterations to License Areas

The City may, at any time, alter, add to, repair, remove from and/or improve the License Area in whole or in part for any operational purpose, which includes without limitation maintenance and improvements in connection with street light services and compliance with Laws; provided (1) the City makes a good-faith effort to provide advance notice to Licensee's On-Call Representative as soon as reasonably practicable; (2) the City allows Licensee's representative to observe the City's work; and (3) the City takes

reasonable steps not to disrupt Licensee's ordinary operations on the License Area. The provisions in this Section 8.3 will not be construed to allow Licensee's ordinary operations to impede or delay the City's authority and ability to make changes to the License Areas necessary to maintain street light services.

8.4. Emergencies

In emergencies, the City's work will take precedence over Licensee's operations, which includes without limitation any Equipment operated on the License Area, and the City may access the License Area in whole or in part as the City deems necessary in its sole determination and in accordance with this Section 8.4, whether the City has notified Licensee of such emergency or other exigent circumstances or not. When safe and practicable, the City will notify Licensee of any emergency or other exigent circumstances that requires the City to remove or replace any Pole and will allow Licensee to remove its Equipment before the City removes or replaces the Pole; provided, however, that the City will remove the Equipment from the Pole when in the City's sole determination it would (1) be unsafe or not practicable to wait for Licensee to perform the work; (2) cause significant delay; or (3) otherwise threaten or compromise public safety or public services. The City will remove any Equipment with reasonable care and store the Equipment for retrieval by Licensee and the City will provide notice as soon as reasonably practicable after such emergency, but in no event later than 24 hours after the emergency. Licensee shall have the right to reinstall such removed Equipment or equivalent Equipment at Licensee's sole expense on the repaired or replaced Pole and in accordance with Section 7 (Equipment Installation). The City's removal of Licensee's Equipment in emergencies or other exigent circumstances will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee's contractual privilege to use the License Area.

9. LICENSEE'S MAINTENANCE OBLIGATIONS

9.1. Damage to Poles

9.1.1. Notice to the City

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

9.1.2. Damage Caused by Licensee

In the event that any use or maintenance by Licensee or its Agents or Invitees cause any damage to any Pole, Licensee must repair such damage within 30 days after the City provides a notice to Licensee that describes such damage. Such 30-day cure period may be extended to a date certain if the City agrees the cure reasonably requires

more time. In the event that Licensee fails to timely cure the damage, the City may repair the damage at Licensee's expense. Licensee will reimburse the City for all costs incurred to repair such damage within 10 days after Licensee receives the City's demand for payment, together with copies of invoices or other evidence to document the costs incurred.

9.1.3. No Right to Repair

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

9.2. Equipment Maintenance

Licensee shall, at its sole cost and expense, install, maintain and promptly repair any damage to any Equipment installed on the License Area whenever repair or maintenance may be required, subject to the City's prior approval if required under Section 7 (Equipment Installation). Licensee is not required to seek the City's prior approval for any Equipment repair, maintenance, replacement or other installation on the License Area when such Equipment is shown on the Approved Plans. Licensee must obtain the City's prior written approval for any Equipment repair, maintenance, replacement or other installation that involves larger, different or additional Equipment than shown on the Approved Plans. Licensee expressly acknowledges that Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455) does not apply to this Master License or any Pole License because the City is acting within its proprietary capacity as the owner of the City Poles. Any work on Licensee's Equipment installed on Poles that is authorized or permitted under this Section 9.2 is subject to Licensee obtaining any required Regulatory Approvals.

9.3. Graffiti Abatement

Licensee's repair and maintenance obligation includes the removal of any graffiti or similar vandalism from the License Area within 48 hours after the City notifies Licensee of said graffiti or vandalism.

9.4. Standard of Work

All work performed by or for Licensee under this Section 9.4 shall be: (1) at Licensee's sole cost and expense; (2) performed only qualified and trained persons and appropriately licensed contractors; (3) performed in a manner and with equipment and materials that will not interfere with or impair the City's operations; (4) compliant with all applicable Laws; and (5) performed solely by Licensee and not by Licensee's Invitees.

9.5. Inspections

At least once in every License Year, Licensee shall perform an inspection of all Equipment and, within 30 days after the inspection, submit a written report to the City on the condition of such Equipment that includes, without limitation, any identified concerns and corrective action taken or planned to be taken. In the event that Licensee's inspection reveals any maintenance concerns in connection with any Pole or any other City Property, Licensee shall promptly notify the City. Licensee shall provide the City with at least 30 days' prior written notice before it commences any inspection. Licensee shall permit any City employee or third-party consultant to observe any inspection activities and may make reasonable accommodations as needed to facilitate such observations; provided that any third-party consultant will be required to agree to a reasonable confidentiality agreement as may be requested by Licensee. In the event that Licensee, its Agents or Invitees notice any maintenance concerns with respect to any Pole or other City Property, Licensee shall promptly notify the City.

10. LIENS

Licensee shall keep the License Area free and clear from any and all liens in connection with any work performed, material furnished or obligations incurred by or for Licensee. Licensee shall inform each and every contractor and material supplier that provides any work, service, equipment or material to Licensee in any way connected with Licensee's use of the License Area that the License Area is public property and is not subject to mechanics' liens or stop notices for Equipment or other materials or services provided for Licensee's Equipment. If Licensee does not cause the release of lien of a mechanic's lien or stop notice by any contractor, service provider or equipment or material supplier purporting to attach to the License Area or other City Property within 30 days after notice or discovery of the lien, the City will have the right, but not the obligation, to cause the same to be released by any means it deems proper, including payment of the Claim giving rise to such lien. Licensee must reimburse the City for all expenses it incurs in connection with any such lien (including reasonable attorneys' fees) within 10 days following receipt of the City's demand together with copies of invoices or other evidence to document the costs incurred. Licensee shall give the City at least 10 days' prior notice of commencement of any construction or installation on any part of the License Area except for minor and routine repair and maintenance of Licensee's Equipment. Licensee shall not create, permit, or suffer any other encumbrances affecting any portion of the License Area.

11. UTILITIES

Licensee shall be responsible to secure its own utility services for its Permitted Use, without installing an electric meter to the extent possible; provided, however that Licensee shall not be permitted to submeter from any electrical service provided to the City on any Pole. The City may, in its sole and absolute discretion, permit Licensee in writing to connect to or submeter from any electrical service provided to the City on any Pole not subject to a flat rate from the City's electrical service provider. Licensee shall timely pay when due all charges for all utilities furnished to its Equipment.

12. TAXES AND ASSESSMENTS

12.1. Possessory Interest Taxes

Licensee understands and acknowledges that this Master License or Pole License may create a possessory interest subject to taxation and that Licensee will be required to pay any such possessory interest taxes under Revenue and Taxation Code Section 107.6. Licensee further understands and acknowledges that any sublicense or assignment permitted under this Master License or Pole License and any exercised options to renew or extend this Master License may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this Master License or Pole License.

12.2. Licensee's Tax Obligations

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

13. COMPLIANCE WITH LAWS

13.1. Compliance with Current and Future Laws

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

suspension of payment of License Charges, or to compel the City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

13.2. Licensee's Personnel

13.2.1. Personnel Training and Certification

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

13.2.2. Licensee's Indemnification for Personnel Injuries

Licensee acknowledges that (1) the City has delegated to Licensee control over the License Area at any time in which Licensee or its Agents are installing, operating or maintaining the Equipment; and (2) the City is not a co-employer of any employee of Licensee or any employee of Licensee's Agents. The City shall not be liable for any Claim by Licensee's or its Agent's employee(s), except where such Claim is directly caused by the gross negligence or willful misconduct of the City. Licensee agrees to fully indemnify, defend and hold the City harmless in the same manner as provided in Section 17 (Licensee's Indemnification Obligations) against any Claim by any employee of Licensee or its Agents that arises in connection with Licensee's or its Agents' access, uses or other activities on or about the License Area.

13.3. Compliance with CPUC GO 95

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

13.4. Compliance with Building and Electric Codes

Licensee shall conduct all activities on the License Area in accordance with the requirements of the California Building Code, the California Electric Code, National Electric Safety Code IEEE C2 (the "NESC") and any applicable local building electrical code, as those codes exist now or may be amended in the future. To the extent that CPUC General Order 95 does not address cellular telephone antenna installations on Poles carrying electrical lines, Licensee shall apply applicable provisions of the NESC, with particular attention to paragraphs 224, 235C, 235F, 238, 239 and 239H and sections 22, 41 and 44. Where any conflict exists between the California Building Code,

the NESC, the California Electric Code, any local code and CPUC General Order 128, the more stringent requirements will apply, as determined by the City.

13.5. Compliance with RF Exposure Regulations

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

14. DAMAGE OR DESTRUCTION

14.1. City's Rights After Damage or Destruction

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

14.1.1. Election to Repair or Replace Damaged Pole

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

14.1.2. Election to Remove Damaged Pole

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

14.1.3. Election to Remove Equipment from Damaged Pole

If the acts of third parties or an act of nature or other force majeure circumstance outside the control of Licensee or its Agents or Invitees destroys or damages any Pole to such an extent that, in the City's reasonable determination after consultation with Licensee, the Equipment on the Pole cannot be operated, the City may decide to

terminate the affected Pole License on 30 days' notice to Licensee and require Licensee to remove the Equipment from the damaged Pole before the termination date specified in the City's notice, provided, however such removal date shall not be any earlier than 60 days following the City's notice. Notwithstanding anything in this Master License or any Pole License to the contrary, the City will have the right to remove any damaged Pole when deemed necessary, in the City's sole determination, to protect the public or property from imminent (whether threatened or actual) harm.

14.2. Licensee's Rights upon Termination

After the City terminates a Pole License pursuant to Section 14.1 (City's Rights After Damage or Destruction), the City will: (1) refund any pre-paid License Charge in connection with the terminated Pole License on a pro-rata basis determined by the number of months left in the current License Year at the time such termination occurs, subject to the Minimum Term as defined in Section 3.2 (Pole License Term) in this Master License; and (2) make efforts to prioritize Licensee's Pole License Application for one replacement Pole. However, nothing in this provision shall require the City to replace any Pole or Pole License that has been terminated.

14.3. Waiver of Statutory Rights

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

15. CONDEMNATION

15.1. Permanent Takings

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

15.1.1. Termination

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

15.1.2. Award

The City will be entitled to any award paid or made in connection with the taking or any sums paid in lieu of such taking. Licensee will have no Claim against the City for the

value of any unexpired Term of any Pole License or otherwise except that Licensee may claim any portion of the award that is specifically allocable to Licensee's loss or damage to Licensee's Equipment.

15.1.3. No Statutory Right to Terminate

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

15.2. Temporary Takings

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

16. ASSIGNMENT AND OTHER TRANSFERS

16.1. General Restriction

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

16.2. Proposed Assignment Procedures

16.2.1. Proposed Assignment Notice

Other than with respect to a Permitted Assignment, in the event that Licensee desires to Assign this its interests or rights, whether in whole or in part, in connection with this Master License, any Pole License or the License Area, Licensee shall first send written notice (the "**Proposed Assignment Notice**") to the City, which states in detail the

proposed terms and conditions for the Assignment and financial information sufficient to show that the proposed assignee (the “**Proposed Assignee**”) has a demonstrated ability to perform all the obligations of Licensee under this Master License and any Pole License issued hereunder. In addition, upon a written request from the City, Licensee or the Proposed Assignee shall provide additional information, which includes without limitation financial statements, business track records, references and other information about the Proposed Assignee that the City reasonably requires to fully evaluate Licensee’s request and render an informed decision. In the event that Licensee does not provide all the such information simultaneously with the Proposed Assignment Notice, the Proposed Assignment Notice shall not be deemed effective until Licensee delivers all such information as the City may reasonably require.

16.2.2. City Response

The City shall approve or disapprove any request for consent to an Assignment within 30 days after the City receives a complete Proposed Assignment Notice, or 30 days after the deemed-effective date if Licensee delivers an incomplete Proposed Assignment Notice as described in Section 16.2.1 (Proposed Assignment Notice) (in either case, the “**Assignment Response Period**”). The City shall not unreasonably withhold approval if the proposed assignee has a demonstrated ability to perform all the obligations of Licensee under this Master License and any Pole License issued hereunder. If the City fails to respond within the Assignment Response Period, the request for consent will be deemed disapproved. If the City delivers to Licensee written consent to the proposed Assignment, then Licensee shall have 100 days from such written consent to complete the Assignment. The City’s consent will be deemed revoked if Licensee fails to complete the proposed Assignment within the 100-day period; provided, however, that the 100-day period may be extended to a date certain in a written agreement, which the City shall not unreasonably refuse. As a condition on the City’s consent, Licensee shall pay to the City fifty percent (50%) the amount by which any consideration paid to Licensee by the Assignee exceeds the aggregate sum of all Licensee Fees and Additional Fees that remain payable under the assigned Pole Licenses within 10 days after Licensee receives payment from the Assignee. Notwithstanding anything in this Master License or any Pole License to the contrary, the City may, in its sole and absolute discretion, refuse consent to any assignment to a Proposed Assignee with (i) liquid assets or other immediately available funds less than Ten Million Dollars (\$10,000,000); (ii) any history of discrimination or other employment practices that conflict with the City’s non-discrimination policies; or (iii) any pending or past criminal convictions or civil judgements that would impugn or damage the City’s reputation by association with said Proposed Assignee.

16.3. Permitted Assignments

16.3.1. Definition

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

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

16.3.2. Conditions

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

16.4. Effect of Assignment

No Assignment by Licensee, consent to Assignment by the City, or Permitted Assignment under Section 16.3 (Permitted Assignments) to any Assignee or other third party will relieve Licensee of any obligation on its part under this Master License, until and unless the Assignee signs a written agreement in a form reasonably acceptable to the City to unconditionally assume all Licensee's obligations under this Master License and any Pole License issued hereunder. Any Assignment that is not in compliance with this Section 16 will be void ab initio and be a material default by Licensee under this Master License without a requirement for notice and a right to cure. The City's acceptance of any License Charge, Additional Fee, or other payments from a proposed Assignee will not be deemed to be the City's consent to such Assignment, recognition of any Assignee, or waiver of any failure of Licensee or other transferor to comply with this Section.

16.5. Assumption by Transferee

Each Assignee shall assume all obligations of Licensee under this Master License and each assigned Pole License and will be and remain liable jointly and severally with Licensee for all obligations to be performed by Licensee until and unless the Assignee signs a written agreement, in a form reasonably acceptable to the City, to unconditionally assume all Licensee's obligations under this Master License and any Pole License issued hereunder. No Assignment will be binding on the City unless Licensee or the Assignee delivers to the City evidence reasonably satisfactory to the City that the Assignee has obtained all required Regulatory Approvals necessary to install, maintain and operate the Equipment and any other associated improvements or personal property, a copy of the Assignment agreement (or other document reasonably

satisfactory to the City in the event of a Permitted Assignment under Section 16.3 (Permitted Assignments)), and an instrument in recordable form that contains a covenant of assumption by such Assignee satisfactory in substance and form to the City, consistent with the requirements of this Article. However, the failure or refusal of an Assignee to execute such instrument of assumption will not release such Assignee from its liability as set forth in this Section. Except for a Permitted Assignment as provided in Section 16.3 (Permitted Assignments), Licensee shall reimburse the City on demand for any reasonable costs that the City incurs in connection with any proposed Assignment, including the costs of investigating the acceptability of the proposed Assignee and legal costs incurred in connection with considering any requested consent. The City agrees that its right to reimbursement under this Section during the Term will be limited to **[insert amount]** and 00/100 Dollars (\$**[insert amount]**) (included as an Additional Fee) for each request.

17. LICENSEE'S INDEMNIFICATION OBLIGATIONS

Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the City, its officials, employees, Agents, Invitees and their respective heirs, legal representatives, successors and assigns (the **"Indemnified Parties"**), harmless from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, whether direct or indirect (each a **"Claim"**), incurred in connection with or arising in whole or in part from: (1) death or personal injury to any person or property damage or other loss that occurred on or about the License Area or arises in connection with Licensee's or its Agents' or Invitees' authorized or unauthorized uses on or about the License Area; (2) any failure or refusal by Licensee to observe or perform any term, covenant or condition in this Master License to be observed or performed on Licensee's part; (3) Licensee's or its Agents' or Invitees' uses or occupancy, or manner of use or occupancy, of the License Area; (4) any exposure to RF emissions or EMFs from Licensee's Equipment or uses on or about the License Area; (5) the License Area condition or any occurrence on or about the License Area attributable to the events described in clauses (1), (2), (3) or (4) in this Section 17; or (6) any act, omission or negligence of Licensee, its Agents or Invitees in, on or about the License Area; all whether any negligence may be attributed to the Indemnified Parties or not, and all whether liability without fault is imposed or sought to be imposed on the Indemnified Parties, but except to the extent that such Claim(s) arise from the Indemnified Parties' willful misconduct or gross negligence. Licensee's obligations under this Section 17 includes, without limitation, reasonable fees, costs and expenses for attorneys, consultants and experts, and the City's costs to investigate any Claim. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim that actually or potentially falls within this Section 17, even when the allegations in such Claim are groundless, fraudulent or false, and which obligation arises at the time the Indemnified Parties tender such Claim to Licensee and continues at all times until such Claim's final resolution. Licensee's obligations under this Section 17 will survive the expiration or termination of this Master License.

18. INSURANCE

18.1. Licensee's Insurance

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

18.1.1. Required Coverages

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

18.1.2. Required Endorsements

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

18.1.3. Cancellation Notices

All insurance policies required to be maintained by Licensee under this Master License shall be endorsed to provide written notice of cancellation for any reason, including without limitation intent not to renew or reduce coverage to both Licensee and the City. In the event that Licensee receives a notice of intent to cancel or notice of cancellation for any coverage required under this Master License, Licensee shall forward such notice to the City within one business day and promptly take action to prevent cancellation, reinstate cancelled coverage or obtain coverage from a different insurer qualified under Section 18.1.7 (Insurer Qualifications).

18.1.4. Claims-Made Policies

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

18.1.5. General Aggregate Limit

The general aggregate limit for any required insurance under this Master License must be double the per-occurrence or Claims limits specified in Section 18.1 when coverage includes a general annual aggregate limit or provides that Claims investigation or legal defense costs will be included in such general annual aggregate limit.

18.1.6. Certificates

On or before the Effective Date, Licensee shall deliver to the City all insurance certificates and additional insured endorsements from Licensee's insurance providers in a form satisfactory to the City that evidences all the required coverages under this Master License, together with complete copies of all policies. In addition, Licensee shall promptly deliver to the City all certificates and policies after Licensee receives a request from the City.

18.1.7. Insurer Qualifications

Licensee's insurance providers must be licensed to do business in California and must meet or exceed an A.M. Best's Key Rating A-7 or its equivalent.

18.1.8. Effective Dates

The City shall not authorize Licensee to install any Equipment on any Pole until and unless all insurance coverages required to be carried by Licensee under this Master License have been obtained. Licensee shall ensure that all insurance coverages required to be carried by Licensee under this Master License remain in effect at all time until all Equipment has been removed from the License Area. The requirements in this Section 18.1.8 (Effective Dates) shall survive the expiration or termination of this Master License.

18.1.9. Licensee's Self-Insurance Alternative

Licensee shall not be permitted to meet its insurance obligations under this Master License through self-insurance without prior written consent from the City, which the City may withhold in its sole discretion for any or no reason. In the event that the City

consents to allow Licensee to self-insure as an alternative insurance program, such consent will not be deemed an amendment or implied waiver to any other requirement in this Master License. Any amendment to any insurance requirement must be in a written agreement.

18.1.10. No Limitation on Indemnification Obligations

Licensee's insurance obligations under this Section 18 in no way relieves or decreases Licensee's liability under Section 17 (Licensee's Indemnification Obligations) or any other provision in this Master License.

18.1.11. Right to Terminate

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

18.2. City's Insurance

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

18.3. Subrogation Waiver

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

18.4. Contractors' Bonds and Insurance

Licensee shall require its contractors that install, maintain, repair, replace or otherwise perform any work on or about the License Area: (1) to provide bonds to guarantee the performance of the work and the payment of subcontractors and suppliers for any installation of Equipment, and (2) to have and maintain insurance of the same coverage and amounts as required of Licensee.

19. LIMITATIONS ON THE CITY'S LIABILITY

19.1. General Limitations on the City's Liability

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

19.2. Consequential Damages

Licensee expressly acknowledges and agrees that the License Charges and Additional Fees payable under this Master License do not take into account any potential liability of the City for consequential or incidental damages. The City would not be willing to enter into this Master License or issue any Pole Licenses in the absence of a complete waiver of liability, to the fullest extent permitted by Law, for consequential or incidental damages due to the acts or omissions of the City, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Licensee or other waivers contained in this Master License and as a material part of the consideration for this Master License, the parties agree that neither party will be liable to the other in connection with this Master License or any Pole License for any consequential, special, indirect or incidental or punitive damages (including lost revenues, loss of equipment, interference, interruption or loss of service, or loss of data, inconvenience, disturbance, lost business, nuisance or other damages) 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.

19.3. No Relocation Assistance

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

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

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

19.5. Licensee's Waiver

Licensee acknowledges the City's rights under this Section and waives any Claims arising from the City's exercise of such rights. In connection with the preceding sentence and releases and waivers under Section 8.1 (City's Access to License Areas), Section 9.1.3 (No Right to Repair), Section 13.1 (Compliance with Current and Future Laws), Section 14.1.1 (Election to Repair or Replace Damaged Pole), Section 15.1.3 (No Statutory Right to Terminate), Section 18.3 (Subrogation Waiver), Section 19.1 (General Limitations on the City's Liability), Section 19.2 (Consequential Damages), Section 19.3 (No Relocation Assistance), Section 22.3 (Application) and any other waiver by Licensee under this Master License, Licensee acknowledges that it is familiar with section 1542 of the California Civil Code, which reads:

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

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

20. RECORDS

20.1. Accounting Records

Licensee shall maintain throughout the Term and for at least four years after this Master License expires or terminates the following records in physical format at Licensee's place of business within the State of California and in an electronic format: (1) site identification and location for all Poles under active Pole Licenses; (2) the amount and payment date for all License Charges paid to the City pursuant to this Master License;

(3) all Regulatory Approvals issued in connection with the Equipment on Poles; and (4) all correspondence with the City in connection with any matter covered under this Master License. The City, or its designee, will have the right to inspect and audit Licensee's records at Licensee's place of business during regular business hours on 10 days' notice to Licensee.

20.2. Estoppel Certificates

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

21. RULES AND REGULATIONS

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

22. SURETY BOND

22.1. Provision of Surety Bond

The City may require Licensee to furnish a surety bond in the amount of **[insert amount]** and 00/100 Dollars (\$**[insert amount]**) (the "Surety Bond") as security to provide recourse for the City (at its option) in the event of a default in the performance of any of obligations under this Master License. Such bond shall be with a company and in a form and amount reasonably satisfactory to the City Manager and the City Attorney.

22.2. Replenishment of Surety Bond

In the event that the City applies or uses the Surety Bond in whole or in part to cure any default by Licensee under this Master License or any Pole License, Licensee shall replenish the Surety Bond in the amount and on the date specified in a written notice to Licensee. The City may, in the City's reasonable judgment, require Licensee to increase

the Surety Bond amount from time-to-time when the City determines that Licensee's past acts or omissions in connection with the License Area warrants additional security.

22.3. Application

Licensee agrees that the City may use the Surety Bond in whole or in part to remedy any damage to the License Area caused by Licensee, its Agents or Invitees or any failure by Licensee to perform any term, covenant or condition in this Master License or any Pole License (including without limitation any failure to pay any License Charge or other sums due under this Master License or any Pole License either before or after any default). In the event that the City uses the 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 section 1950.7 or any similar Law 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.

23. SURRENDER OF LICENSE AREA

23.1. Surrender

No later than 60 days after the Expiration Date or other termination of this Master License or any Pole License, Licensee shall, at its sole cost and expense, peaceably remove its Equipment from applicable portion of the License Area except for any fiber optic cable to which the City will obtain title under Section 7.9 (Title to Licensee's Equipment and Other Improvements), and any other Equipment or improvements that the City agrees in writing to accept, repair any damages caused by the removal work and surrender the applicable portion of the License Area to the City in good order and condition, normal wear and tear and casualty excepted, free of debris and hazards, and free and clear of all liens and encumbrances. Licensee's obligations under this Section 23.1 will survive the Expiration Date or other termination of this Master License.

23.2. Abandonment

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

23.3. Holding Over

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

24. HAZARDOUS MATERIALS

24.1. Hazardous Materials in License Area

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

24.2. Licensee's Environmental Indemnity

If Licensee breaches any of its obligations contained in this Section 24, or if any act, omission, or negligence of Licensee or any of its Agents or Invitees results in any contamination of the License Area or other City Property, or in a Release of Hazardous Material from, on, about, in or beneath any part of the License Area or other City Property, or the violation of any Environmental Law, then Licensee, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless the City, including its Agents, and their respective successors and assigns from and against any and all Claims (including damages for decrease in value of the License Area or other City Property, the loss or restriction of the use of usable space in the License Area or other City Property and sums paid in settlement of Claims, attorneys' fees, consultants' fees, and experts' fees and related costs) arising during or after the Term of this Master License relating to such Release or violation of Environmental Laws; provided, however, Licensee shall not be liable for any Claims to the extent such Release was caused by the gross negligence or willful misconduct of the City or its Agents. Licensee's Indemnification obligation includes costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought onto the License Area or other City Property by Licensee or any of its Agents or Invitees and to

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

25. DEFAULT

25.1. Events of Default by Licensee

Any of the following will constitute an event of default under this Master License and any Pole Licenses issued under it: (1) Licensee fails to pay any License Charge or Additional Fees as and when due if the failure continues for 10 days after notice from the City; (2) Licensee fails to perform or comply with any other material obligation or representation made under this Master License, if the failure continues for 30 days after the date of notice from the City, or, if such default is not capable of cure within the 30-day period, Licensee fails to promptly undertake action to cure such default within such 30-day period and thereafter fails to use its best efforts to complete such cure within 60 days after the City's notice; (3) Licensee, except where otherwise permitted under this Master License, removes its Equipment or abandons the License Area for a continuous period of more than 60 days, such that the License Area is no longer being used for the Permitted Use; or (4) any of the following occurs: (i) the appointment of a receiver due to Licensee's insolvency to take possession of all or substantially all of the assets of Licensee; (ii) an assignment by Licensee for the benefit of creditors; or (iii) any action taken by or against Licensee under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief Laws, if any such receiver, assignment, or action is not released, discharged, dismissed, or vacated within 60 days.

25.2. City's Remedies

In addition to all other rights and remedies available to the City at law or in equity, the City will have the following remedies following the occurrence of an event of default by Licensee.

25.2.1. License Continuation

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

25.2.2. Pole License Termination

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

25.2.3. Master License Termination

If Licensee's default is of such a serious nature in the City's reasonable judgment that the default threatens public health or safety on a majority of the Poles licensed to Licensee, and the default or threatened danger to the public is likely to occur again in the future such that the City's Poles are no longer appropriate support structures for the Equipment or the Permitted Use, the City may terminate this Master License in whole or in part. Examples of reasons for termination may include, but are not limited to, malfunctions in the City's streetlights caused by or attributable to the Equipment and/or structural damage caused to the Poles such that the Poles would need to be replaced to be deemed safe. Termination of this Master License in whole will terminate all Pole Licenses issued under it automatically and without the need for any further action by the City. In either case, the City will deliver written notice to Licensee providing 30 days' notice of termination and specify the reason or reasons for the termination and whether the termination affects the entire Master License or only certain Pole Licenses in the notice. The City will specify the amount of time Licensee will have to remove its Equipment from any affected City Pole, which will be at least 60 days after the date of the City's notice. If Licensee does not remove its Equipment within the specified period, the City will be entitled to remove Licensee's Equipment from the City Pole. The City will have the right to make any terminated portion of the License Area available for license to other parties as of the effective date of the termination, even if Licensee's Equipment is still on the Pole.

25.2.4. Default Fees

Without limiting the City's other rights and remedies under this Master License, the City may require Licensee to pay Additional Fees for the City's administrative cost in providing notice or performing inspections for the events described below (each, a "**Default Fee**") by giving notice of the City's demand that Licensee cure the default and specifying the cure period. The Default Fee for the initial notice from the City will be due and payable to the City 10 days after delivery of notice to Licensee. In addition, if Licensee fails to cure the condition within the cure period set forth in the initial notice, and the City then delivers to Licensee a follow-up notice requesting compliance, then the Default Fee for the follow-up notice will be due and payable to the City 10 days after delivery of the follow-up notice to Licensee. Default Fees will apply to any of the following events: (1) Licensee constructs or installs any alteration or improvement without the City's prior approval to the extent required by Section 6 (Pole Licenses), Section 7 (Equipment Installation), or Section 7.3.1 (Alterations to City's Property) of this Master License; (2) Licensee fails to cure damage required by Section 9 (Licensee's Maintenance Obligations) on a timely basis; (3) Licensee fails to notify the City, through its project manager, before accessing the License Area or following the plan approval procedures as set forth in Section 7 (Equipment Installation); (4) Licensee fails to provide evidence of the required bonds and insurance coverage described in Section 18 (Insurance) on a timely basis.; or (5) fails to timely remove Equipment after termination or abandonment of Master License.

25.3. Licensee's Remedies

Licensee's sole remedy for the City's breach or threatened breach of this Master License or any Pole License issued under it will be an action for damages, subject to Section 19 (Limitations on the City's Liability).

25.4. Cumulative Rights and Remedies

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

TERMINATION

26.1. Termination for Failure to Obtain Regulatory Approvals

In the event that Licensee cannot obtain all Regulatory Approvals required for any Pole License after one year from the subject Pole License effective date, then either the City or Licensee may terminate that Pole License on 60 days' notice to the other party delivered within 10 days after the first anniversary of that Pole License's effective date. The parties agree that the Commencement Date will be deemed to have not occurred for any Pole License terminated under this Section 26.1, and Licensee will have no obligation to pay the applicable License Charge for that Pole License.

26.2. Licensee's Termination Rights

26.2.1. Master License Termination Rights

Licensee may, in Licensee's sole discretion, terminate this Master License on five (5) years' written notice to the City at any time after the Effective Date. In addition, Licensee may terminate this Master License on 30 days' written notice after any uncured default of this Master License by the City, after all applicable cure periods have expired.

26.2.2. Pole License Termination Rights

Licensee may, in Licensee's sole discretion, terminate any Pole License on 90 days' written notice to the City at any time after 12 months from the subject Pole License Commencement Date so long as Licensee is not in default with respect to the subject Pole License.

26.2.3. Termination Rights after Pole Replacement

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

26.3. City's Absolute Right to Terminate Pole Licenses

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

26.4. Licensee's Rights after Termination

In the event that the City terminates any Pole License for reasons unrelated to Licensee's failure to perform its obligations under this Master License, the City shall refund any pre-paid Licensee Charge on a pro-rata basis, and Licensee shall not have any further liability for the License Charge. In addition, the City shall prioritize Licensee's Pole License Application for any Pole License to replace the terminated Pole License; provided, however, that (1) the City shall prioritize only as many Pole License Applications as Pole Licenses terminated by the City and (2) the City's prioritization will not affect Licensee's obligations under this Master Agreement. In addition, the City's prioritization of any Pole License Application under this Section 26.4 shall not affect the City's rights under Section 6.4.2 (Required Changes to the Pole License Application).

27. INTERFERENCE

27.1. Obligation Not to Cause Interference

Licensee will not operate or maintain its Equipment in a manner that interferes with or impairs other communication (radio, telephone and other transmission or reception) or computer equipment lawfully used by any person, including the City or any of its Agents. Such interference will be an event of default under this Master License by Licensee, and upon notice from the City, Licensee shall be responsible for eliminating such interference promptly and at no cost to the City. Licensee will be required to use its best efforts to remedy and cure such interference with or impairment of City operations. If Licensee does not cure the default promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the City will have the right to bring an action against Licensee to enjoin such interference or to terminate all Pole Licenses where the Equipment is causing interference or impairment, at the City's election. Notwithstanding any other provision of this Master License, City agrees that City will use reasonable efforts to allow City Invitees to install only such equipment that is of the type and frequency which will not cause interference to the Equipment actually installed by Licensee. This limitation does not apply to equipment installed by the City for the City's use in carrying out its municipal functions. In the event that Licensee discovers any such interference caused by a City Invitee, the City shall reasonably cooperate with Licensee to identify the source and mitigate the interference; provided, however, that the City's cooperation shall not obligate the City to change, alter or power off any City-owned or controlled equipment used for public health and safety or other municipal functions. The parties acknowledge that the Licensee possesses technical expertise that puts Licensee in the best position to identify and mitigate interference sources, and Licensee shall be primarily responsible for identification and mitigation work.

27.2. Impairment Caused by Change in City Use

Subject to the City's obligations under Section 27.1 of this Master License, if any change in the nature of the City's use of the License Area during the Term results in measurable material adverse impairment to Licensee's normal operation of its Equipment making it necessary to alter the Equipment to mitigate the adverse effect, Licensee shall notify the City and provide evidence of the claimed impairment. Upon receipt of such notice, the City will have the right to make its own reasonable determination and, if it agrees with Licensee, investigate whether it can reasonably and economically mitigate that interference. The City will provide notice to Licensee of the City's determination within 15 days of receiving Licensee's notice hereunder.

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

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

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

27.3. Impairment Caused by City Access

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

28. MISCELLANEOUS PROVISIONS

28.1. Notices

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

TO CITY:

City of Concord City Manager
1950 Parkside Drive, MS/01A
Concord, California 94519
Telephone: [insert]
Facsimile: [insert]
Email: [insert]

with a copy to:

City of Concord City Attorney
1950 Parkside Drive, MS/01A
Concord, California 94519
Telephone: [insert]

Facsimile: [insert]
Email: [insert]

TO LICENSEE:

Telephone: [insert]
Facsimile: [insert]
Email: [insert]

with a copy to:

Telephone: [insert]
Facsimile: [insert]
Email: [insert]

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

28.2. Waiver; No Implied Waivers

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

terms of this Master License will not relieve Licensee of any obligation to secure the City's consent in any other or future instance under the terms of this Master License.

28.3. Amendments

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

28.4. Interpretation

The following rules of interpretation apply to this Master License.

28.4.1. General

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

28.4.2. Joint and Several Liability

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

28.4.3. Captions

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

28.4.4. City Actions

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

28.4.5. Words of Inclusion

The use of the term "including," "such as," or words of similar import when following any general or specific term, statement or matter may not be construed to limit the term, statement or matter to the stated terms, statements or matters, whether or not language of non-limitation, such as "including, but not limited to" and "including without limitation"

are used. Rather, the stated term, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within the broadest scope of the term, statement or matter.

28.4.6. Laws

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

28.5. Successors and Assigns

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

28.6. Brokers

Neither party has had any contact or dealings regarding the license of the License Area, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder’s fee in connection with the license contemplated herein (“**Broker**”), whose commission, if any is due, is to be paid pursuant to a separate written agreement between such Broker and the party through which such Broker contracted. In the event that any Broker perfects a claim for a commission or finder’s fee based upon any such contact, dealings or communication, Licensee shall indemnify the City from all Claims brought by the Broker. This Section 28.6 will survive expiration or earlier termination of this Master License.

28.7. Severability

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

28.8. Governing Law; Venue

This Master License must be construed and enforced in accordance with the laws of the State of California and the City Charter, without regard to the principles of conflicts of law. This Master License is made, entered and will be performed in the City of Concord,

County of Contra Costa, State of California. Any action concerning this Master License must be brought and heard in Superior Court for the County of Contra Costa.

28.9. Time for Performance

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

28.10. Survival

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

28.11. Recording

Licensee acknowledges and agrees that Licensee shall not have the right to record this Master License, any Pole License or any memorandum or short form of any of them in the Official Records of the County of Contra Costa.

28.12. Counterparts

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

28.13. Approval Authority

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

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

DRAFT

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

THE CITY:

City of Concord,
a California municipal corporation

By: _____

Its: City Manager

Date: _____

LICENSEE:

[insert licensee name],
a [insert licensee's corporate form]

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

[name]
City Attorney

Date: _____

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

ATTEST:

By: _____

[name]
City Clerk

Date: _____

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

EXHIBIT A

FORM OF POLE LICENSE AGREEMENT

POLE LICENSE NO. **[INSERT NUMBER IN CONSECUTIVE ORDER]**

Pursuant to that certain Master License between the City of Concord, a California municipal corporation (the “**City**”) and **[insert licensee’s corporate form]**, a **[insert licensee’s corporate form]** (“**Licensee**”), Licensee submits to the City two partially executed counterparts of this Pole License, together with all the following materials listed below, as its Pole License Application in accordance with Section 6 (Pole Licenses) under the Master License:

1. Exhibit A-1, which designates all Pole Locations that Licensee seeks to be included in the License Area under this Pole License;
2. Exhibit A-2, which includes complete, detailed and final plans and specifications for all Licensee’s Equipment to be installed in the License Area, subject to Regulatory Approvals;
3. an Administrative Fee equal to **[insert amount]**;
4. an RF Compliance Report, if not previously provided.

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

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

THE CITY:

City of Concord,
a California municipal corporation

By: _____

Its: _____

LICENSEE:

[insert licensee name],
a **[insert licensee’s corporate form]**

By: _____

Its: _____

Date: _____

Date: _____

EXHIBIT A-1

POLE LOCATIONS / LICENSE AREA

Pole License No.

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

EXHIBIT A-2

LICENSEE'S PLANS AND SPECIFICATIONS

Pole License No.

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

EXHIBIT A-3

FORM OF ACKNOWLEDGEMENT LETTER

[Licensee to complete and submit with Pole License Application]

[insert date]

[insert addressee information]

RE: Pole License No. []

Dear City Manager:

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

This letter also confirms that Licensee has submitted all required insurance information to the City. A check for the License Charge for the first License Year of this Pole 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,

[insert name]

[insert title]

Enc.

[] [insert all required Regulatory Approvals]

[] Insurance certificates

[] Contractor's bonds and insurance certificates

[] First License Year's License Charge

SCHEDULE A-4

LICENSE CHARGE AND DEFAULT FEE SCHEDULE

Pole License No.

LICENSE CHARGE SCHEDULE	
annual License Charge per City Pole	amount
2017	\$[insert amount]
2018	\$[insert amount]
2019	\$[insert amount]
2020	\$[insert amount]
2021	\$[insert amount]
2022	\$[insert amount]
2023	\$[insert amount]
2024	\$[insert amount]
2025	\$[insert amount]
2026	\$[insert amount]
2027	\$[insert amount]

DEFAULT FEE SCHEDULE		
VIOLATION	INITIAL NOTICE	EACH FOLLOW-UP NOTICE
unauthorized installations	\$350	\$400
failure to make required repairs	\$300	\$350
access violations	\$300	\$350
insurance violations	\$300	\$350

EXHIBIT B

DESIGN GUIDELINES

[City to insert Design Guidelines that include detailed equipment specifications and drawings in this Exhibit B]



Concord *Connected*

March 17, 2017

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Agenda

- Introductions
AT&T Team, J-5, and City of Concord Officials
- Small Cell Overview
- Examples of AT&T Small Cell Proposals in Concord
- City of Concord Permitting Process
- Attachment Agreement With City of Concord

People are choosing wireless technologies faster than ever before:



U.S. adults spent an average of **5.5 hours** a day watching video in 2015.¹



U.S. Android and iPhone users in the U.S. spent **9x** more time each month using digital media in 2015 than they did in 2008.²



As of 1Q2016, there were **7.4 billion** mobile subscriptions worldwide.³

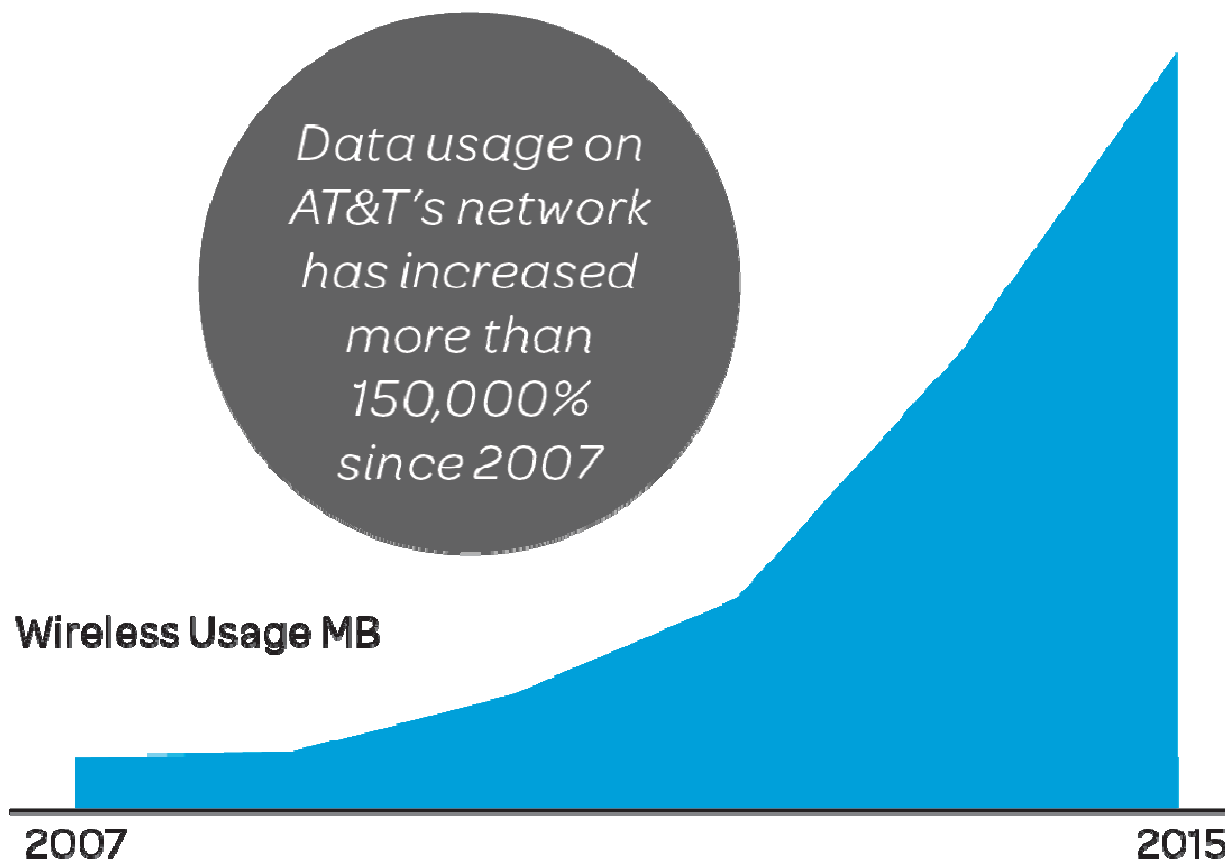
¹eMarketer, Adults Spend 5.5 Hours with Video Content Daily, <http://www.emarketer.com/Article/US-Adults-Spend-55-Hours-with-Video-Content-Daily/1012362>

²Mary Meeker, Internet Trends 2016- Code Conference, June 1, 2016

³Ericsson, Mobility Report (June 2016)



Consumer and business demand for wireless data is on the rise.



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Consumer and business demand for wireless data is on the rise.

- Nearly all Californians (92%) have a cell phone and 68 percent have a smartphone. ¹
- More than 62% of American households rely on wireless as their primary means of communication. ²
- 76 percent of all 911 calls came from cell phones. ³
- Over 150,000% increase in data traffic from January 2007 through December 2015. ⁴
- 98% of small businesses rely on wireless technology. ⁵
- Existing macro sites have limited capacity.
- Residents use smartphones, tablets, laptops at home—all drive the need for reliable and expanded connectivity.

1. <http://www.pewresearch.org/fact-tank/2015/11/25/device-ownership/>
2. <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201605.pdf>
3. <https://www.911.gov/pdf/National-911-Program-2015-ProfileDatabaseProgressReport-021716.pdf>
4. http://about.att.com/story/att_details_5g_evolution.html
5. <https://smallbiztrends.com/2013/05/small-business-use-wireless.html>



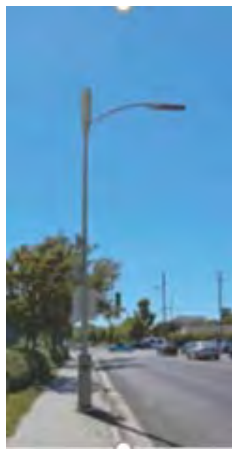
Different types of cell sites

Macro Cells



Larger coverage radius,
Seen located on free standing towers, faux trees, buildings, water tanks

Small Cells



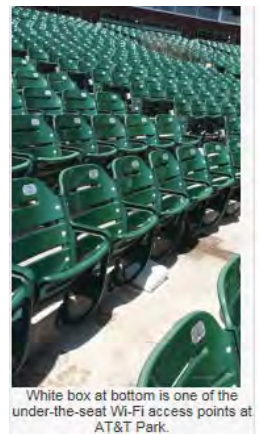
Provides enhanced voice and data services by helping to bolster network capacity

Distributed Antenna



Coverage solution in areas with challenging terrain, or in high-use areas like arenas, stadiums, convention centers

Wi-Fi Hot Zones



Delivers high speed internet access, mainly for outdoor coverage



What's the difference?

Key Differences between "Cell Towers " and Small Cells

<i>Comparison</i>	<i>Cell Towers</i>	<i>Small Cells</i>
<i>Size</i>	Large antennas, support equipment	Typically less than 1% of the volume of cell tower antennas, support equipment
<i>New towers</i>	Requires new, taller towers or placement on top of existing tall buildings/structures	Placed on utility/light poles in the public right-of-way
<i>Power Output</i>	High Power	Low to Moderate
<i>Coverage Area</i>	Up to several miles	Up to 1500 feet (1/3 mile)
<i>Network configuration</i>	Separate, independent sites	Deployed as a part of a connected network





Why Small Cells?

A new network architecture is needed

There are generally three ways to increase capacity in the network:

- License more spectrum from the FCC.
- Upgrade existing cell sites to use new technology.
- Build more cell sites.

Small cells are **flexible** network solutions that can be readily deployed to specific locations, including:

- Where customers are prone to experience connectivity issues
- Heavily populated areas that need more network capacity
- Areas that can't effectively be served by a traditional macro cell



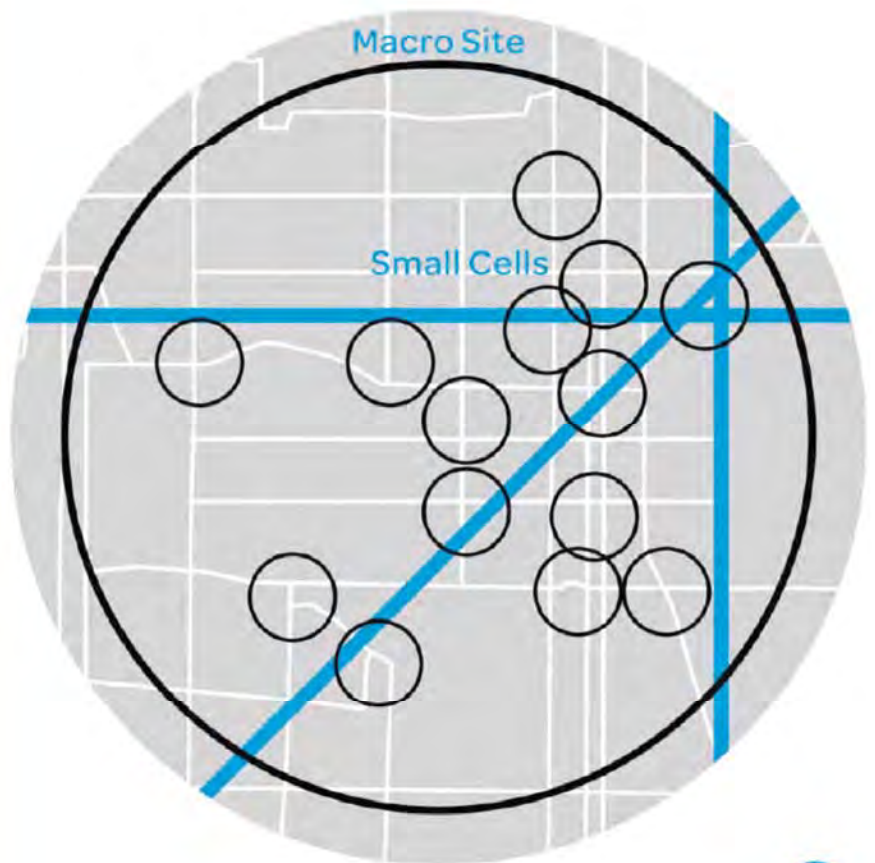
A photograph of a person's hands holding a white smartphone and a white disposable coffee cup. The person has red nail polish. The background is a blurred outdoor scene with warm, golden light, suggesting a sunny day. A blue text box is overlaid on the left side of the image.

Small cells and future technologies

Small cells are used to “densify” AT&T’s network and to bring the network “closer” to its users. This allows us to provide a better LTE experience today while also allowing us to prepare for the technologies of the future—such as 5G, smart cities and new developments in the Internet of Things (IoT).



Small cells can
densify our
network to meet
customer
demand



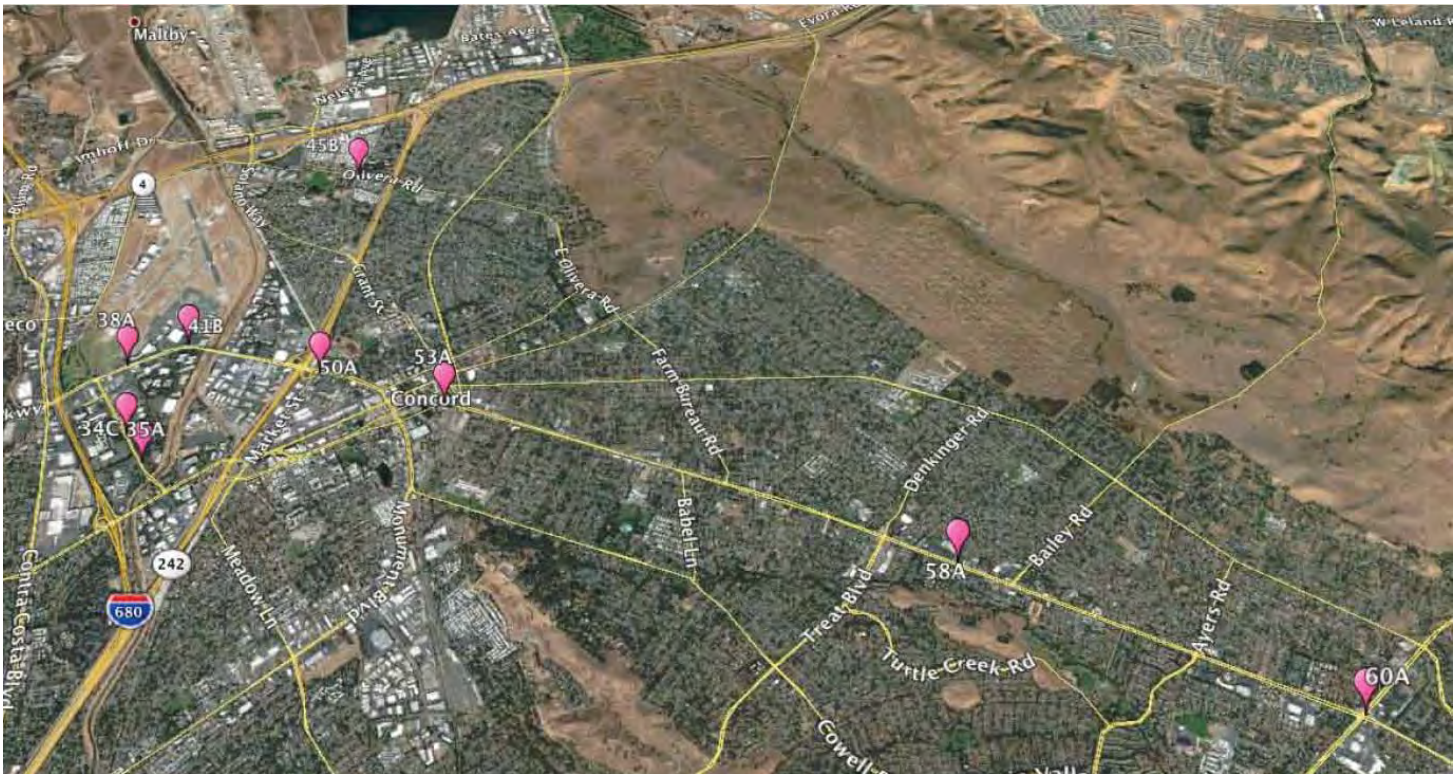


Smart public policy can facilitate deployment and more quickly bring the benefits of small cells to your community.

- Local officials and leaders can facilitate the deployment of small cells to bring their citizens enhanced coverage and capacity, while helping us prepare our network to accommodate future technologies in their city by:
 - ✓ Establishing universal Master Attachment Agreements (MAAs) for small cell deployment
 - ✓ Establishing streamlined permitting processes
 - ✓ Ensuring pole attachment rates and fees are reasonable



9 Proposed City of Concord Traffic Signals



View 1

Example: Proposed City of Concord Traffic Signal Installation



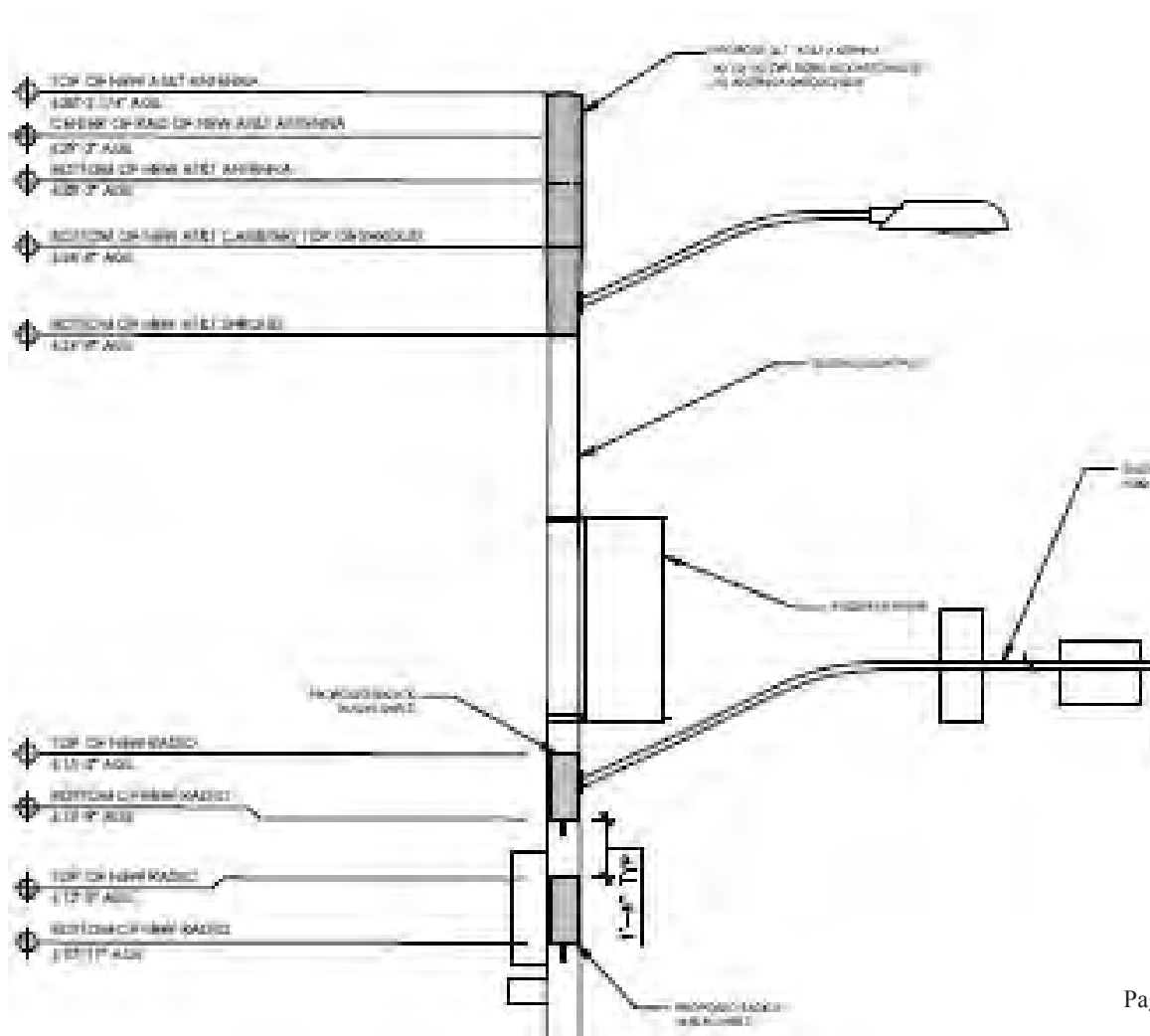
View 2

Example: Proposed City of Concord Traffic Signal



NORTHWEST ELEVATION (LOOKING SOUTHEAST)

Proposed City of Concord Traffic Signal Installation



17 Proposed PG&E Wood Utility Poles



View 1

Example: Proposed PG&E Wood Utility Pole Installation

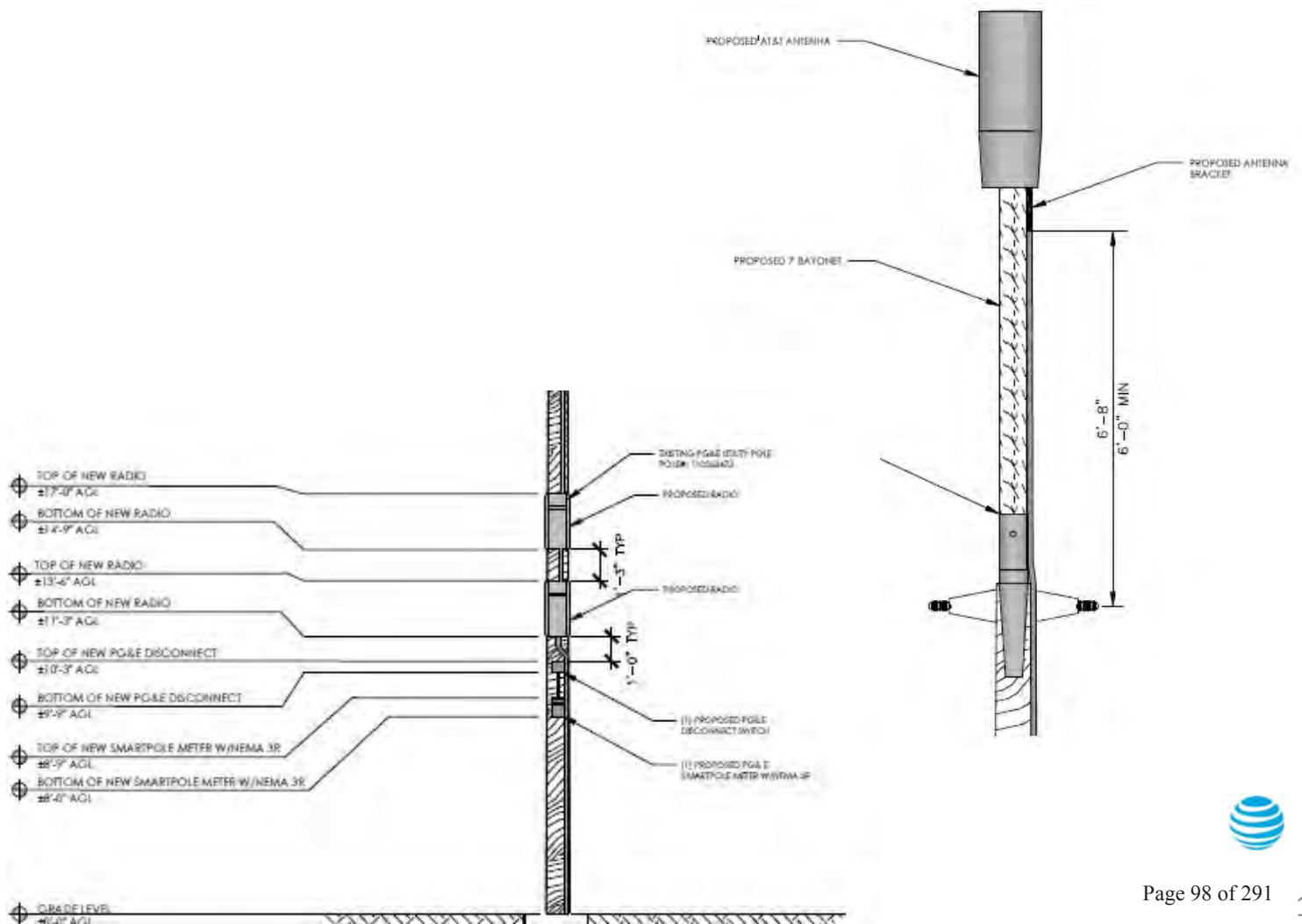


View 2

Example: Proposed PG&E Wood Utility Pole Installation



Proposed City of Concord Traffic Signal Installation





Benefits of a Master Attachment Agreement with AT&T

- Improved Wireless Service & Technology to the Community
- Leverage Existing City Infrastructure for Revenue Stream
- Possibility to Create Streamlined License Agreement Application Process
- Possibility to Establish Streamlined Permit Review Process
- Ability to Impact Installation Standards and Consistency
- Potential to Initiate LED Conversion





Requests for Streamlined Application Processing:

- Pre-Approval of Proposed Designs and City Owned Pole Locations
- Permit Application Processing in Clusters or Batches





Appendix



Sample Small Cells Deployed



COMPLIANCE WITH FCC RULES FOR RADIO FREQUENCY

- *AT&T Mobility ensures that all its small cell sites meet FCC rules for radio frequency exposure.*
- *This small cell construction will typically place transmitting antennas more than 30 feet above areas accessible beneath the antennas. The low transmit power levels emitted by small cell installations drop off rapidly by the distance to accessible areas beneath the antennas and produce exposure levels well below the FCC's maximum permissible exposure (MPE) levels for the general population (GP). **Typically, this is .05% of the existing FCC MPE at ground level for deployment of two 5 watt radios.***
- *At the physical antenna levels, appropriate precautions, such as warning signs and labels, are used to protect workers ensuring that exposure in those areas don't exceed the FCC's MPE limits.*





APA California NEWS FLASH



American Planning Association
California Chapter

Making Great Communities Happen

06/19/2017

LEGISLATIVE ALERT

Hello APA California Members:

SB 649 passed out of the Senate after a last minute "deal" was announced to make further amendments on the leasing fees in the bill. Those amendments have yet to happen but we do expect to see them soon and are now preparing for the bill to go to both Assembly Local Government Committee and then Assembly Communications and Conveyance Committee if it passes Local Government.

Even with the amendments made by the industry in the Senate, APA California still has major concerns, as noted below:

- Full discretionary review is eliminated. Discretionary approval of small cell permits are **ONLY** allowed in the coastal zone and in historic districts. All other areas must process these permits through either a building or encroachment permit
- Very limited ability to apply design standards for property in the right of way, however the language is conflicting and difficult to interpret
- **Mandatory** leasing of public property in and outside of the public right of way at prescribed fees
- Fees for leasing of public property set at a range of \$100-\$850 per year, with an agreement to add language on how those fees could be calculated plus an additional \$250 for the time to set up the fee structure - **after applying the calculated proposed to be used, those fees would likely barely cover maintenance costs.**

APA California also believes SB 649 will set a dangerous precedent for other private industries to seek similar treatment. APA California, along with other local government associations and many cities/counties continue to remain very opposed.

Please send opposition letters/make calls to your local Assembly Members. Letters for the Local Government Committee are due by this Thursday, June 22nd to Assembly Local Government Committee staff: angela.mapp@asm.ca.gov. Please also send your letters to:

Author's staff: Nidia.Bautista@sen.ca.gov

Myself: lauren@stefangeorge.com

The bill will likely be heard in Assembly Local Government Committee on June 28th at 1:30 so if you are able to attend and voice your opposition, please plan to do so and let me know. Thank you!

AB 2788, which would have severely restricted local agencies' ability to permit "small cells", **IS BACK!**

You might recall that a similar bill was introduced as a gut and amend in the middle of session last year and soon after dropped. This year there is a new author but the bill is just as onerous. "Small cell" is defined as: " a wireless telecommunications facility with antennas of no more than six cubic feet in volume each and associated equipment with a cumulative volume no larger than 21 cubic feet on all poles and structures and 28 cubic feet on all nonpole structures. **An associated electric meter, concealment, telecom demarcation box, ground-based enclosure, battery backup power system, grounding equipment, power transfer switch, cutoff switch, cable, or conduit may be located outside the primary equipment enclosure and is not included in the calculation of the equipment volume. Volume is a measure of the exterior displacement, not the interior volume, of the enclosure. Any equipment that is concealed from public view in or behind an otherwise approved structure or concealment is not included in the volume calculations.**

SB 649, by Senator Hueso, would:

- permit the use installation of a "small cell" without a city or county discretionary permit, thereby eliminating CEQA review, and would preclude consideration of aesthetics, design and nuisance impacts.
- require that the small cell only be subject to a building permit or administrative permit.
- require small cells to be permitted in all zones.
- require a permit with a duration of less than 10 years to be renewed for an equivalent duration unless the city or county makes a finding that the wireless telecommunications facility does not comply with the codes and permit conditions applicable at the time the permit was initially approved.
- require cities and counties to make city/county owned facilities available for the installation of a small cell(s), precluding cities/counties from leasing or licensing publicly owned property.

The bill was amended this morning (attached) and will be heard in Senate Energy, Utilities & Communications Committee next Tuesday, April 4th. While we know it's late notice, if at all possible please send letters to the author and the committee staff: Nidia.Bautista@sen.ca.gov. In preparation for the likelihood that it will pass that committee, please also send a copy to the Senate Governance & Finance Committee staff, where the bill will be heard next: Anton.Favorini-Csorba@sen.ca.gov.

Finally, please make sure you send a copy of the letter to your local Senator and Assembly Member and one to me for my records. **APA** California thanks you in advance for your help!

For more legislative position letters, please [go here](#).

Lauren De Valencia y Sanchez
Stefan/George Associates
925 L Street, suite 200
Sacramento, CA 95814
Office: (916) 443-5301
Fax: (916) 443-3494

Proposed Master License for Wireless Facilities On City Poles in the Right-of-Way between City of Concord and Verizon Wireless

I. Definitions

1. "Laws" should be defined as: "Laws means any and all laws, regulations, ordinances, resolutions, judicial decisions, rules, permits and approvals applicable to Licensee's use that are in force on the date of this Agreement or as lawfully amended including, without limitation, City's code. Licensee shall comply with all Laws with respect to Licensee's use. This Agreement does not limit any rights Licensee may have in accordance with Laws to install its own poles in the right of way or to attach Licensee's equipment to third-party poles located in the right of way. This Agreement shall in no way limit or waive either party's present or future rights under Laws. If, after the date of this Agreement, the rights or obligations of either Party are materially preempted or superseded by changes in Laws, the parties agree to amend the Agreement to reflect the change in Laws."
2. "Licensee's On Call Representative" will be the 24 hour on call number for Verizon Wireless ("VZW") Network Operations Center.
3. "RF:" VZW is checking on the accuracy of the frequency ranges listed.

II. License Agreement

1. Limitations on License Area (2.1.2 (2) & 2.1.2(3)): VZW will need to place License Areas in residential area and certain equipment underground. Will there be prohibitions on such installations?
2. Master License Term (3.1): Term will need to be longer, at least an initial 10 year term with two (2) automatic – five (5) year renewal terms. All Pole Licenses should not terminate when the Master License Agreement ("MLA") terminates.
3. Pole License Term (3.2): Each Pole License should be for a term of 10 years, with two (2) – five (5) year renewal terms based on the Commencement Date of the particular Pole License and not coterminous with the termination of the MLA.
4. Commencement Date (4.1.1): The commencement date of each Pole License should be the later of the first anniversary of the effective date of the Pole License or that first day of the month after the date on which VZW has obtained all regulatory approvals. VZW cannot build without a Pole License or without regulatory approvals. Regulatory approvals can be an exhibit to the Pole License.
5. Acknowledgment Letter (4.1.2): 60 business days after obtaining all regulatory approvals, VZW will deliver the Acknowledgment Letter to City.
6. Acknowledgment Letter (4.1.2): VZW may make payments by electronic funds transfer, wire transfer, surety bond or letter of credit.
7. Acknowledgment Letter (4.1.2): What is the proposed amount for the Security Deposit?

8. License Fee Amount (4.1.3): Please provide proposed license fee amount.
9. Annual License Fee Adjustments (4.1.4): Please insert a 2% annual license fee adjustment.
10. Master License Administrative Fee (4.2.1): What is the fee amount to be included in this paragraph?
11. Pole License Administrative Fee (4.2.2): What is the fee amount to be included in this paragraph?
12. Additional Fees (4.5) and Estimated Charges & Fees (4.7): Delete both paragraphs because the Master License Administrative Fee and Pole License Administrative Fee should include payment for City's costs so that additional, subsequent payments are not needed.
13. Signs or Advertisements (5.4): VZW is required by the FCC to post certain signs. Please insert at the end of the last sentence “, except as required by applicable law” to allow installation of signage as required by law.
14. Pole License Application Review Procedures (6.4): Add timeline for City's review of Pole License Applications. Review and provide approval or reasons for disapproval for batches of 10 Pole License Applications within 30 days from City's receipt of such applications.
15. Pole License Application Review Procedures (7.1.): Add that City's approval will not be unreasonably withheld, conditioned or delayed.
16. Site Identification Required (7.1.1): Changes to the identification plates will be considered maintenance, so not subject to approval process.
17. Prior Regulatory Approvals Required (7.2): At the end of the first full sentence in this paragraph, add “if the same are required by applicable law.”
18. Fiber Optic Cables (7.7): Delete first paragraph of Section 7.7. These are public rights of way that the City should be licensing for the public benefit to provide a public service. VZW shouldn't be obligated to provide conduit for the City.
19. Fiber Optic Cables (7.7): Second paragraph of Section 7.7 is under review by VZW internal employment compliance group.
20. Fiber Optic Cables (7.7): Fourth paragraph of Section 7.7 should be deleted, VZW cannot agree to a 1542 waiver.
21. Fiber Optic Cables (7.8): Delete reference to “and any underground fiber optic cables.”
22. City's Access to License Areas (8.1): City's access to the License Area resulting in Equipment being removed, should be qualified to state that the emergency must be one threatening imminent property damage or personal injury and, if after receipt of notice by VZW, VZW is unable to remove the Equipment or disconnect power to the License Area.
23. City's Access to License Areas (8.1): Delete “gross” in reference to City's “gross negligence.”
24. Repairs, Maintenance and Alteration to Poles (8.2): Delete “gross” in reference to City's “gross negligence.”
25. Emergencies (8.4): In the last two lines of the paragraph on Page 20 of the MLA, add the underlined words here “provided, however, that the City

will disconnect power to the License Area” and delete references to removing the Equipment from the Pole.

26. Equipment Maintenance (9.2): Delete second to last sentence of Section 9.2. City should not be excused from compliance with applicable laws.
27. Inspection (9.5): This is onerous. VZW already has Equipment maintenance obligations at Section 9.2.
28. Utilities (11): Delete and add instead: “Licensee shall be solely responsible for obtaining and maintaining electric service for the Equipment, including, but not limited to, making payments to electric utilities and installation of separate electric meters, if necessary.”
29. Compliance with Current and Future Laws (13.1): Delete and add that VZW will install, operate and maintain the Equipment and perform work in compliance with all Laws (which is a defined term).
30. Licensee’s Indemnification for Personnel Injuries (13.2.2): At the end of the last sentence, add “, except to the extent such Claims arise out of the negligence or willful misconduct of the City, its employees or agents.”
31. Election to Repair or Replace Damage Pole (14.1.1): At the end of the last sentence of Section 14.1.1, add “However, if City elects not to perform such work, Licensee may perform such work at its sole cost and expense, subject to City approval of Licensee’s plans and specifications and Licensee’s compliance with City permit requirements. In such case, the affected Pole License will remain in full force and effect.”
32. City Response to Assignment (16.2.2): If the City fails to respond within the Assignment Response Period, Licensee will provide a second notice with a clear heading in bold and all capital letters indicating it is the second notice and if City does not respond with approval or written reasons for disapproval within 30 days from receipt of the second notice, the request for assignment shall be deemed approved.
33. City Response to Assignment (16.2.2): Delete portions requiring completion of assignment within 100 days from City’s consent and revocation of consent.
34. City Response to Assignment (16.2.2): Delete references of payment to City of 50% of the amount of any consideration paid to Licensee by the Assignee in excess of the License Fees and Additional Fees. City may be entitled to 50% of license fee payments received by VZW from a sublicensee which fees are in excess of what VZW pays to City as the license fee under a Pole License. However, the City should not be entitled to 50% of the consideration from all transfers included in the defined term “Assignment,” which may include a merger, sale, acquisition or any other transfer.
35. Assumption by Transferee (16.5): Need to discuss amount to be inserted for amount of limit on payment to City for reimbursement under this section.
36. Master License Termination (17.2.3): In the first line of the section, add the underlined portion herein, “If Licensee’s default is of such a serious nature, which excludes those events of default in Section 17.1. . . “ This will clarify that those events of default will not be subject to Section 17.2.3.
37. Master License Termination (17.2.3): Delete the last sentence of this Section.

38. Licensee's Indemnification Obligations (18): Delete reference to RF and EMF exposure, the indemnity related to claims arising from VZW's use or occupancy of the License Area is broad enough.
39. Licensee's Indemnity (18.1): Delete "gross" as qualification on exclusion for Indemnified Parties' gross negligence.
40. Licensee's Indemnity (18.1): Insert mutual indemnity obligations for the City to indemnify VZW.
41. Insurance (19): To be reviewed approved by risk management. Subject to further revisions.
42. General Limitations on the City's Liability (20.1): Revise so that this is not a waiver of all claims and remove the "gross" qualification on the negligence exception.
43. Consequential Damages (20.2): Make a mutual waiver of consequential damages by each party against the other.
44. Licensee's Waiver (20.5): No 1542 waiver
45. Security Deposit Amount (23.1): VZW may pay security deposit as cash, surety bond, or letter of credit. Please provide proposed amount.
46. Further Deposits (23.2): Please delete. No to future security deposits based on City's assessment of need for the same.
47. Surrender of License Area (25.1.1): Need at least 60 days for removal.
48. Surrender (24.1): Change removal period to 90 days.
49. Holding Over (24.3): Change holdover rate to 125%.
50. Licensee's Environmental Indemnity (25.2): Remove "gross" from "gross negligence" references.
51. Termination for Failure to Obtain Regulatory Approvals (26.1): At the end of the last sentence of this section, add "If Licensee obtains all Regulatory Approvals within such 60 day period, City's termination notice shall be deemed revoked and the Pole License shall remain in full force and effect."
52. City's Absolute Right to Terminate Pole Licenses (26.3): Qualify termination for "poses a threat to public health or safety" to be as related to the public services provided by the Poles; and qualify termination for public nuisance to be due to the physical condition of the Pole.
53. Interference (27): VZW's obligations to cure interference should related to interference with equipment in the right of way as of the commencement date of the Pole License and not relate to future uses of which VZW was not aware when it installed its equipment. Failure to cure interference with earlier or later installed equipment should not be grounds for termination, but should require VZW to power down the interfering VZW equipment until the interference proven to be caused by VZW can be resolved.
54. Impairment Caused by City Access (27.3): Change reference in this Section from 10 days to 24 hours.

III. Exhibits

1. Exhibit A (Form of Pole License): The Pole License when issued should state what the License Fee will be as of the commencement date for that particular Pole License, including any prorated amount owed.
2. Schedule A-4 (License Fee and Default Fee Schedule): Fee amounts to be discussed.
3. Exhibit B (Design Guidelines). Please provide.

MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

June 20, 2017

VIA EMAIL

Chair Jason Laub
Vice Chair Ray Barbour
Commissioners Dominic Aliano,
John Mercurio and Mark Weinmann
Planning Commission
City of Concord
1950 Parkside Drive
Concord, California 94519

Re: Draft Wireless Communications Facilities Ordinance
Planning Commission Agenda Item VI(1), June 21, 2017

Dear Chair Laub, Vice Chair Barbour and Commissioners:

We write on behalf of Verizon Wireless regarding the draft wireless communications facilities ordinance. Verizon Wireless previously provided comments on the draft ordinance and participated in a meeting with City representatives on May 8, 2017. While Verizon Wireless appreciates the extension of temporary use permits for wireless facilities for up to one year, our other comments have not been addressed in the revised draft ordinance before the Commission. To that end, we attach our prior letter of May 5, 2017.

Verizon Wireless remains concerned regarding unlawful requirements of the draft ordinance such as mandatory submittal of a technical objectives and propagation maps which a state appeals court has affirmed cannot be required for right-of-way facilities (Section 18.205.050(B)(12)),¹ application submittal delays of up to three weeks that conflicts with federal regulations (Sections 18.205.050(C) and 18.207.050(C)), and the favoring of facilities on City-owned property that violates state law (Section 18.205.090(A)).

We emphasize that wireless facilities in the right-of-way—particularly those installed pursuant to a master license agreement with the City—should be permitted with an encroachment permit issued by the Public Works Department, with referral to Planning Division staff for review under objective aesthetic standards (Section 18.205.040). Eligible facilities requests to collocate or modify facilities should be processed administratively as

¹ Under the previous version of the draft ordinance, this submittal requirement was found in Section 18.205.050(B)(11).

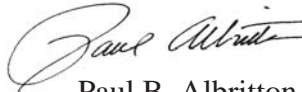
Page 2 of 2

stand-alone approvals, not as amendments to underlying use permits which are discretionary (Section 18.207.040).

The City is currently developing a master license agreement with wireless carriers, and this process should inform the City of new technology for right-of-way facilities such as “small cells” that provide needed network capacity with little visual impact. The Commission should defer recommendation of the draft ordinance and direct Planning Division staff to work with wireless industry representatives on revisions that eliminate conflicts with state and federal law and incentivize deployment of facilities with minimal impacts.

Verizon Wireless looks forward to working with the City of Concord on revisions to the draft ordinance.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul Albritton", written in black ink.

Paul B. Albritton

cc: Suzanne Brown, Esq.
Afshan Hamid

Attachment

MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

May 5, 2017

VIA EMAIL

Afshan Hamid
Senior Planner
Planning Division
City of Concord
1950 Parkside Drive
Concord, California 94519

Re: Draft Wireless Communications Facilities Ordinance and Draft Master License Agreement for Wireless Facilities on City Poles in the Right-of-Way

Dear Afshan:

We write on behalf of Verizon Wireless regarding the draft wireless communications facilities ordinance (the “Draft Ordinance”) and draft master license agreement (the “Draft MLA”) to be discussed at a City meeting on May 8, 2017. Verizon Wireless appreciates the invitation to participate in development of the Draft Ordinance and Draft MLA. We provide initial comments on the Draft Ordinance, including suggestions to streamline permitting of right-of-way facilities and remove conflicts with state and federal law such as RF compliance requirements and procedures for eligible facilities requests. We also briefly comment on provisions of the Draft MLA regarding design standards and permit requirements.

As acknowledged in the Draft MLA, wireless carriers have developed new “small cell” facilities that provide needed network capacity to targeted areas with minimal visual impact. The City can encourage small cells in the right-of-way through processing as an encroachment permit, with referral by Public Works to the Planning Department for review under objective aesthetic criteria. Design standards for right-of-way facilities should also accommodate small cell equipment on poles, and Verizon Wireless can advise the City regarding reasonable design standards for the Draft Ordinance and the Draft MLA.

Our specific comments on the Draft Ordinance and Draft MLA are as follows:

CHAPTER 18.205 – NEW AND SUBSTANTIALLY CHANGED WIRELESS FACILITIES

§18.205.040 – Approvals Required

Right-of-Way Facilities

The Draft Ordinance requires either a Planning Division administrative permit or minor use permit for wireless facilities in the right-of-way, however, the Planning Division should not be issuing permits for right-of-way facilities. As we explain, right-of-way facilities should be approved through an encroachment permit issued by the Public Works Department.

For facilities installed pursuant to a master license agreement, the Draft MLA and individual pole license agreements will provide the City with ample review for conformance with development standards, and an encroachment permit would ensure conformance with Public Works requirements. Public Works may wish to refer encroachment permit applications to the Planning Division to ensure they conform to design guidelines referenced in Draft MLA Section 6.2 that are yet to be developed.

For facilities on joint utility poles and other right-of-way structures, the City should not require a use permit because Verizon Wireless's use of the right-of-way is already authorized under California Public Utilities Code §7901. The City may exercise limited aesthetic review of right-of-way facilities, and we suggest that the City consider the example of San Francisco where the Department of Public Works permits right-of-way wireless facilities, referring applications to Planning Department staff for review and recommendation under objective aesthetic standards. *See* San Francisco Public Works Code Article 25.

§18.205.050 – Application Requirements

(B) Application Content

2. Title Report

Title reports provide numerous details unrelated to findings and standards for approval of wireless facilities, which occupy only a small area of a parcel. Title reports would include irrelevant covenants or easements elsewhere on a property. Site plans required under Draft Ordinance Section 18.205.050(B)(6) would depict property lines and relevant utility and access easements. This requirement should allow applicants to submit other types of evidence of current property ownership.

9. RF Compliance Demonstration

Any requirement that RF compliance reports account for cumulative emissions from “other transmitters in the area” must not exceed requirements in FCC guidelines for calculation of exposure.

This provision requires a statement of compliance with FCC exposure standards under penalty of perjury that is inappropriate and impossible to obtain. Registered engineers certify maximum calculated exposure based upon formulas provided by the FCC. After making the calculations, no engineer supplying the FCC compliance report will have control over how a facility is built and operated, and none can provide the requested certification under penalty of perjury simply due to the fact that such information is unavailable at the time the engineer is asked to make the sworn statement. The FCC has jurisdiction over matters related to RF compliance, and this requirement exceeds the City’s authority. The requirement for an affirmation under penalty of perjury should be stricken.

11. Project Purpose Statement

The City cannot require Verizon Wireless to demonstrate the need for right-of-way facilities through a description of technical objectives and propagation maps because Verizon Wireless’s use of the right-of-way is authorized by Public Utilities Code §7901. Established case law confirms Verizon Wireless’s right to use the right-of-way without demonstration of need. Most recently, a California appellate court affirmed that a local jurisdiction cannot condition issuance of a permit for a wireless facility in the right-of-way on technological necessity. *See T-Mobile West LLC v. City and County of San Francisco*, 3 Cal.App 5th 334, 342-343 (Cal. App. 2016). This requirement should be revised to exempt right-of-way facilities.

12. Alternatives Analysis

There is no reason to require applicants to review alternatives to collocations, fully-concealed facilities that pose no land use impacts or facilities in most-preferred locations. Such facilities are not intrusive by design and should be encouraged with no requirement to explain how they constitute the best placement. This submittal requirement should be revised to include an exception for collocations, fully-concealed facilities and facilities in the most-preferred locations specified in Draft Ordinance §18.205.090(A).

With respect to right-of-way facilities, an alternatives analysis should not be required for facilities placed on City property pursuant to a license agreement.

12. Materials Samples

Certain wireless facilities—particularly small cells in the right-of-way—involve only small equipment components that require no concealment measures as they pose minimal visual impacts. This provision should be revised to allow staff to waive the materials sample requirement for such installations.

(C) Procedures for a Duly-Filed Application

1. Pre-Submittal Conference
2. Submittal Appointment
3. Appointment Scheduling Procedures

While Verizon Wireless appreciates the option for a pre-application meeting for certain applications, any required pre-submittal appointments and the application appointment requirement are inconsistent with procedures outlined in a recent FCC order. *See In Re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Etc.*, FCC 14-153 (FCC October 17, 2014) (the “Spectrum Act Order”). The Spectrum Act Order stipulates that the time period for review of wireless facility applications commences when an application is first filed. *See* Spectrum Act Order ¶258. The FCC “Shot Clock” time period for review of wireless facility applications incorporates an initial 30-day review period during which the City may issue a notice of incomplete application that will halt the Shot Clock until an applicant responds. Appointment requirements may delay for over three weeks applications that could otherwise be filed on a walk-in basis, particularly given the unreasonable timeframe of five to 15 working days for applicants to wait for appointments. At a minimum, appointments must be available on a daily basis.

(E) Applications Deemed Withdrawn

The Spectrum Act Order does not allow a local jurisdiction to terminate an application while the time period for review is tolled pending an applicant’s response to a request for information. Indeed, the Spectrum Act Order plainly states that “The shot clock will begin running again after the applicant makes a supplemental submission.” *See* Spectrum Act Order ¶259. This provision terminating applications after 180 days with no response is in direct conflict with federal regulation and should be stricken, even though there is a provision for limited further tolling (at the sole discretion of the Planning Division). At a minimum, notice should be provided before an application, paid for by the applicant, is closed.

§18.205.070 – Decisions

(A) Required Findings for Approval

As noted above, an alternatives review should not be required for collocations, fully-concealed facilities and facilities in most-preferred locations. Accordingly, Findings (4) and (5) related to alternatives should not apply to such facilities.

§18.205.080 – Standard Conditions of Approval

(N) Permit Renewal

Renewal applications should be processed administratively for facilities that have operated without complaint during their prior term, including legal non-conforming facilities. In accordance with California Government Code Section 65964(b), renewals should be granted in 10-year increments.

§18.205.090 – Site Location Guidelines

(A) Preferred Locations

(B) Discouraged Locations

While the City can offer its own assets to interested carriers, this provision favoring City-owned parcels over all other locations is inconsistent with California Government Code Section 65964(c) which bars the City from limiting wireless facilities to sites owned by particular parties. Items 1 and 2 of this list of preferred locations should be stricken. The City may incentivize wireless carriers to use its assets by offering reasonable terms in the Draft MLA.

We suggest that the list of more-preferred areas should include residentially-zoned parcels with only an established non-residential use. This would capture such facilities as churches which are ideal structures for camouflaged or concealed wireless facilities.

§18.205.100 – Development Standards

(A) Generally Applicable Development Standards

(2) Overall Height

Limiting wireless facilities to zoning district height limits restricts their coverage footprint and leads to the unintended consequence of more facilities overall to achieve service objectives. Rooftop antennas must be able to propagate signal over building parapets. At a minimum, a height exception of 10 feet should be allowed for fully-

Page 6 of 10

concealed facilities, rooftop facilities with minimal visual impacts and right-of-way facilities with small antennas mounted to the tops of poles. Alternately, a height exception approved by the approval authority should be allowed where required for a wireless carrier to meet coverage objectives.

(7) Backup Power Sources

The City should encourage backup power sources (batteries) for right-of-way facilities in order to guarantee continued wireless service during emergencies when it is needed most. The ban on generators within 250 feet of any residence is unnecessary as wireless facility generators are not a principal power source; rather, they provide continued service during power outages or emergencies and are routinely operated only twice per month for 20 minutes during a weekday for testing purposes. This provision should be revised to allow the approval authority to permit generators and other backup power sources for facilities in any location.

(11) Utilities

Undergrounding of new utility runs is unwarranted where short extensions of existing aerial utilities pose minimal visual impacts. This provision should be stricken.

(D) Right-of-Way Wireless Facilities

Many new right-of-way wireless facilities, particularly small cell facilities that provide network capacity in high-usage areas, involve only small equipment boxes developed by carriers with an aim to minimize visibility. Rather than requiring undergrounding, the City should favor such deployments and accommodate small pole-mounted boxes subject to reasonable standards such as rotation away from sightlines, painting to match pole color and concealment behind existing signage where available. The Draft MLA contemplates pole-mounted equipment for facilities on City-owned poles, suggesting that the City is comfortable with such installations (see, for example, Draft MLA Section 4.1.2). With respect to facilities mounted on utility poles, the Draft Ordinance should acknowledge that exceptions may be allowed to comply with Public Utility Commission General Order 95 which mandates certain safety clearances for wireless equipment.

§18.205.110 – Temporary Wireless Facilities

(A) General Requirements for Temporary Wireless Facilities

(3) Required Findings

(g) 90-Day Limit

We encourage the City allow a longer period than 90 days for temporary facilities approved by the Planning Manager. Occasionally, carriers must deploy temporary facilities to provide continued service during relocation or substantial repair of permanent facilities. San Francisco recently adopted amendments to its Planning Code allowing the Planning Department to approve temporary facilities administratively for up to one year if sited to avoid residential areas to the extent feasible. *See* San Francisco Planning Code §205.2(d).

CHAPTER 18.____ – ELIGIBLE FACILITIES REQUESTS

§18.____.040 – Prior Approvals Required

(A) Section 6409 Approval

Eligible facilities requests should be processed as stand-alone administrative approvals, not amendments to underlying use permits. First, not all wireless facilities are approved with a use permit under Draft Ordinance §18.205.040; some are approved with an administrative permit. Second, a use permit is a discretionary permit subject to a wide range of conditions of approval, whereas an eligible facilities request involves a ministerial determination subject only to the clear criteria for “substantial change” adopted by the FCC in the Spectrum Act Order. Further, conditions of approval related to eligible facilities requests are limited to those that require compliance with generally applicable building, structural, electrical or safety codes or other objective health and safety standards. *See* Spectrum Act Order, ¶ 202. We suggest that the Planning Division process eligible facilities requests as a zoning clearance.

§18.____.050 – Application Requirements

(B) Application Content

- (2) Title Report**
- (4) Environmental Compliance**

The FCC limited the type of information local governments can require for eligible facilities requests. Under 47 C.F.R. §1.40001(c)(1), a “local government may require the applicant to provide documentation or information only to the extent

reasonably related to determining whether the request meets the requirements of this section...[a] local government may not require an applicant to submit any other documentation....” To this end, the City may not require a title report, which, as noted above, may describe property details such as easements and covenants affecting other areas of a property that are unrelated to the actual structure being modified. Environmental compliance is not related to the City’s determination of whether an eligible facilities request constitutes a “substantial change” under FCC criteria; those criteria impose strict limits on facility expansion. These requirements should be stricken.

(8) RF Compliance Demonstration

As noted in our comments to Draft Ordinance Section 18.205.050(B)(9), the City cannot require affirmation of RF exposure compliance under penalty of perjury as that exceeds the City’s authority in an area regulated by the FCC.

(C) Procedures for a Duly Filed Application

Our comments to Draft Ordinance Section 18.205.050(C) apply to these provisions as well. The FCC has set a 60-day review period for eligible facilities requests, and the unnecessary delays due to appointments and scheduling are unwarranted, particularly for very minor modifications that can be processed quickly. *See* C.F.R. §1.40001(c)(3). These scheduling and appointment requirements for eligible facilities requests should be eliminated.

(D) Applications Deemed Withdrawn

As noted above, the FCC has ruled that an application review period tolled for incompleteness recommences upon an applicant’s response to a timely information request. This applies to eligible facilities requests as well, and there is no provision allowing a jurisdiction to terminate an application. *See* C.F.R. §1.40001(c)(3)(ii). This provision must be stricken.

§18. .060 – Decisions

(A) Public Notice; Administrative Review

As noted above, the FCC has limited the type of information a local government may require for eligible facilities requests. Public notice is not a requirement of FCC rules and is not pertinent to the determination of whether an eligible facilities request involves a “substantial change.” Determinations regarding eligible facilities requests are administrative and do not require public input. The City cannot require applicants to post notice of an eligible facilities request. This requirement must be stricken.

§18. .070 – Standard Conditions of Approval

As noted above, conditions of approval for eligible facilities requests are limited to those that require compliance with generally applicable building, structural, electrical or safety codes or other objective health and safety standards. Because of this constraint of federal regulation, the City cannot subject eligible facilities requests to conditions of approval regarding build-out period, maintenance agreements, indemnification, performance bonds, recall to approval authority, revocation or records retention.

(A) Permit Term

This provision suggests that an eligible facilities request permit will have a term of less than 10 years, however, under California Government Code §65964(b), permit durations of less than 10 years are generally presumed to be unreasonable. An eligible facilities request permit should be granted with a term of a minimum of 10 years, and we suggest that the term of the underlying land use permit also be extended to be coterminous. At a minimum, the sentence preventing extension of underlying permits should be revised to allow underlying permit terms to be extended at request of the applicant and at the discretion of the Planning Division.

(B) Compliance Obligations Due to Invalidation

Early termination of an approval issued pursuant to an eligible facilities request would violate the vested rights of wireless carriers who have obtained a building permit and constructed their improvements. A federal circuit court has upheld FCC rules interpreting 47 U.S.C. §1455. This provision should be deleted.

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

6.2 Design Guidelines

The City has not yet developed design guidelines to be incorporated as Exhibit B to the Draft MLA. As noted above, the Draft MLA contemplates pole-mounted equipment, and Verizon Wireless would be pleased to work with the City to develop design guidelines that allow for small cells and other antenna and equipment installations on poles that minimize visual impacts while providing needed network capacity to high-usage areas.

7.2 Prior Regulatory Approvals Required

This provision of the Draft MLA requires a use permit prior to construction work; however, as noted in our comments to Draft Ordinance Section 18.205.040, right-of-way facilities installed on City assets pursuant to a license agreement should be processed

Afshan Hamid
City of Concord
May 5, 2017

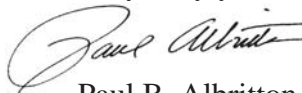
Page 10 of 10

through an encroachment permit and not an administrative permit, and no right-of-way facility should require a use permit as Verizon Wireless's use of the right-of-way is authorized under Public Utilities Code §7901. The City can encourage wireless carriers to use its own assets with reasonable permit requirements for facilities installed under a license agreement.

Conclusion

The Draft Ordinance must be revised to eliminate conflicts with state and federal law. Whether located on City-owned assets or not, right-of-way facilities should be permitted with an encroachment permit, not an administrative permit or use permit. Verizon Wireless would be pleased to provide further input on design standards of the Draft Ordinance and Draft MLA. We look forward to working with the City to revise these documents.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul Albritton", written in black ink.

Paul B. Albritton

cc: Suzanne Brown, Esq.
Laura Simpson

DRAFT MAY 10, 2017

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

between

CITY OF CONCORD, A CALIFORNIA MUNICIPAL CORPORATION

and

[INSERT LICENSEE NAME], A [INSERT CORPORATE FORM]

NEW CINGULAR WIRELESS PCS, LLC
D/B/A AT&T MOBILITY, A DELAWARE LIMITED LIABILITY COMPANY

Effective Date: **[insert]**

DRAFT

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

This MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON CITY POLES IN THE RIGHT-OF-WAY (“**Master License**”) dated [date] (the “**Effective Date**”) is between the CITY OF CONCORD, a chartered California municipal corporation (the “**City**”) and [insert licensee name], a [insert licensee corporate form] NEW CINGULAR WIRELESS PCS, LLC, d/b/a AT&T Mobility, a Delaware limited liability company (the “**Licensee**”).

BACKGROUND

- A. WHEREAS**, technology developments and demand for high-speed mobile data service and capacity has extended beyond the capabilities of traditional macrocell wireless communications facilities. To meet this demand, wireless providers have accelerated their small cell and distributed antenna system deployments in the public right-of-way and the City has a clear incentive to develop public-private agreements that manage these accelerated deployments in a way that balances local aesthetics and public health and safety while also deriving the benefits of these new technologies for the City’s residents to the greatest extent practicable; and
- B. WHEREAS**, Licensee is in the business of installing, maintaining and operating wireless communication facilities and typically installs, maintains and operates its wireless communications facilities on existing vertical infrastructure in the public right-of-way; and
- C. WHEREAS**, the City owns as its personal property a substantial number of existing poles within the public right-of-way that are potentially suitable for installing wireless communications facilities within the City’s jurisdiction and has a duty under California law to derive appropriate value from the City’s property assets for the public good; and
- D. WHEREAS**, Licensee desires to install, maintain and operate wireless communications facilities on the City’s poles in the public right-of-way and Licensee is willing to compensate the City for the right to use the City’s poles for wireless communications purposes; and
- E. WHEREAS**, consistent with California state law, the City intends this Master License and any Pole License to be applicable only to City-owned Poles, and does not intend this Master License or any Pole License to require any consideration as a precondition for any telephone corporation’s access to the public rights-of-way permitted under California Public Utilities Code § 7901; and
- F. WHEREAS**, consistent with all applicable Laws, the City does not intend this Master License to grant the Licensee any exclusive right to use or occupy the

public rights-of-way within the City's territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the City may enter into similar or identical agreements with other entities, which include without limitation Licensee's competitors; and

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

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

AGREEMENT

1. GENERAL DEFINITIONS

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

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

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

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

"CPUC" means the California Public Utilities Commission established in the California Constitution, Article XII, Section 5, or its duly appointed successor agency.

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

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

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

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

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

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

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

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

authorized to act on behalf of Licensee in any emergency in and in day-to-day operations of the Equipment.

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

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

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

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

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

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

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

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

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

“RF Compliance Report” means a report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the

FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

2. SCOPE OF LICENSE

2.1. License Area

2.1.1. Pole License Issuance and Effect

Subject to the terms and conditions in this Master License, the City will issue to Licensee one or more Pole Licenses, which will grant Licensee a contractual privilege to use the space on the subject Pole approved for the Equipment, which includes any conduits, pull boxes or other City Property specifically identified in the Approved Plans attached to the Pole License (individually for each licensed Pole and collectively for all licensed Poles, the “**License Area**”). Any approved Pole License will become effective on the first day of the month following the date on which both the City and Licensee execute such Pole License. After the City approves a Pole License, the City will not license any space on the licensed Pole to any third party who desires to use the Pole for the Permitted Use.

2.1.2. Limitations on License Areas

This Master License applies to only Poles identified in final and fully executed Pole Licenses. This Master License does not authorize Licensee or any other persons or entities to enter on to or use any other City Property, except the License Areas specified in any Pole Licenses. Furthermore, neither this Master License nor any Pole License authorizes or confers any rights in Licensee or any other persons or entities to use any portions of the public rights-of-way, or any improvements or other personal property within the public rights-of-way owned by any third parties. Licensee expressly acknowledges and agrees that the City has the absolute right to deny for any or no reason, and will not be obligated to issue, any Pole License or other license to Licensee for any purpose related to the following poles:

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

~~(4) any wood Pole; provided, however, that the City may, in its sole discretion and on a case by case basis, allow Licensee to replace, at Licensee's sole cost and expense, an existing wood Pole with a steel or concrete Pole for purposes of installing, maintaining and operating Licensee's Equipment.~~

2.2. Limitations on Licensee's Interests

2.2.1. Limited Interest Created

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

2.2.2. Limited Rights Created

Any Pole License the City approves pursuant to this Master License grants to Licensee only a non-possessory and revocable license to enter on to and use the License Area for the Permitted Use. Licensee expressly acknowledges and agrees that (1) neither this Master License or any Pole License will be coupled with an interest; (2) the City retains legal possession and control over all Poles for the City's operations, which will be superior to Licensee's interest at all times; (3) subject to the terms and conditions in this Master License, the City may terminate a Pole License in whole or in part at any time in the event a Pole is forbidden by state, county, or municipal authorities or by owners of private property or that the Pole must otherwise be modified such that the continued presence of a Licensee Equipment on the Pole cannot be maintained consistent with other requirements; (4) except as specifically provided otherwise in this Master License, the City may enter into any agreement with third parties in connection with use and occupancy of Poles and other City Property; (5) Licensee has no ownership rights in any Pole whatsoever; and (6) neither this Master License nor any Pole License creates or will be deemed to create any partnership or joint venture between the City and Licensee.

2.2.3. No Impediment to Municipal Uses

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

2.3. Diminutions in Light, Air and Signal

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

2.4. License Area Condition

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

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

2.4.2. Licensee's Due Diligence

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

2.4.3. Certified Access Specialist Disclosure

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

3. TERM

3.1. Master License Term

The term under this Master License (the **"Term"**) will commence on the Effective Date and will automatically expire 10 years from the Effective Date on **[insert specific date]**

and will automatically renew for four (4) successive five (5) year periods (the “Expiration Date”), unless earlier terminated in accordance with this Master License.

3.2. Pole License Term

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

4. LICENSE FEE; OTHER PAYMENTS

4.1. License Fees

4.1.1. Commencement Date

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

4.1.2. Acknowledgment Letter

For each Pole License approved by the City pursuant to Section 6.4.4 (Pole License Application Approval), Licensee shall deliver to the City a letter in the form shown in Exhibit A-3 to the Pole License (the “Acknowledgment Letter”) within approximately 10 business days after Licensee obtains all Regulatory Approvals necessary for the Permitted Use on any License Area. The parties intend the Acknowledgement Letter to: (1) confirm the Commencement Date; (2) ~~tender or confirm payment by wire transfer of the License Fee for the first License Year and the Security Deposit;~~ (3) provide the City with copies of all Regulatory Approvals for the Equipment on each licensed Pole; and (4) confirm that Licensee has submitted all information required in Section 19 (Insurance) under this Master License. Upon written notice to Licensee, the City shall have the right to correct the Commencement Date stated in Licensee’s Acknowledgement Letter after the City examines the Regulatory Approvals if, in the City’s reasonable determination, the Commencement Date stated on the Acknowledgment Letter is incorrect or inaccurate. The City’s reasonable determination in connection with this Section 4.1.2 will be final for all purposes under this Master

License. The City will use reasonable efforts to deliver a countersigned Acknowledgement Letter to Licensee within approximately five business days after the City receives the partially executed Acknowledgment Letter with all required attachments and enclosures from Licensee. The fully executed Acknowledgment Letter will be Licensee's notice to proceed with its installation. The date on which the City countersigns the Acknowledgement Letter will be the effective date for the subject Pole License.

4.1.3. License Fee Amount

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

4.1.4. Annual License Fee Adjustments

Each year throughout the Term on January 1 (each an "**Adjustment Date**"), the License Fee will be increased 42% over the License Fee payable in the immediately previous year. The adjustment provided in this Section will be effective even if the first License Year was for less than a full calendar year.

4.1.5. License Fee Due Date

Licensee shall pay the License Fee for the first ~~year at the same time License Year~~ within sixty (60) days of the date Licensee delivers the Acknowledgement Letter without any deduction or setoff for any reason. Thereafter, Licensee shall pay the annual License Fee on January 1 in each year throughout the Term. As an illustration, and not a limitation, if the Commencement Date for a Pole License falls on June 1, then the License Fee due in the first License Year will be prorated 50% (to account for the six-month difference between January and May) and will be due ~~on the Commencement Date~~ within sixty (60) days of the date Licensee delivers the Acknowledgement Letter. The full License Fee for the second License Year, and each subsequent year thereafter, will be due on January 1.

4.2. Administrative Fees

4.2.1. Master License Administrative Fee

At the time Licensee delivers to the City a partially executed counterpart to this Master License, Licensee shall pay to the City a nonrefundable administrative fee equal to **[insert amount] and 00/100 Dollars (\$[insert amount])** (the “**Master License Administrative Fee**”) to recoup the City’s costs to review and execute this Master License. The City will not be obligated to execute any Master License until the City receives the Master License Administrative Fee.

Comment [A1]: Please advise as to the amount of the Master License Administrative Fee. Such fee is subject to review and approval prior to execution.

4.2.2. Pole License Administrative Fee

At the time Licensee delivers to the City a Pole License Application, Licensee shall pay to the City a nonrefundable administrative fee equal to **[insert amount] and 00/100 Dollars (\$[insert amount])** (the “**Pole License Administrative Fee**”). The City will not be obligated to commence its review for any Pole License Application until the City receives the Pole License Administrative Fee. The parties to this Master License collectively refer to the Master License Administrative Fee and the Pole License Administrative Fee as “**Administrative Fees**.”

Comment [A2]: Please advise as to the amount of the Pole License Administrative Fee. Such fee is subject to review and approval prior to execution.

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 ~~40-60~~ days after the City notifies that such amounts are due and unpaid, such amounts will be subject to a late charge equal to ~~6~~1% of unpaid amounts.

4.4. Default Interest

Any License Fees, Additional Fees, Administrative Fees and all other amounts payable to the City other than late charges will bear interest at ~~403~~% per annum from the due date when not paid within ~~40-60~~ days after due and payable to the City. Any sums received shall be first applied towards any interest, then to the late charge and lastly to principle amount owed. Any interest or late charge payments will not alone excuse or cure any default by Licensee.

4.5. Additional Fees

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

4.6. Payment Procedures

Licensee shall pay all License Fees, Additional Fees, Administrative Fees and all other amounts payable to the City in cash or other immediately available funds by (1) local check payable to [insert City payment address] or (2) electronic wire transfer to an account specified by the City. Any payment made with a dishonored check will be deemed unpaid. The parties may change the payment address from time-to-time by written notice.

4.7. Estimated Charges and Fees

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

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

Licensee _____

City _____

5. USES

5.1. Permitted Use

Licensee may use the License Area solely for the installation, operation and maintenance of Equipment for transmission and reception of wireless communications signals (the "Permitted Use") in compliance with all applicable Laws and any conditions in any Regulatory Approvals and for no other use whatsoever without the City's prior written consent, which the City may withhold in its sole and absolute discretion for any or no reason. Licensee may lease, license or otherwise allow its Invitees to use capacity on Licensee's Equipment; provided, however, that any such third parties shall not be permitted to perform any physical work on any Pole without the City's prior written consent, which the City may reasonably withhold or condition as the City deems necessary to protect the Pole or public health safety and/or welfare.

5.2. Prohibition on “Macro Cell” Uses

The City and Licensee intend this Master License and any Pole License to cover only “small cell” and/or distributed antenna system installations, as those terms are commonly understood to mean small, low-power, low-elevation, unobtrusive wireless facilities intended to cover relatively small geographic areas. Licensee expressly acknowledges and agrees that the Permitted Use under this Master License does not include the right to use any Pole as a support structure for a “macro cell” or a traditional wireless tower typically constructed on private property. The City may, in its sole and absolute discretion, approve “macro cell” facilities on its Poles on a case-by-case basis.

5.3. Prohibition on Illegal Uses or Nuisances

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

5.4. Signs or Advertisements

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

6. POLE LICENSES

6.1. City Approval Required

Licensee shall not have any right to use the License Area in whole or in part for any purpose until and unless the City approves a Pole License. Subject to any express limitations in this Master License, the City will not be obligated to subordinate its municipal functions or proprietary interest in any manner whatsoever to Licensee’s interest under any Pole License. When the City considers whether to approve or disapprove any Pole License Application, the City may consider any matter that affects its municipal functions or proprietary interests, which include without limitation: (1) Licensee’s proposed plans and Equipment specifications; (2) compliance with any applicable Laws; (3) impacts on the City’s street light operations; (4) any potential hazards or unsafe conditions that could result from Licensee’s installation, operation or maintenance; (5) any potential visual or aesthetic impacts, which includes without limitation whether any alternative locations or configurations would be more aesthetically desirable or appropriate in the City’s sole discretion; (6) the additional load on the Pole the proposed Equipment would create; and (7) any municipal plans for the Pole or right-of-way in proximity to the Pole.

6.2. Design Guidelines

The parties agree that the installation configurations more particularly described and depicted in **Exhibit B** (the “**Design Guidelines**”) will be presumptively approvable by the City. The City may update and amend the Design Guidelines from time-to-time, and may substitute such updated or amended Design Guidelines for the current Exhibit B upon written notice to Licensee, provided, however, such updated or amended Design Guidelines shall not apply retroactively unless required by Laws. The City shall consult in good faith with Licensee before any update or amendment to the Design Guidelines becomes effective. Nothing in this Section 6.2 is intended to limit or affect the City’s rights to disapprove any Pole License Application pursuant to Section 2.1.2 (Limitations on License Areas), Section 6.1 (City Approval Required), Section 6.4.5 (City’s Right to Disapprove) or any other provision in this Master License that expressly reserves the City’s right to disapprove any Pole License Application.

6.3 Pole License Application

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

6.4. Pole License Application Review Procedures

The City will review complete Pole License Applications in a reasonably prompt manner, taking into account the nature and scope of each Pole License Application and/or the particular Poles requested in such Pole License Application, and in the chronological order (date and time) in which a complete Pole License Application is submitted or deemed submitted. Except as specified otherwise in this Master License, the City will not prioritize any application or licensee over any other application or licensee. Licensee acknowledges that (1) the City will not be obligated to prioritize Pole License Application review over its municipal functions; (2) the City’s staff and budget considerations will impact the City’s ability to review and process Pole License Applications; and (3) the City will not be obligated to act on any Pole License Application within any specific timeframe.

6.4.1. Incomplete Pole License Applications

The City will not be obligated to review or approve any incomplete Pole License Application. In the event that Licensee submits an incomplete Pole License Application, the City may, with or without notice to Licensee, suspend its review for that incomplete Pole License Application until Licensee delivers all required elements for a complete Pole License Application. In addition, the City may suspend all pending Pole License Application, whether complete or incomplete, reviews when Licensee fails to timely submit any Pole License Administrative Fee. The date and time when Licensee submits

the missing elements will be deemed the date and time that Licensee submitted the Pole License Application.

6.4.2. Required Changes to the Pole License Application

In the event that the City determines for any reason that the Permitted Use at any particular Pole Location would impede its municipal functions or otherwise negatively affects its proprietary interests, the City will provide notice to Licensee as soon as reasonably practicable. Licensee will have ~~14~~30 days from such notice to change its Pole License Application without any impact on the Pole License Application's priority relative to any other applications then under review or later received by the City. Any changes received after the ~~14-day~~30-day period or any other changes Licensee may make to the Pole License Application will cause the date and time on which the application was submitted or deemed submitted to be changed to the date and time on which Licensee submitted the proposed changes.

6.4.3. Consultation with Other City Departments

The City may consult with other departments within the City to assess whether Licensee's proposed Equipment poses any concerns, which includes without limitation any concerns about aesthetics, historic or environmental impacts, traffic control, pedestrian access and general right-of-way management. Licensee acknowledges that any consultation with any other City departments in accordance with this Section 6.4.3 and any actions or failures to act by the City that may result from such consultations would be in the City's proprietary capacity as the Pole owner and not an exercise of the City's regulatory authority.

6.4.4. Pole License Application Approval

In the event that the City approves a Pole License Application, the City will return one fully executed Pole License to Licensee. Licensee acknowledges and agrees that the City's decision to approve or disapprove any Pole License Application is not, and will not be deemed to be, a regulatory determination subject to any administrative appeal, but is an exercise of the City's proprietary authority over its Poles as its personal property. In the event that Licensee fails to commence construction pursuant to the Pole License within one year from the date the City fully executes the Acknowledgment Letter, the Pole License shall automatically expire unless the City Manager grants a written extension that may not exceed one additional year. Licensee shall not be entitled to any refund for any fees, which include without limitation the License Fee, paid in connection with a Pole License that expires pursuant to this Section 6.4.4. Nothing in this Section 6.4.4 is intended to prohibit or prevent Licensee from submitting a new Pole License Application for the same or substantially the same Poles as those covered under a Pole License that expired pursuant to this Section 6.4.4.

6.4.5. City's Right to Disapprove

Licensee acknowledges that the City reserves the absolute right to disapprove any Pole License Application in whole or in part when the City determines in its ~~sole-reasonable~~ judgment that the subject Pole Location or proposed Equipment would interfere with the City's municipal functions or proprietary interests or create a hazardous or unsafe condition. In addition, Licensee acknowledges that the City reserves the absolute right to disapprove any license within a Pole License Application when the subject Pole would involve above-ground equipment (other than the antenna and any required electric meter) in a residential district or in close proximity to a residential use.

6.4.6. Federal and State Regulations Inapplicable

Licensee expressly acknowledges and agrees that all requirements, limitations or other restrictions in any Laws applicable to the City in its regulatory capacity (which may include without limitation 47 U.S.C. § 332(c)(7); 47 U.S.C. § 253; 47 U.S.C. § 1455; 47 C.F.R. § 1.40001; California Public Utilities Code §§ 7901 or 7901.1; California Government Code §§ 50030, 65850.6, 65964 or 65964.1; and any judicial or administrative interpretations in connection with any such Laws) do not apply to the City's review or determination in connection with any Pole License Application submitted pursuant to this Master License. Without any limitation on the generality of the preceding sentence, and for only the purposes in this Master License and any Pole License, the City and Licensee expressly acknowledge and agree that any Equipment installed pursuant to this Master License or any Pole License will not be considered or interpreted as "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), and any Pole or replacement Pole on which such Equipment is installed will not be considered or interpreted as a "tower" or a "base station" as used in 47 U.S.C. § 1455 or 47 C.F.R. § 1.40001 *et seq.*

7. EQUIPMENT INSTALLATION

7.1. Approved Plans and Equipment Specifications

Licensee must submit detailed plans and equipment specifications as Exhibit A-2 to any Pole License Application, which must include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed in connection with the License Area. Licensee acknowledges that Exhibit A-2 to any approved Pole License will be deemed to be the "**Approved Plans**" and that Licensee will be permitted to install only the Equipment and other improvements shown on such Approved Plans.

7.1.1. Site Identification Required

On each licensed Pole, Licensee must install one identification plate in strict compliance with the size, material, form and substance as shown on the Approved Plans. The identification plate must include Licensee's corporate name and telephone number at which Licensee's On-Call Representative can be reached at all times (24 hours per day

and 7 days per week). Licensee must replace the identification plate within ~~48 hours~~ 5 days in the event that any information on such plate changes.

7.1.2. Changes Required for Regulatory Approvals

Licensee may amend previously Approved Plans when such changes are required to obtain or maintain compliance with other Regulatory Approvals necessary to install the Equipment. Any such changes will require the City's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. The City will provide notice of its decision to Licensee in accordance with Section 28.1 (Notices).

7.1.3. Corrections to Approved Plans

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

7.2. Prior Regulatory Approvals Required

Licensee shall not commence any work at the License Area until Licensee obtains all necessary Regulatory Approvals, which includes without limitation, a use permit from the City's Planning Division, an encroachment permit, construction permit, electrical permit, a Right of Way Permit from the City's Engineering Division and any other permit obtained through any other City department, and tenders full and complete copies of each Regulatory Approval to the City. The City's consent or refusal to consent to any Pole License issued by the City in its proprietary capacity as the Pole owner will not be deemed to be any approval or denial in connection with any Regulatory Approval issued by the City in its regulatory capacity as a municipal government.

Comment [A3]: Please provide more information with respect to the timing necessary to obtain the required Regulatory Approvals.

7.3. Installation; Strict Compliance with Approved Plans

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

7.3.1. Alterations to City's Property

Neither Licensee nor its Agents or Invitees may remove, damage or in any manner alter any City Property without prior written consent from the City and any other City agencies with jurisdiction over the subject City Property. The City may withhold its consent in its sole and absolute discretion, and may reasonably condition its consent in each instance based on scope and nature of the proposed alterations. Licensee shall immediately notify the City if any removal, damage or other alteration occurs to City Property for any reason and through any cause.

7.3.2. Licensee's Contractors

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

7.4. Labor and Materials Costs

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

7.5. Project Managers

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

City's Project Manager:

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

Licensee's Project Manager:

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

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

7.6. Coordination with the City

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

7.7. Fiber-Optic Cables

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

Comment [A4]: This Section is under further review and approval by AT&T management.

The services to be provided under this Section 7.7 are or may be subject to prevailing wage rate payment as set forth in California Labor Code Section 1771. Accordingly, to the extent that such services are subject to the prevailing wage rate payment requirements, Licensee shall comply with all California Labor Code requirements pertaining to "public works," including the payment of prevailing wages in connection with the services to be provided 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 for inspection and copying during regular business hours at a location within the City of Concord.

Licensee shall defend, indemnify and hold the City harmless and its officers, officials, employees, volunteers, agents and representatives (collectively, "Indemnitees") from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "Claims"), arising out of or in any way connected with Licensee's obligation to comply with all laws with respect to the work of improvements or Prevailing Wage Policies, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781, as amended and added by Senate Bill 966.

Licensee hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Licensee's obligation to comply with all laws with respect to the work of improvements and Prevailing Wage Policies. Licensee is aware of and familiar with the provisions of California Civil Code Section 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."

As such relates to this Section 7.7, Licensee hereby waives and relinquishes all rights and benefits which it may have under California Civil Code Section 1542. The obligations of Licensee under this Section 3.B shall survive the termination of this Master License.

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 or Invitees will be and remain at all times Licensee's personal property. All structural improvements to any Pole, any replacement Pole and any underground fiber optic cables, all as approved by the City and shown in the Approved Plans, will become City Property and remain should Licensee vacate or abandon such License Area, unless the City elects in a written notice to Licensee that it does not wish to take title to such structural improvements. Subject to Section 24 (Surrender of

License Area), Licensee may remove its Equipment from the License Area at any time after 30 days' written notice to the City.

8. PUBLIC WORKS OPERATIONS

8.1. City's Access to License Areas

Except as specifically provided otherwise in this Master License, the City and its Agents have the right to access any License Area in whole or in part at any time without notice for any purpose. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's or its Agents' access to the License Area, which includes any Equipment removed in an emergency or other exigent circumstances pursuant to Section 8.4 (Emergencies), except to the extent that the damage arises directly and exclusively from the gross negligence or willful misconduct of the City or its Agents and not contributed to by the acts, omissions or negligence of Licensee, its Agents or Invitees. ~~The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's or its Agents' gross negligence or willful misconduct and not contributed to by Licensee's or its Agents' or Invitees' acts, omissions or negligence.~~

8.2. Repairs, Maintenance and Alterations to Poles

The City and/or the City's Public Works Department will: (1) maintain and repair Poles as needed, in its sole judgment, for its street light operations and other municipal functions; (2) correct any immediately hazardous condition. Except as provided in Section 26 (Termination), and excluding conditions that arise from the City's or its Agents' gross negligence or willful misconduct, neither any City work on any Pole nor any condition on any Pole will: (a) entitle Licensee to any damages; (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 (c) constitute or be construed as a constructive termination of this Master License or any Pole License.

8.3. Repairs, Maintenance and Alterations to License Areas

The City may, at any time, alter, add to, repair, remove from and/or improve the License Area in whole or in part for any operational purpose, which includes without limitation maintenance and improvements in connection with street light services and compliance with Laws; provided, ~~however,~~ (1) the City makes a good-faith effort to provide advance notice to Licensee's On-Call Representative as soon as practicable; (2) the City allows Licensee's representative to observe the City's work; and (3) the City takes reasonable steps not to disrupt Licensee's ordinary operations on the License Area. The provisions in this Section 8.3 will not be construed to allow Licensee's ordinary operations to impede or delay the City's authority and ability to make changes to the License Areas necessary to maintain street light services.

8.4. Emergencies

In emergencies, the City's work will take precedence over Licensee's operations, which includes without limitation any Equipment operated on the License Area, and the City may access the License Area in whole or in part as the City deems necessary in its sole determination and in accordance with this Section 8.4, whether the City has notified Licensee of such emergency or other exigent circumstances or not. When safe and practicable, the City will notify Licensee of any emergency or other exigent circumstances that requires the City to remove or replace any Pole and will allow Licensee to remove its Equipment before the City removes or replaces the Pole; provided, however, that the City will remove the Equipment from the Pole when in the City's sole determination it would (1) be unsafe or not practicable to wait for Licensee to perform the work; (2) cause significant delay; or (3) otherwise threaten or compromise public safety or public services. The City will remove any Equipment with reasonable care and store the Equipment for retrieval by Licensee and shall provide notice as soon as practicable after such emergency, but in no event later than 24 hours after the emergency. Licensee shall have the right to reinstall such removed Equipment or equivalent Equipment at Licensee's sole expense on the repaired or replaced Pole and in accordance with Section 7 (Equipment Installation). The City's removal of Licensee's Equipment in emergencies or other exigent circumstances will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee's contractual privilege to use the License Area.

9. LICENSEE'S MAINTENANCE OBLIGATIONS

9.1. Damage to Poles

9.1.1. Notice to the City

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

9.1.2. Damage Caused by Licensee

In the event that any use or maintenance by Licensee or its Agents or Invitees cause any damage to any Pole, Licensee must repair such damage within 30 days after the City provides a notice to Licensee that describes such damage. Such 30-day cure period may be extended to a date certain if the City agrees the cure reasonably requires more time. In the event that Licensee fails to timely cure the damage, the City may repair the damage at Licensee's expense. Licensee will reimburse the City for all costs incurred to repair such damage within ~~40-60~~ days after Licensee receives the City's

demand for payment, together with copies of invoices or other evidence to document the costs incurred.

9.1.3. No Right to Repair

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

9.2. Equipment Maintenance

Licensee shall, at its sole cost and expense, install, maintain and promptly repair any damage to any Equipment installed on the License Area whenever repair or maintenance may be required, subject to the City's prior approval if required under Section 7 (Equipment Installation). Licensee is not required to seek the City's prior approval for any Equipment repair, maintenance, replacement or other installation on the License Area when such Equipment is shown on the Approved Plans. Licensee must obtain the City's prior written approval for any Equipment repair, maintenance, replacement or other installation that involves larger, different or additional Equipment than shown on the Approved Plans that increases pole loading beyond the pole loading that was established in the Approved Plans, or involves placement of Equipment outside the area designated in the Approved Plans. Licensee expressly acknowledges that Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455) does not apply to this Master License or any Pole License because the City is granting them in its proprietary capacity as the owner of the City Poles. Any work on Licensee's Equipment installed on Poles that is authorized or permitted under this Section 9.2 is subject to Licensee obtaining any required Regulatory Approvals.

9.3. Graffiti Abatement

Licensee's repair and maintenance obligation includes the removal of any graffiti from the License Area-Licensee's Equipment within 48 hours after the City notifies Licensee.

9.4. Standard of Work

All work performed by or for Licensee under this Section 9.4 shall be: (1) at Licensee's sole cost and expense; (2) performed only qualified and trained persons and appropriately licensed contractors; (3) performed in a manner and with equipment and materials that will not interfere with or impair the City's operations; (4) compliant with all applicable Laws; and (5) performed solely by Licensee and not by Licensee's Invitees.

9.5. Inspections

At least once in every License Year, Licensee ~~shall~~ may perform an inspection of all Equipment and, within 10-30 business days after the inspection, may submit a written

report to the City on the condition of such Equipment that includes, without limitation, any identified concerns and corrective action taken or planned to be taken. In the event that Licensee's inspection reveals any maintenance concerns in connection with any Pole or any other City Property, Licensee shall promptly notify the City. Licensee shall provide the City with at least 30 days' prior written notice before it commences any inspection. Licensee shall permit any City employee or third-party consultant to observe any inspection activities and may make reasonable accommodations as needed to facilitate such observations; provided that any third-party consultant will be required to agree to a reasonable confidentiality agreement as may be requested by Licensee. In the event that Licensee, its Agents or Invitees notice any maintenance concerns with respect to any Pole or other City Property, Licensee shall promptly notify the City.

10. LIENS

Licensee shall keep the License Area free and clear from any and all liens in connection with any work performed, material furnished or obligations incurred by or for Licensee. Licensee shall inform each and every contractor and material supplier that provides any work, service, equipment or material to Licensee in any way connected with Licensee's use of the License Area that the License Area is public property and is not subject to mechanics' liens or stop notices for Equipment or other materials or services provided for Licensee's Equipment. If Licensee does not cause the release of lien of a mechanic's lien or stop notice by any contractor, service provider or equipment or material supplier purporting to attach to the License Area or other City Property within 30 days after notice or discovery of the lien, the City will have the right, but not the obligation, to cause the same to be released by any means it deems proper, including payment of the Claim giving rise to such lien. Licensee must reimburse the City for all expenses it incurs in connection with any such lien (including reasonable attorneys' fees) within 40-60 days following receipt of the City's demand together with copies of invoices or other evidence to document the costs incurred. Licensee shall give the City at least 10 days' prior notice of commencement of any construction or installation on any part of the License Area except for minor and routine repair and maintenance of Licensee's Equipment. Licensee shall not create, permit, or suffer any other encumbrances affecting any portion of the License Area.

11. UTILITIES

Licensee shall be responsible to secure its own utility services for its Permitted Use, without installing an electric meter to the extent possible; ~~provided, however that Licensee shall not be permitted to submeter from any electrical service provided to the City on any Pole.~~ The City may, in its sole and absolute discretion, permit Licensee to connect to or submeter from any electrical service provided to the City on any Pole not subject to a flat rate from the City's electrical service provider. Licensee shall timely pay when due all charges for all utilities furnished to its Equipment.

Comment [A5]: Please provide further clarification with respect to utility metering options.

12. TAXES AND ASSESSMENTS

12.1. Possessory Interest Taxes

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

12.2. Licensee's Tax Obligations

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

13. COMPLIANCE WITH LAWS

13.1. Compliance with Current and Future Laws

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

judicial, or other action affects the rights or obligations of the Parties, or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of small cells on city infrastructure or in the right of way, that differ, in any material respect from the terms of this Agreement ("New Law"), then either Party may, upon thirty (30) days written Notice, require that the terms of this Agreement be renegotiated to conform to the New Law. Such conformed terms shall then apply on a going forward basis for all existing and new small cell installations, unless the New Law requires retroactive application, in which case such new terms shall apply retroactively, as required by the New Law. In the event that the Parties are unable to agree upon new terms within 90 days after Notice, then the rates contained in the New Law shall apply from the 90th day forward until the negotiations are completed, or a Party obtains a ruling regarding the appropriate conforming terms from a commission or court of competent jurisdiction.

13.2. Licensee's Personnel

13.2.1. Personnel Training and Certification

Comment [A6]: This Section remains under further review by AT&T

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

13.2.2. Licensee's Indemnification for Personnel Injuries

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

13.3. Compliance with CPUC GO 95

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

13.4. Compliance with Building and Electric Codes

Licensee shall conduct all activities on the License Area in accordance with the requirements of the California Building Code, the California Electric Code, National Electric Safety Code IEEE C2 (the “**NESC**”) and any applicable local building electrical code, as those codes exist now or may be amended in the future. To the extent that CPUC General Order 95 does not address cellular telephone antenna installations on Poles carrying electrical lines, Licensee shall apply applicable provisions of the NESC, with particular attention to paragraphs 224, 235C, 235F, 238, 239 and 239H and sections 22, 41 and 44. Where any conflict exists between the California Building Code, the NESC, the California Electric Code, any local code and CPUC General Order 128, the ~~more stringent requirements will apply, as determined by the City~~CPUC General Orders shall apply.

13.5. Compliance with RF Exposure Regulations

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

14. DAMAGE OR DESTRUCTION

14.1. City’s Rights After Damage or Destruction

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

14.1.1. Election to Repair or Replace Damaged Pole

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

14.1.2. Election to Remove Damaged Pole

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

14.1.3. Election to Remove Equipment from Damaged Pole

If the acts of third parties or an act of nature or other force majeure circumstance outside the control of Licensee or its Agents or Invitees destroys or damages any Pole to such an extent that, in the City's reasonable determination, the Equipment on the Pole cannot be operated, the City may decide to terminate the affected Pole License on 30 days' notice to Licensee and require Licensee to remove the Equipment from the damaged Pole before the termination date specified in the City's notice; provided, however, such removal date shall not be any earlier than 60 days following the City's notice.

14.2. Licensee's Rights upon Termination

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

14.3. Waiver of Statutory Rights

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

15. CONDEMNATION

15.1. Permanent Takings

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

15.1.1. Termination

Any affected Pole License will automatically terminate as to the part taken or transferred on the date the permanent taking or transfer occurs, and the License Fee under the

affected Pole License will be ratably reduced to account for the reduction in License Area.

15.1.2. Award

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

15.1.3. No Statutory Right to Terminate

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

15.2. Temporary Takings

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

16. ASSIGNMENT AND OTHER TRANSFERS

16.1. General Restriction

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

16.2. Proposed Assignment Procedures

16.2.1. Proposed Assignment Notice

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

16.2.2. City Response

The City shall approve or disapprove any request for consent to an Assignment within 30 days after the City receives a complete Proposed Assignment Notice, or 30 days after the deemed-effective date if Licensee delivers an incomplete Proposed Assignment Notice as described in Section 16.2.1 (Proposed Assignment Notice) (in either case, the **"Assignment Response Period"**). If the City fails to respond within the Assignment Response Period, the request for consent will be deemed disapproved. If the City delivers to Licensee written consent to the proposed Assignment, then Licensee shall have 100 days from such written consent to complete the Assignment. The City's consent will be deemed revoked if Licensee fails to complete the proposed Assignment within the 100-day period; provided, however, that the 100-day period may be extended to a date certain in a written agreement, which the City shall not unreasonably refuse. As a condition on the City's consent, Licensee shall pay to the City fifty percent (50%) the amount by which any consideration paid to Licensee by the Assignee exceeds the aggregate sum of all Licensee Fees and Additional Fees that remain payable under the assigned Pole Licenses within ~~10-60~~ days after Licensee receives payment from the Assignee.

16.3. Permitted Assignments

16.3.1. Definition

The City agrees that Licensee will be permitted to enter into an Assignment of this Master License and Pole Licenses issued under it (a **"Permitted Assignment"**), without the City's prior consent but with notice to the City as provided below, to: (i) Licensee's parent; (ii) a Licensee's subsidiary; (iii) an entity that acquires all or substantially all of Licensee's assets in the market in which the License Area is located (as the market is defined by the FCC under an order or directive of the FCC; (iv) an entity that acquires Licensee by a change of stock ownership or partnership interest; or (v) an entity Controlled by Licensee or that, with Licensee, is under the Common Control of a third party.

16.3.2. Conditions

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

16.4. Effect of Assignment

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

16.5. Assumption by Transferee

Each Assignee shall assume all obligations of Licensee under this Master License and each assigned Pole License and will be and remain liable jointly and severally with Licensee for all obligations to be performed by Licensee. No Assignment will be binding on the City unless Licensee or the Assignee delivers to the City evidence satisfactory to the City that the Assignee has obtained all Regulatory Approvals required to operate as a wireless telecommunications service provider on the assigned License Area, a copy of the Assignment agreement (or other document reasonably satisfactory to the City in the event of a Permitted Assignment under Section 16.3 (Permitted Assignments)), and an instrument in recordable form that contains a covenant of assumption by such Assignee satisfactory in substance and form to the City, consistent with the requirements of this Article. However, the failure or refusal of an Assignee to execute such instrument of assumption will not release such Assignee from its liability as set forth in this Section. Except for a Permitted Assignment as provided in Section 16.3 (Permitted Assignments), Licensee shall reimburse the City ~~on~~ within 60 days of demand for any reasonable costs that the City incurs in connection with any proposed Assignment, including the costs of investigating the acceptability of the proposed Assignee and legal costs incurred in connection with considering any requested consent. The City agrees that its right to reimbursement under this Section during the Term will be limited to **[insert amount] and 00/100 Dollars (\$[insert amount])** for each request.

Comment [A7]: Please provide amount of reimbursement limitation.

17. DEFAULT

17.1. Events of Default by Licensee

Any of the following will constitute an event of default by Licensee under this Master License and any Pole Licenses issued under it: (1) Licensee fails to pay any sums due to the City within ~~40-30~~ days after notice from the City; (2) Licensee fails to perform or comply with any other obligation or representation made under this Master License, if the failure continues for 30 days after the date of notice from the City, or, if such default is not capable of cure within the 30-day period, Licensee fails to promptly undertake action to cure such default within such 30-day period and thereafter fails to use its best efforts to complete such cure within 60 days after the City's notice; (3) Licensee removes its Equipment or abandons the License Area for a continuous period of more than 60 days, such that the License Area is no longer being used for the Permitted Use; or (4) any of the following occurs: (i) the appointment of a receiver due to Licensee's insolvency to take possession of all or substantially all of the assets of Licensee; (ii) an assignment by Licensee for the benefit of creditors; or (iii) any action taken by or against Licensee under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief Laws, if any such receiver, assignment, or action is not released, discharged, dismissed, or vacated within 60 days.

17.2. City's Remedies

In addition to all other rights and remedies available to the City at law or in equity, the City will have the following remedies following the occurrence of an event of default by Licensee.

17.2.1. License Continuation

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

17.2.2. Pole License Termination

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

17.2.3. Master License Termination

If Licensee's default is of such a serious nature in the City's ~~sole~~-reasonable judgment that the default materially affects the purposes of this Master License, the City may terminate this Master License in whole or in part. Termination of this Master License in whole will terminate all Pole Licenses issued under it automatically and without the need

for any further action by the City. In either case, the City will deliver notice to Licensee providing 30-days' notice of termination and specify whether the termination affects the entire Master License or only certain Pole Licenses in the notice. The City will specify the amount of time Licensee will have to remove its Equipment from any affected City Pole, which will be at least ~~30-60~~ days after the date of the City's notice for up to 50% of licensed City Poles and an additional 30 days for more than 51% of licensed City Poles. If Licensee does not remove its Equipment within the specified period, the City will be entitled to remove Licensee's Equipment from the City Pole. The City will have the right to make any terminated portion of the License Area available for license to other parties as of the effective date of the termination, even if Licensee's Equipment is still on the Pole.

17.2.4. Default Fees

Without limiting the City's other rights and remedies under this Master License, the City may require Licensee to pay Additional Fees for the City's administrative cost in providing notice or performing inspections for the events described below (each, a "Default Fee") by giving notice of the City's demand that Licensee cure the default and specifying the cure period. The Default Fee for the initial notice from the City will be due and payable to the City ~~40-60~~ days after delivery of notice to Licensee. In addition, if Licensee fails to cure the condition within the cure period set forth in the initial notice, and the City then delivers to Licensee a follow-up notice requesting compliance, then the Default Fee for the follow-up notice will be due and payable to the City ~~40-60~~ days after delivery of the follow-up notice to Licensee. Default Fees will apply to any of the following events: (1) Licensee constructs or installs any alteration or improvement without the City's prior approval as required by Section 6 (Pole Licenses), Section 7 (Equipment Installation), or Section 7.3.1 (Alterations to City's Property) of this Master License; (2) Licensee fails to cure damage required by Section 9 (Licensee's Maintenance Obligations) on a timely basis; (3) Licensee fails to notify the City, through its project manager, before accessing the License Area or following the plan approval procedures as set forth in Section 7 (Equipment Installation); or (4) Licensee fails to provide evidence of the required bonds and insurance coverage described in Section 19 (Insurance) on a timely basis.

17.3. Licensee's Remedies

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

17.4. Cumulative Rights and Remedies

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

18. LICENSEE'S INDEMNIFICATION OBLIGATIONS

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

19. INSURANCE

19.1. Licensee's Insurance

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

19.1.1. Required Coverages

Licensee shall procure and keep in effect at all times during the Term, at Licensee's cost, insurance in the following amounts and coverages: (1) Commercial General Liability insurance (including premises operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual

liability; independent contractors; personal injury) with limits of ~~at least~~ \$2 million combined single limit for each occurrence; (2) Worker's Compensation Insurance per California statutory limits with Employer's Liability Limits ~~not less than of~~ \$1 million each accident or disease or policy limit; (3) Commercial Automobile Liability Insurance with limit ~~not less than of~~ \$2 million each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles.

19.1.2. Required Endorsements

Commercial General Liability Insurance and Commercial Automotive Liability Insurance required policies must ~~contain include~~ the following ~~endorsements~~: (1) ~~name~~ the City, its officers, agents, employees and volunteers as additional insureds. City'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 City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of City, its employees, agents or independent contractors; and, (iii) not exceed Licensee's indemnification obligation under this Agreement, if any; (2) that such policies are primary insurance to any other insurance available to the additional insureds with respect to any Claims that arise in connection with this Master License; (3) that such insurance applied separately to each insured against whom a Claim is made or brought; (4) that such policies provide for the severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not void or otherwise reduce coverage as to any other named insured; and (5) that such policies shall afford coverage for ~~all~~ Claims based on acts, omissions, injury or damage that occurred or arose (or the onset occurred or arose) in whole or in part during the policy period.

19.1.3. Cancellation Notices

~~All insurance policies required to be maintained by Licensee under this Master License shall be endorsed to provide written notice of cancellation for any reason, including without limitation intent not to renew or reduce coverage to both Licensee and the City. In the event that Licensee receives a notice of intent to cancel or notice of cancellation for any coverage required under this Master License, Licensee shall forward such notice to the City within one business day and promptly take action to prevent cancellation, reinstate cancelled coverage or obtain coverage from a different insurer qualified under Section 19.1.7 (Insurer Qualifications). Licensee shall provide at least 30 days' prior written notice to City of cancellation of any required coverage that is not replaced.~~

19.1.4. Claims-Made Policies

In the event that any required insurance under this Master License is provided under a claims-made form, Licensee shall continuously maintain such coverage throughout the

Term and, without lapse, for three years after this Master License expires or terminates, to the effect that, should any event during the Term give rise to a Claim brought after this Master License expires or terminates, such Claims will be covered under Licensee's claims-made policies.

19.1.5. General Aggregate Limit

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

19.1.6. Certificates

On or before the Effective Date, Licensee shall deliver to the City all insurance certificates and additional insured endorsements from Licensee's insurance providers in a form satisfactory to the City that evidences all the required coverages under this Master License, ~~together with complete copies of all policies~~. In addition, Licensee shall promptly deliver to the City all certificates ~~and policies~~ after Licensee receives a request from the City.

19.1.7. Insurer Qualifications

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

19.1.8. Effective Dates

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

19.1.9. Licensee's Self-Insurance Alternative

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

Notwithstanding the forgoing, 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 City as an additional insured, the following conditions apply: (i) City 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) City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and (iii) City shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like..

19.1.10. No Limitation on Indemnification Obligations

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

19.1.11. Right to Terminate

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

19.2. City's Insurance

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

19.3. Subrogation Waiver

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

19.4. Contractors' Bonds and Insurance

Licensee shall endeavor to require its contractors that install, maintain, repair, replace or otherwise perform any work on or about the License Area: (1) to provide bonds to guarantee the performance of the work and the payment of subcontractors and suppliers for any installation of Equipment, and (2) to have and maintain insurance of the same coverage and reasonable and prudent amounts as required of Licensee.

20. LIMITATIONS ON THE CITY'S LIABILITY

20.1. General Limitations on the City's Liability

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

20.2. Consequential Damages

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

20.3. No Relocation Assistance

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

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

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

20.5. Licensee's Waiver

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

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

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

21. RECORDS

21.1. Accounting Records

Licensee shall maintain throughout the Term and for at least four years after this Master Agreement expires or terminates the following records in physical format at Licensee's place of business within the Bay Area and in an electronic format: (1) site identification and location for all Poles under active Pole Licenses; (2) the amount and payment date for all License Fees paid to the City pursuant to this Master License; (3) all Regulatory Approvals issued in connection with the Equipment on Poles; and (4) all correspondence with the City in connection with any matter covered under this Master License. The City, or its designee, will have the right to inspect and audit Licensee's records at Licensee's place of business during regular business hours on 10 days' notice to Licensee.

21.2. Estoppel Certificates

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

22. RULES AND REGULATIONS

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

~~23. SECURITY DEPOSIT~~

~~23. INTENTIONALLY DELETED~~

~~23.1. Amount~~

~~At the time Licensee tenders to the City the first Acknowledgement Letter, Licensee must also tender to the City for deposit a sum equal to [insert amount] and 00/100~~

~~Dollars (\$insert amount) (the “Security Deposit”) to secure Licensee’s faithful performance of all terms, covenants and conditions in this Master License and any Pole License.~~

~~23.2. Further Deposits~~

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

~~23.3. Application~~

~~Licensee agrees that the City may use the Security Deposit in whole or in part to remedy any damage to the License Area caused by Licensee, its Agents or Invitees or any failure by Licensee to perform any term, covenant or condition in this Master License or any Pole License (including without limitation any failure to pay any License Fee or other sums due under this Master License or any Pole License either before or after any default). In the event that the City uses the Security Deposit in whole or in part, the City will not be deemed to have waived any rights under this Master License, or legal or equitable rights whatsoever. Licensee expressly waives any rights it may have under California Civil Code section 1950.7 or any similar Law and agrees that the City may retain from the Security Deposit any portion reasonably necessary to compensate the City for any foreseeable or unforeseeable loss or damage caused by Licensee’s, its Agents’ or Invitee’s acts or omissions. The City’s obligations with respect to the Security Deposit shall be in the nature of a debtor, and the City shall not be deemed to hold the Security Deposit in trust for any reason. The City may (but shall not be obligated to) keep the Security Deposit separate from general funds. Licensee shall not be entitled to any interest on the Security Deposit.~~

24. SURRENDER OF LICENSE AREA

24.1. Surrender

No later than 30-60 days after the Expiration Date or other termination of this Master License or any Pole License, Licensee shall, at its sole cost and expense, peaceably remove its Equipment from applicable portion of the License Area except for any fiber optic cable to which the City will obtain title under Section 7.8 (Title to Licensee’s Equipment and Other Improvements) and surrender it to the City in good order and condition, normal wear and tear excepted, free of debris and hazards, and free and clear of all liens and encumbrances. ~~Immediately before the Expiration Date or other termination of this Master License, Licensee shall, at its sole cost and expense, remove all of Licensee’s Equipment except for any fiber optic cable to which the City will obtain~~

~~title under Section 7.8 (Title to Licensee's Equipment and Other Improvements) and repair any damage to the License Area and any City facilities resulting from the installation or removal of Licensee's Equipment.~~ Licensee's obligations under this Section 24.1 will survive the Expiration Date or other termination of this Master License.

24.2. Abandonment

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

24.3. Holding Over

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

25. HAZARDOUS MATERIALS

25.1. Hazardous Materials in License Area

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

25.2. Licensee's Environmental Indemnity

If Licensee breaches any of its obligations contained in this Section 25, or if any act, omission, or negligence of Licensee or any of its Agents or Invitees results in any contamination of the License Area or other City Property, or in a Release of Hazardous Material from, on, about, in or beneath any part of the License Area or other City Property, or the violation of any Environmental Law, then Licensee, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless the City, including its Agents, and their respective successors and assigns from and against any and all Claims (including damages for decrease in value of the License Area or other City Property, the loss or restriction of the use of usable space in the License Area or other City Property and sums paid in settlement of Claims, attorneys' fees, consultants' fees, and experts' fees and related costs) arising during or after the Term of this Master License relating to such Release or violation of Environmental Laws; provided, however, Licensee shall not be liable for any Claims to the extent such Release was caused by the ~~gross~~-negligence or willful misconduct of the City or its Agents or stemming from a Release of Hazardous Material which existed in the License Area or other City Property prior to Licensee's use of such property. Licensee's Indemnification obligation includes costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought onto the License Area or other City Property by Licensee or any of its Agents or Invitees and to restore the License Area or other City Property to its condition prior to Licensee's introduction of such Hazardous Material or to correct any violation of Environmental Laws. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and the other Indemnified Parties from any Claim that actually or potentially falls within this Indemnity provision even if the allegations supporting the Claim are or may be groundless, fraudulent, or false, which obligation arises at the time such Claim is tendered to Licensee by the Indemnified Party and continues until the Claim is finally resolved. Without limiting the foregoing, if Licensee or any of its Agents or Invitees causes the Release of any Hazardous Material on, about, in, or beneath the License Area or other City Property with the exception of any pre-existing Hazardous Material, then in any such event Licensee shall, immediately, at no expense to any Indemnified Party, take any and all necessary actions to return the License Area or other City Property, as applicable, to the condition existing prior to the Release of any such Hazardous Materials on the License Area or other City Property or otherwise abate the Release in accordance with all Environmental Laws, except to the extent such Release was caused by the ~~gross~~-negligence or willful misconduct of the City or its Agents. Licensee shall afford the City a full opportunity to participate in any discussions with Regulatory Agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise or proceeding involving Hazardous Material.

26. TERMINATION

26.1. Termination for Failure to Obtain Regulatory Approvals

In the event that Licensee cannot obtain all Regulatory Approvals required for any Pole License after one year from the subject Pole License effective date, then either the City

or Licensee may terminate that Pole License on 60 days' notice to the other party delivered within 10 days after the first anniversary of that Pole License's effective date. The parties agree that the Commencement Date will be deemed to have not occurred for any Pole License terminated under this Section 26.1, and Licensee will have no obligation to pay the applicable License Fee for that Pole License.

26.2. Licensee's Termination Rights

26.2.1. Master License Termination Rights

Licensee may, in Licensee's sole discretion, terminate this Master License on ~~one year's~~ 180 days' written notice to the City at any time after the Effective Date.

26.2.2. Pole License Termination Rights

Licensee may, in Licensee's sole discretion, terminate any Pole License on 90 days' written notice to the City at any time after 12 months from the subject Pole License Commencement Date so long as Licensee is not in default with respect to the subject Pole License.

26.2.3. Termination Rights after Pole Replacement

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

26.3. City's Absolute Right to Terminate Pole Licenses

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

26.4. Licensee's Rights after Termination

In the event that the City terminates any Pole License for reasons unrelated to Licensee's failure to perform its obligations under this Master License, the City shall refund any pre-paid Licensee Fee on a pro-rata basis. In addition, the City shall prioritize Licensee's Pole License Application for any Pole License to replace the terminated Pole License; provided, however, that (1) the City shall prioritize only as

many Pole License Applications as Pole Licenses terminated by the City and (2) the City's prioritization will not affect Licensee's obligations under this Master Agreement.

27. INTERFERENCE

27.1. Licensee's Obligation Not to Cause Interference

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

27.2. Impairment Caused by Change in City Use

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

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

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

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

27.3. Impairment Caused by City Access

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

28. MISCELLANEOUS PROVISIONS

28.1. Notices

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

TO CITY:

Telephone: [insert]

Facsimile: [insert]

Email: [insert]

with a copy to:

Telephone: [insert]

Facsimile: [insert]

Email: [insert]

TO LICENSEE:

PCS, LLC

New Cingular Wireless

Attn: Network Real Estate Administration

Telephone: [insert]
Facsimile: [insert]
Email: [insert]

with a copy to: _____

575 Morosgo Drive NE
Atlanta, GA 30324

with a copy to: New Cingular Wireless, PCS, LLC
Attn: Legal Department, Network Operations
Re: City of Concord, California Poles
208 S. Akard Street
Dallas, TX 75202 -4206

Telephone: [insert]
Facsimile: [insert]
Email: [insert]

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

28.2. Waiver; No Implied Waivers

No failure by either party to insist upon the strict performance of any obligation of the other under this Master License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, will constitute a waiver of such breach. No acceptance by the City or any ~~its~~ Agent of full or partial payment of License Fees or Additional Fees during the continuance of any such breach will constitute a waiver of such breach or of the City's right to demand strict compliance with such term, covenant or condition, or operate as a waiver of any requirement of this Master License. No express waiver by either party of any default or

the performance of any provision hereof will affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more waivers of a default or the performance of any provision hereof by either party will not be deemed to be a waiver of a subsequent default or performance. The City's consent given in any instance under the terms of this Master License will not relieve Licensee of any obligation to secure the City's consent in any other or future instance under the terms of this Master License.

28.3. Amendments

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

28.4. Interpretation

The following rules of interpretation apply to this Master License.

28.4.1. General

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

28.4.2. Joint and Several Liability

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

28.4.3. Captions

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

28.4.4. City Actions

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

28.4.5. Words of Inclusion

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

28.4.6. Laws

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

28.5. Successors and Assigns

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

28.6. Brokers

Neither party has had any contact or dealings regarding the license of the License Area, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the license contemplated herein (“**Broker**”), whose commission, if any is due, is to be paid pursuant to a separate written agreement between such Broker and the party through which such Broker contracted. In the event that any Broker perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, Licensee shall indemnify the City from all Claims brought by the Broker. This Section 28.6 will survive expiration or earlier termination of this Master License.

28.7. Severability

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

28.8. Governing Law; Venue

This Master License must be construed and enforced in accordance with the laws of the State of California and the City Charter, without regard to the principles of conflicts of law. This Master License is made, entered and will be performed in the City of Concord, County of Contra Costa, State of California. Any action concerning this Master License must be brought and heard in ~~Superior Court~~ any federal or state court for the County of Contra Costa, without waiver of right of removal.

28.9. Attorneys' Fees

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

28.10. Time for Performance

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

28.11. Survival

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

28.12. Recording

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

28.13. Counterparts

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

28.14. Approval Authority

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

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

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

THE CITY:

City of Concord,
a California municipal corporation
~~form~~ Delaware limited liability company

LICENSEE:

~~insert licensee name~~ New Cingular
Wireless PCS, LLC d/b/a AT&T Mobility,
a ~~insert licensee's corporate~~

By: _____

Its: City Manager

Date: _____

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

~~name~~
City Attorney

Date: _____

APPROVED BY CITY COUNCIL
RESOLUTION No. ~~insert~~

ATTEST:

By: _____

~~name~~
City Clerk

Date: _____

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

EXHIBIT A

FORM OF POLE LICENSE AGREEMENT

POLE LICENSE NO. [INSERT NUMBER IN CONSECUTIVE ORDER]

Pursuant to that certain Master License between the City of Concord, a California municipal corporation (the "City") and [insert licensee's corporate form], a [insert licensee's corporate form] ("Licensee"), Licensee submits to the City two partially executed counterparts of this Pole License, together with all the materials listed below, as its Pole License Application in accordance with Section 6 under the Master License:

1. Exhibit A-1, which designates all Pole Locations that Licensee seeks to be included in the License Area under this Pole License;
2. Exhibit A-2, which includes complete, detailed and final plans and specifications for all Licensee's Equipment to be installed in the License Area, subject to Regulatory Approvals;
3. an Administrative Fee equal to [insert amount];
4. an RF Compliance Report, if not previously provided.

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

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

THE CITY:

City of Concord,
a California municipal corporation

By: _____

Its: _____

LICENSEE:

[insert licensee name],
a [insert licensee's corporate form]

By: _____

Its: _____

{00009953;%1}

DRAFT FOR DISCUSSION PURPOSES ONLY
CONFIDENTIAL ATTORNEY WORK PRODUCT

Date: _____ Date: _____

DRAFT

{00009953;%1}

DRAFT FOR DISCUSSION PURPOSES ONLY
CONFIDENTIAL ATTORNEY WORK PRODUCT

EXHIBIT A-1

POLE LOCATIONS / LICENSE AREA

Pole License No.

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

DRAFT

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EXHIBIT A-2

LICENSEE'S PLANS AND SPECIFICATIONS

Pole License No. [REDACTED]

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

DRAFT

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EXHIBIT A-3

FORM OF ACKNOWLEDGEMENT LETTER

[Licensee to complete and submit with Pole License Application]

[insert date]

[insert addressee information]

RE: Pole License No. []

Dear City Manager:

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

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

[insert name]
[insert title]

Enc.

- [] [insert all required Regulatory Approvals]
- [] Insurance certificates
- [] Contractor's bonds and insurance certificates

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~~[] Security Deposit~~
~~[] First License Year's License Fee~~

DRAFT

{00009953;%1}

SCHEDULE A-4

LICENSE FEE AND DEFAULT FEE SCHEDULE

Pole License No.

LICENSE FEE SCHEDULE	
annual License Fee per City Pole	amount
2017	\$ insert amount
2018	\$ insert amount
2019	\$ insert amount
2020	\$ insert amount
2021	\$ insert amount
2022	\$ insert amount
2023	\$ insert amount
2024	\$ insert amount
2025	\$ insert amount
2026	\$ insert amount
2027	\$ insert amount

DEFAULT FEE SCHEDULE		
VIOLATION	INITIAL NOTICE	EACH FOLLOW-UP NOTICE
unauthorized installations	\$350	\$400
failure to make required repairs	\$300	\$350
access violations	\$300	\$350
insurance violations	\$300	\$350

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CONFIDENTIAL ATTORNEY WORK PRODUCT

EXHIBIT B

DESIGN GUIDELINES

[City to insert Design Guidelines that include detailed equipment specifications and drawings in this Exhibit B]

Comment [A8]: Please provide further background/ information with respect to the City's Design Guidelines.

DRAFT

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~~DRAFT MAY 10, 2017~~

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

between

CITY OF CONCORD, A CALIFORNIA MUNICIPAL CORPORATION

and

MOBILITIE, LLC, A NEVADA LIMITED LIABILITY COMPANY

Effective Date: [insert]

{00009953;%1}

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

This MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON CITY POLES IN THE RIGHT-OF-WAY ("**Master License**") dated [date], 2017 (the "**Effective Date**") is between the CITY OF CONCORD, a chartered California municipal corporation (the "**City**") and [insert licensee name] Mobilitie, LLC, a [insert licensee corporate form] Nevada limited liability company (the "**Licensee**").

BACKGROUND

- A. WHEREAS**, technology developments and demand for high-speed mobile data service and capacity has extended beyond the capabilities of traditional macrocell wireless communications facilities. To meet this demand, wireless providers have accelerated their small cell and distributed antenna system ("**DAS**") deployments in the public right-of-way and the City has a clear incentive to develop public-private agreements/arrangements that manage these accelerated deployments in a way that balances/preserves local aesthetics and public health and safety while also deriving the benefits of these new technologies for the City's residents to the greatest extent practicable; and
- B. WHEREAS**, Licensee is in the business of installing, maintaining ~~has the authority under applicable Laws to install~~ and ~~operating/maintain telephone lines within the State of California, which include~~ wireless ~~communication/communications~~ facilities, in the public right-of-way to provide wireless communications services; and ~~typically~~
- B.C. WHEREAS**, Licensee installs, and maintains ~~and operates its~~ wireless communications facilities on existing vertical infrastructure in the public right-of-way; and
- C.D. WHEREAS**, the City owns ~~as its personal property~~ a substantial number of existing poles within/in the public right-of-way that are ~~potentially~~ suitable for installing wireless communications facilities within the City's jurisdiction and has a duty under California law to derive appropriate value from the City's property assets for the public good; and
- D.E. WHEREAS**, Licensee desires to install, maintain and operate wireless communications facilities on the City's poles in the public right-of-way in a manner consistent with the City's regulatory authority and Licensee is willing to compensate the City for the right to use the City's poles for wireless communications purposes; and
- E.F. WHEREAS**, consistent with California state law, the City intends this Master License and any Pole License to be applicable only to City-owned Poles, and does not intend this Master License or any Pole License to require any consideration as

a precondition for any telephone corporation's access to the public rights-of-way permitted under California Public Utilities Code § 7901; and

F.G. WHEREAS, consistent with all applicable Laws, the City does not intend this Master License to grant the Licensee any exclusive right to use or occupy the public rights-of-way within the City's territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the City may enter into similar or identical agreements with other entities, which include without limitation Licensee's competitors; and

G.H. WHEREAS, the City desires to authorize Licensee's access to individual City-owned poles based on a comprehensive and uniform Master License according to the terms and conditions set forth in this Master License, any applicable Pole License, and pursuant to all the applicable permits issued by the City to protect public health and safety; and

H.I. WHEREAS, on [insert date], the City Council of the City of Concord adopted Resolution No. [insert], which approved the form and material terms for a Master License Agreement for Wireless Facilities on City Poles in the right-of-way to be used in connection with the licensing of Poles and other City-owned property for wireless communications facilities, and further delegated authority to the City Manager to enter into such agreements.

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

AGREEMENT

1. GENERAL DEFINITIONS

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

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

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

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

of business associations, ownership of more than 50% of the beneficial interest and voting control of such association.

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

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

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

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

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

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

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

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

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

|

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

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

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

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

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

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

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

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

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

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

| **“RF Compliance Report”** means a report prepared and certified by an RF engineer acceptable to the City, such acceptance not to be unreasonably withheld, delayed or conditioned, that certifies that the proposed facility, as well as any collocated facilities, will

comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

2. SCOPE OF LICENSE

2.1. License Area

2.1.1. Pole License Issuance and Effect

Subject to the terms and conditions in this Master License, the City will issue to Licensee one or more Pole Licenses, which will grant Licensee a contractual privilege to use the space on the subject Pole approved for the Equipment, which includes any conduits, pull boxes or other City Property specifically identified in the Approved Plans attached to the Pole License (individually for each licensed Pole and collectively for all licensed Poles, the “**License Area**”). Any approved Pole License will become effective on the first day of the month following the date on which both the City and Licensee execute such Pole License. After the City approves a Pole License, the City will not license any space on the licensed Pole to any third party who desires to use the Pole for the Permitted Use.

2.1.2. Limitations on License Areas

This Master License applies to only Poles identified in final and fully executed Pole Licenses. This Master License does not authorize Licensee or any other persons or entities to enter on to or use any other City Property, except the License Areas specified in any the Pole Licenses. ~~Furthermore, neither this Master License nor any Pole License authorizes or confers any rights in Licensee or any other persons or entities to use any portions of the public rights of way, or any improvements or other personal property within the public rights of way owned by any third parties.~~ Licensee expressly acknowledges and agrees that the City ~~has the absolute right to deny for any or no reason, and~~ will not be obligated to issue, any Pole License or other license to Licensee for any purpose related to the following poles:

- (1) any decorative Pole, which includes any Pole or light standard with ornate features or characteristics designed or intended to enhance the appearance of the Pole or light standard; or

- ~~(2) any Pole in or near a residential district or residential use;~~

~~(3) any Pole in any area with undergrounded utilities when the Licensee does not propose to install the non-antenna equipment (other than the electric meter as may be required by Licensee's utility provider) underground;~~

~~(4)(2)~~ any wood Pole; provided, however, that the City may, in its sole discretion and on a case-by-case basis, allow Licensee to (i) modify an existing Wood Pole, or (ii) replace, at Licensee's sole cost and expense, an existing wood Pole with a steel or concrete Pole for purposes of installing, maintaining and operating Licensee'sthe Equipment.

2.2. Limitations on Licensee's Interests

2.2.1. Limited Interest Created

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

2.2.2. Limited Rights Created

Any Pole License the City approves pursuant to this Master License grants to Licensee only a non-possessory and revocable (solely pursuant to the terms of this Master License) license to enter on to and use the License Area for the Permitted Use. Licensee expressly acknowledges and agrees that (1) neither this Master License or any Pole License will be coupled with an interest; (2) the City retains legal possession and control over all Poles for the City's operations, which will be superior to Licensee's interest at all times; (3) ~~subject to the terms and condition~~extent set forth in this Master License, the City may terminate a Pole License in whole or in part at any time; (4) except as specifically provided otherwise in this Master License, the City may enter into any agreement with third parties in connection with use and occupancy of Poles and other City Property; ~~(5) Licensee has no ownership rights in any Pole whatsoever; and (6) and (5)~~ neither this Master License nor any Pole License creates or will be deemed to create any partnership or joint venture between the City and Licensee.

2.2.3. No Impediment to Municipal Uses

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

2.3. Diminutions in Light, Air and Signal

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

2.4. License Area Condition

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

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

2.4.2. Licensee's Due Diligence

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

2.4.3. Certified Access Specialist Disclosure

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

3. TERM

3.1. Master License Term

The term under this Master License (the **"Term"**) will commence on the Effective Date and will automatically expire 10 years from the Effective Date ~~on [insert specific date] of this Agreement~~ (the **"Expiration Date"**), unless earlier terminated in accordance with this Master License, provided, however, that, unless the City or Licensee provides written

notice to the other prior to expiration of the Term that it will not renew the Term, the Term will automatically renew for consecutive additional one-year periods (each such period a "Renewal Term") upon the same terms and conditions set forth in this Agreement and the Expiration Date will occur as of the date of expiration of each such Renewal Term.

3.2. Pole License Term

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

4. LICENSE FEE; OTHER PAYMENTS

4.1. License Fees

4.1.1. Commencement Date

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

4.1.2. Acknowledgment Letter

~~For each Pole License approved by the City pursuant to Section 6.4.4 (Pole License Application Approval),~~ Licensee shall deliver to the City a letter in the form shown in Exhibit A-3 to the Pole License (the "**Acknowledgment Letter**") within ~~approximately~~ 10 business days after Licensee obtains all Regulatory Approvals necessary for the Permitted Use on any License Area. The parties intend the Acknowledgement Letter to: (1) confirm the Commencement Date; (2) tender or confirm payment by wire transfer of the License Fee for the first License Year ~~and the Security Deposit~~; (3) provide the City with copies of all Regulatory Approvals ~~for the Equipment on each licensed Pole~~; and (4) confirm that Licensee has submitted all information required in Section 19 (Insurance) under this Master License. Upon written notice to Licensee, the City shall have the right to correct the Commencement Date stated in Licensee's Acknowledgement Letter after the City examines the Regulatory Approvals ~~if, in the City's reasonable determination, the Commencement Date stated on the Acknowledgment Letter is incorrect or inaccurate.~~

The City's reasonable determination in connection with this Section 4.1.2 will be final for all purposes under this Master License. The City will use reasonable efforts to deliver a countersigned Acknowledgement Letter to Licensee within ~~approximately~~ five business days after the City receives the partially executed Acknowledgment Letter ~~with all required attachments and enclosures~~ from Licensee. The fully executed Acknowledgment Letter will/shall be Licensee's notice to proceed with its installation. ~~The date on which the City countersigns the Acknowledgement Letter will be the effective date for the subject Pole License.~~

4.1.3. License Fee Amount

Licensee shall pay to the City an annual fee at the rate specified in the License Fee Schedule attached to each Pole License (the "**License Fee**").⁴ The License Fee Schedule will reflect the annual License Fee adjustments as provided in Section 4.1.4 (Annual License Fee Adjustments). Licensee shall pay each annual License Fee in advance without any prior demand, deduction, setoff or counterclaim for any reason, except to account for a partial year in the event ~~that (1) the Commencement Date falls on a date other than January 1; (2) this Master License expires or terminates; or (3) any other~~ abatement rights expressly granted in this Master License ~~becomes effective~~. Any amounts for less than a full year or full month will be calculated based on a 360-day year and a 30-day month.

4.1.4. Annual License Fee Adjustments

Each year throughout the Term on January 1 (each an "**Adjustment Date**"), ~~the~~ the License Fee will be increased ~~43~~% over the License Fee payable in the immediately previous year. The adjustment provided in this Section will be effective even if the first License Year was for less than a full calendar year.

4.1.5. License Fee Due Date

Licensee shall pay the License Fee for the first year at the same time Licensee delivers the Acknowledgement Letter without any deduction or setoff for any reason. Thereafter, Licensee shall pay the annual License Fee on ~~January 1 in each year throughout the Term. As an illustration, and not a limitation, if the Commencement Date for a Pole License falls on June 1, then the License Fee due in the first License Year will be prorated 50% (to account for the six month difference between January and May) and will be due on the Commencement Date. The full License Fee for the second License Year, and each subsequent year thereafter, will be due on January 1 the anniversary of the Commencement Date.~~

4.2. Administrative Fees

4.2.1. Master License Administrative Fee

At the time Licensee delivers to the City a partially executed counterpart to this Master License, Licensee shall pay to the City a nonrefundable administrative fee equal to [insert amount] and 00/100 Dollars (\$[insert amount]) (the “**Master License Administrative Fee**” ~~to recoup~~), which the parties agree approximately represents the City’s reasonable costs to review and execute of reviewing, executing and implementing this Master License. The City will not be obligated to execute any Master License until the City receives the Master License Administrative Fee.

4.2.2. Pole License Administrative Fee

At the time Licensee delivers to the City a Pole License Application, Licensee shall pay to the City a nonrefundable administrative fee equal to [insert amount] Five Hundred and 00/100 Dollars (~~\$(insert amount)(\$500.00)~~) (the “**Pole License Administrative Fee**” ~~to recoup~~), which the parties agree approximately represents the City’s reasonable costs of reviewing said Pole License Application. The City will not be obligated to commence its review for any Pole License Application until the City receives the Pole License Administrative Fee. The parties to this Master License collectively refer to the Master License Administrative Fee and the Pole License Administrative Fee as “**Administrative Fees.**”

4.3. Late Charges

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

4.4. Default Interest

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

4.5. Additional Fees

The parties to this Master License define “**Additional Fees**” to collectively mean any sums payable by Licensee to the City in its proprietary capacity (subject to applicable law) as the licensor, which includes without limitation any late charges, default interest, costs in connection with a request for the City’s consent to an Assignment under Section 16.2 (Proposed Assignment Procedures) and Default Fees under Section 17.2.4; provided,

however, that the term excludes any (1) License Fees; (2) Administrative Fees; ~~and/or~~ (3) any other amounts payable to the City by Licensee in connection with the City's review of Pole License Applications or coordinating and inspecting Equipment installed on the License Area; and (4) any ~~payments~~payment to the City in its regulatory capacity.

4.6. Payment Procedures

Licensee shall pay all License Fees, Additional Fees, Administrative Fees and all other amounts payable to the City in cash or other immediately available funds by (1) local check payable to [insert City payment address] or (2) electronic wire transfer to an account specified by the City. Any payment made with a dishonored check will be deemed unpaid. The parties may change the payment address from time-to-time by written notice.

4.7. Estimated Charges and Fees

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

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

Licensee _____

City _____

5. USES

5.1. Permitted Use

Licensee may use the License Area solely for the installation, operation and maintenance of Equipment for transmission ~~and~~ reception and backhaul of wireless communications signals (the "**Permitted Use**") and solely shall conduct such operations in compliance with all applicable Laws and any conditions in any Regulatory Approvals ~~and for no~~. Licensee shall not make any other use whatsoever of the License Area without the City's prior written consent, ~~which the City may withhold in its sole and absolute discretion for any or no reason~~. Licensee may lease, license or otherwise allow its Invitees to use

capacity on Licensee's Equipment; provided, however, that any such third parties shall not be permitted to perform any physical work on any Pole without the City's prior written consent, which the City may reasonably withhold or condition as the City deems necessary to protect the Pole or public health safety and/or welfare.

5.2. Prohibition on "Macro Cell" Uses

The City and Licensee intend this Master License and any Pole License to cover only "small cell" and/or distributed antenna system installations, as those terms are commonly understood to mean small, low-power, low-elevation, unobtrusive wireless facilities intended to cover relatively small geographic areas. Licensee expressly acknowledges and agrees that the Permitted Use under this Master License does not include the right to use any Pole as a support structure for a "macro cell" or a traditional wireless tower typically constructed on private property. The City may, in its sole and absolute discretion, approve "macro cell" facilities on its Poles on a case-by-case basis.

5.3. Prohibition on Illegal Uses or Nuisances

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

5.4. Signs or Advertisements

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

6. POLE LICENSES

6.1. City Approval Required

Licensee shall not have any right to use the License Area in whole or in part for any purpose until and unless the City approves a Pole License, which approval shall not be unreasonably withheld, conditioned or delayed. Subject to any express limitations in this Master License, the City will not be obligated to subordinate its municipal functions or proprietary interest (subject to applicable law) in any manner whatsoever to Licensee's interest under any Pole License. When the City considers whether to approve or disapprove any Pole License Application, the City may consider make reasonable consideration of any matter that affects its municipal functions or proprietary interests, (subject to applicable law), which include without limitation: (1) Licensee's proposed plans and Equipment specifications; (2) compliance with any applicable Laws; (3) impacts on the City's street light operations; (4) any potential hazards or unsafe

conditions that could result from Licensee's installation, operation or maintenance; (5) any potential visual or aesthetic impacts, ~~which includes without limitation whether any alternative locations or configurations would be more aesthetically desirable or appropriate in the City's sole discretion~~; (6) the additional load on the Pole the proposed Equipment would create; and (7) any municipal plans for the Pole or right-of-way in proximity to the Pole.

6.2. — Design Guidelines

6.2. Pre-Approved Designs and Locations

The parties agree that the installation configurations more particularly described and depicted in **Exhibit B** ~~(the "each a "Pre-Approved Design-Guidelines")~~ will be presumptively approvable by the City. ~~The City may update and amend. The City shall not be permitted to deny a Pre-Approved Design based on its physical or aesthetic appearance, except to the extent that the City determines in its reasonable discretion that such aesthetic concern arises solely in connection with the proposed location in which the Pre-Approved Design Guidelines from time to time would be situated. As an illustration and may substitute such updated or amended not a limitation, the City would be permitted to deny a Pre-Approved Design Guidelines in a commercial area if proposed to be placed adjacent to a park or architecturally significant building. In the event that the City desires to disapprove any Pre-Approved Design within a Pole License Application, the City shall state its reasons for the current Exhibit B upon denial in a written notice to Licensee. The City shall consult in good faith with Licensee before any update or amendment to the Design Guidelines becomes effective. Nothing in this Section 6.2 is intended to limit or affect the City's rights to disapprove any Pole License Application pursuant to Section 2.1.2 (Limitations on License Areas), Section 6.1 (City Approval Required), Section 6.4.5 (City's Right to Disapprove) or any other provision in this Master License that expressly reserves the City's~~ If Exhibit B contains more than one Pre-Approved Design, the City shall have the right to disapprove any Pole License Application select the Pre-Approved Design in its absolute discretion.

6.3. Pole License Application

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

6.4. Pole License Application Review Procedures

The City will review a complete Pole License Applications ~~Application~~ in a reasonably prompt manner, ~~taking into account the nature and scope of each Pole License Application and/or the particular Poles requested (but in such Pole License Application, no event longer than forty-five (45) days)~~ and in the chronological order (date and time) in

which a complete Pole License Application is submitted or deemed submitted. Except as specified otherwise in this Master License, the City will not prioritize any application or licensee over any other application or licensee. Licensee acknowledges that (1) the City will not be obligated to prioritize Pole License Application review over its municipal functions; and (2) the City's staff and budget considerations will impact the City's ability to review and process Pole License Applications; ~~and (3) the City will not be obligated to act on any Pole License Application within any specific timeframe.~~

6.4.1. Incomplete Pole License Applications

The City will not be obligated to review or approve any incomplete Pole License Application. In the event that Licensee submits an incomplete Pole License Application, the City may, ~~with or without notice to Licensee,~~ suspend its review for that incomplete Pole License Application until Licensee delivers all required elements for a complete Pole License Application. ~~In addition, the~~ The City may suspend all pending Pole License Application, ~~whether complete or incomplete,~~ reviews when Licensee fails to timely submit any Pole License Administrative Fee. The date and time when Licensee submits the missing elements will be deemed the date and time that Licensee submitted the Pole License Application.

6.4.2. Required Changes to the Pole License Application

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

6.4.3. Consultation with Other City Departments

The City may consult with other departments within the City to assess whether Licensee's proposed Equipment poses any concerns, which includes without limitation any concerns about aesthetics, historic or environmental impacts, traffic control, pedestrian access and general right-of-way management. Licensee acknowledges that any consultation with any other City departments in accordance with this Section 6.4.3, and any actions or failures to act by the City that may result from such consultations would be in the City's proprietary capacity (subject to applicable law) as the Pole owner and not an exercise of the City's regulatory authority.

6.4.4. Pole License Application Approval

In the event that the City approves a Pole License Application, the City will return one fully executed Pole License to Licensee. ~~Licensee acknowledges and agrees that the~~The City's decision to approve or disapprove any Pole License Application is not, ~~and will not be deemed to be,~~ a regulatory determination subject to any administrative appeal, but is an exercise of the City's proprietary authority over its Poles as its personal property (subject to applicable law). In the event that Licensee fails to commence construction pursuant to the Pole License within one year from the date the City fully executes the Acknowledgment Letter, the Pole License shall automatically expire unless the City Manager grants a written extension that may not exceed one additional year. Licensee shall not be entitled to any refund for any fees, which include without limitation the License Fee, paid in connection with a Pole License that expires pursuant to this Section 6.4.4. Nothing in this Section 6.4.4 is intended to prohibit or prevent Licensee from submitting a new Pole License Application for the same or substantially the same Poles as those covered under a Pole License that expired pursuant to this Section 6.4.4.

6.4.5. City's Right to Disapprove

Licensee acknowledges that the City reserves the absolute right to disapprove any Pole License Application ~~in whole or in part~~ when the City determines in its sole judgment that the subject Pole Location or proposed Equipment would interfere with the City's municipal functions or proprietary interests (subject to applicable law) or create a hazardous or unsafe condition. ~~In addition, Licensee acknowledges, provided that the City reserves with specificity the absolute right to disapprove any license within a Pole License Application when the subject Pole would involve above-ground equipment (other than the antenna and any required electric meter) in a residential district or in close proximity to a residential use particular reason for denial.~~

6.4.6. Federal and State Regulations Inapplicable

Licensee expressly acknowledges and agrees that all requirements, limitations or other restrictions in any Laws applicable to the City in its regulatory capacity (which may include without limitation 47 U.S.C. § 332(c)(7); 47 U.S.C. § 253; 47 U.S.C. § 1455; 47 C.F.R. § 1.40001; California Public Utilities Code §§ 7901 or 7901.1; California Government Code §§ 50030, 65850.6, 65964 or 65964.1; and any judicial or administrative interpretations in connection with any such Laws) do not apply to the City's review or determination in connection with any Pole License Application submitted pursuant to this Master License. Without any limitation on the generality of the preceding sentence, and for only the purposes in this Master License and any Pole License, the City and Licensee expressly acknowledge and agree that any Equipment installed pursuant to this Master License or any Pole License will not be considered or interpreted as "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), and any Pole or replacement Pole on which such Equipment is installed will not be considered or interpreted as a "tower" or a "base station" as used in 47 U.S.C. § 1455 or 47 C.F.R. § 1.40001 *et seq.*

7. EQUIPMENT INSTALLATION

7.1. Approved Plans and Equipment Specifications

Licensee must submit detailed plans and equipment specifications as Exhibit A-2 to any Pole License Application, which must include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed in connection with the License Area. Licensee acknowledges that Exhibit A-2 to any approved Pole License will be deemed to be the “**Approved Plans**” and that Licensee will be permitted to install only the Equipment and other improvements shown on such Approved Plans.

7.1.1. Site Identification Required

On each licensed Pole, Licensee must install one identification plate in strict compliance with the size, material, form and substance as shown on the Approved Plans. The identification plate must include Licensee’s corporate name and telephone number at which Licensee’s On-Call Representative can be reached at all times (24 hours per day and 7 days per week). Licensee must replace the identification plate within 48 hours in the event that any information on such plate changes.

7.1.2. Changes Required for Regulatory Approvals

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

7.1.3. Corrections to Approved Plans

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

7.2. Prior Regulatory Approvals Required

Licensee shall not commence any work at the License Area until Licensee obtains all necessary Regulatory Approvals, which includes without limitation, a use permit from the City’s Planning Division, an encroachment permit, construction permit, electrical permit a Right of Way Permit from the City’s Engineering Division and any other permit obtained through any other City department, and tenders full and complete copies of each Regulatory Approval to the City. The City’s consent or refusal to consent to any Pole License issued by the City in its proprietary capacity as the Pole owner will not be deemed to be any approval or denial in connection with any Regulatory Approval issued by the City in its regulatory capacity as a municipal government- (subject to applicable law).

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Comment [DN1]: Mobilitie would like to discuss permit and approval process

7.3. Installation; Strict Compliance with Approved Plans

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

7.3.1. Alterations to City's Property

Neither Licensee nor its Agents or Invitees may remove, damage or in any manner alter any City Property without prior written consent from the City and any other City agencies with jurisdiction over the subject City Property. The City may withhold its consent in its sole and absolute discretion, and may reasonably condition its consent in each instance based on scope and nature of the proposed alterations. Licensee shall immediately notify the City if any removal, damage or other alteration occurs to City Property for any reason and through any cause.

7.3.2. Licensee's Contractors

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

7.4. Labor and Materials Costs

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

7.5. Project Managers

The City and Licensee each designate the person listed in this Section 7.5 as its project manager to coordinate ~~Licensee's~~ the Equipment design and installation, and serve as

each party's respective primary contact person for all design, engineering, construction and installation issues that may arise between the parties in connection with this Master License.

City's Project Manager:

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

Licensee's Project Manager:

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

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

7.6. Coordination with the City

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

7.7. Fiber-Optic Cables

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

The services to be provided under this Section 7.7 are or may be subject to prevailing wage rate payment as set forth in California Labor Code Section 1771. Accordingly, to the extent that such services are subject to the prevailing wage rate payment requirements, Licensee shall comply with all California Labor Code requirements pertaining to "public works," including the payment of prevailing wages in connection with the services to be provided 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 for inspection and copying during regular business hours at a location within the City of Concord.

Licensee shall defend, indemnify and hold the City harmless and its officers, officials, employees, volunteers, agents and representatives (collectively, "Indemnitees") from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "Claims"), arising out of or in any way connected with Licensee's obligation to comply with all laws with respect to the work of improvements or Prevailing Wage Policies, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781, as amended and added by Senate Bill 966.

Licensee hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Licensee's obligation to comply with all laws with respect to the work of improvements and Prevailing Wage Policies. Licensee is aware of and familiar with the provisions of California Civil Code Section 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."

As such relates to this Section 7.7, Licensee hereby waives and relinquishes all rights and benefits which it may have under California Civil Code Section 1542. The obligations of Licensee under this Section 3.B shall survive the termination of this Master License.

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 or Invitees will be deemed and remain at all times Licensee's personal property. All structural improvements to any Pole, any replacement Pole and any underground fiber optic cables, all as approved by the City and shown in the Approved Plans, will become and remain City Property ~~and remain~~ should Licensee vacate or abandon such License Area, unless the City elects in a written notice to Licensee that it does not wish to take title to such structural improvements. Subject to Section 24 (Surrender of License Area), Licensee may remove ~~the~~ Equipment from the License Area at any time after 30 days' written notice to the City.

8. PUBLIC WORKS OPERATIONS

8.1. City's Access to License Areas

Except as specifically provided otherwise in this Master License, the City and its Agents have the right to access any License Area in whole or in part at any time without notice for any purpose. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's or its Agents' access to the License Area, which includes any Equipment removed in an emergency or other exigent circumstances pursuant to Section 8.4 (Emergencies), except to the extent that the damage arises directly ~~and exclusively~~ from the ~~gross~~ negligence or willful misconduct of the City or its Agents and not contributed to by the acts, omissions or negligence of Licensee, its Agents or Invitees. ~~The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's or its Agents' gross negligence or willful misconduct and not contributed to by Licensee's or its Agents' or Invitees' acts, omissions or negligence.~~

8.2. Repairs, Maintenance and Alterations to Poles

The City and/or the City's Public Works Department will: (1) maintain and repair Poles as needed, in its ~~sole~~reasonable judgment, for its street light operations and other municipal functions; (2) correct any immediately hazardous condition. Except as provided in Section 26 (Termination), and excluding conditions ~~that arise~~arising directly from the ~~City's or its Agents' gross~~ negligence or willful misconduct of City or its Agents, neither any City work on any Pole nor any condition on any Pole will: (a1) entitle Licensee to any damages; (b2) excuse or reduce any obligation by Licensee to pay any License Fees or Additional Fees or perform any covenant under this Master License; or (e3) constitute or be construed as a constructive termination of this Master License or any Pole License.

8.3. Repairs, Maintenance and Alterations to License Areas

The City may, at any time, alter, add to, repair, remove from and/or improve the License Area in whole or in part for any operational purpose, which includes without limitation maintenance and improvements in connection with street light services and compliance with Laws; provided, however, (1) the City makes a good-faith effort to provide notice to Licensee's On-Call Representative; (2) the City allows Licensee's representative to observe the City's work; and (3) the City takes reasonable steps not to disrupt Licensee's ordinary operations on the License Area. The provisions in this Section 8.3 will not be construed to allow Licensee's ordinary operations to impede or delay the City's authority and ability to make changes to the License Areas necessary to maintain street light services.

8.4. Emergencies

In emergencies, the City's work will take precedence over Licensee's operations, which includes without limitation any Equipment operated on the License Area, and the City may access the License Area in whole or in part as the City deems necessary in its sole determination and in accordance with this Section 8.4, whether the City has notified Licensee of such emergency or other exigent circumstances or not. When safe and practicable, the City will notify Licensee of any emergency or other exigent circumstances that requires the City to remove or replace any Pole and will allow Licensee to remove ~~the~~ Equipment before the City removes or replaces the Pole; provided, however, that the City will remove the Equipment from the Pole when in the City's sole determination it would (1) be unsafe or not practicable to wait for Licensee to perform the work; (2) cause significant delay; or (3) otherwise threaten or compromise public safety or public services. The City will remove any Equipment with reasonable care and store the Equipment for retrieval by Licensee. Licensee shall have the right to reinstall such removed Equipment or equivalent Equipment at Licensee's sole expense on the repaired or replaced Pole and in accordance with Section 7 (Equipment Installation). The City's removal of ~~Licensee's~~ Equipment in emergencies or other exigent circumstances will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee's contractual privilege to use the License Area.

9. LICENSEE'S MAINTENANCE OBLIGATIONS

9.1. Damage to Poles

9.1.1. Notice to the City

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

9.1.2. Damage Caused by Licensee

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

9.1.3. No Right to Repair

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

9.2. Equipment Maintenance

9.2.1. Generally

Licensee shall, at its sole cost and expense, install, maintain and promptly repair any damage to any Equipment installed on the License Area whenever repair or maintenance may be required, subject to the City's prior approval if required under Section 7 (Equipment Installation). Licensee is not required to seek the City's prior approval for any Equipment repair, maintenance, replacement or other installation on the License Area when such Equipment is shown on the Approved Plans. Licensee must obtain the City's prior written approval for any Equipment repair, maintenance, replacement or other installation that involves larger, different or additional Equipment than shown on the Approved Plans. Licensee expressly acknowledges that, subject to applicable law, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455) does not apply to this Master License or any Pole License because the City is granting them in its proprietary capacity as the owner of the City Poles. Any work on Licensee's Equipment installed on Poles that is authorized or permitted under this Section 9.2 Subsection is subject to Licensee obtaining any required Regulatory Approvals.

9.2.2. Modifications

Notwithstanding any other provision of this Master License, modifications to any pole attachment shall be subject to only a notice requirement only when (i) such modification to the attachment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the attachment, as approved by the City; or (ii) such modification involves replacement of the attachment with an attachment that is the same, or smaller in weight and dimensions, and substantially similar in appearance from publicly accessible spaces as the approved attachment. Licensee will notify the City of any such modification within 15 days after said modification is made.

9.3. Graffiti Abatement

Licensee's repair and maintenance obligation includes the removal of any graffiti from the License Area within 48 hours after the City notifies Licensee.

9.4. Standard of Work

All work performed by or for Licensee under this Section 9.4 shall be: (1) at Licensee's sole cost and expense; (2) performed only qualified and trained persons and appropriately licensed contractors; (3) performed in a manner and with equipment and materials that will not interfere with or impair the City's operations; and (4) compliant with all applicable Laws; ~~and (5) performed solely by Licensee and not by Licensee's Invitees.~~

9.5. Inspections

At least once in every License Year, Licensee shall perform an inspection of all Equipment and, within 10 business days after the inspection, submit a written report to the City on the condition of such Equipment that includes, without limitation, any identified concerns and corrective action taken or planned to be taken. In the event that Licensee's inspection reveals any maintenance concerns in connection with any Pole or any other City Property, Licensee shall promptly notify the City. Licensee shall provide the City with at least 30 days' prior written notice before it commences any inspection. Licensee shall permit any City employee or third-party consultant to observe any inspection activities and may reasonable accommodations as needed to facilitate such observations; provided that any third-party consultant will be required to agree to a reasonable confidentiality agreement as may be requested by Licensee. In the event that Licensee, its Agents or Invitees notice any maintenance concerns with respect to any Pole or other City Property, Licensee shall promptly notify the City.

10. LIENS

Licensee shall keep the License Area free and clear from any and all liens in connection with any work performed, material furnished or obligations incurred by or for Licensee. Licensee shall inform each and every contractor and material supplier that provides any work, service, ~~equipment~~Equipment or material to Licensee in any way connected with Licensee's use of the License Area that the License Area is public property and is not

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

11. UTILITIES

Licensee shall be responsible to secure its own utility services for its Permitted Use, without installing an electric meter to the extent possible; provided, however that Licensee shall not be permitted to submeter from any electrical service provided to the City on any Pole. The City may, in its sole and absolute discretion, permit License to connect to or submeter from any electrical service provided to the City on any Pole not subject to a flat rate from the City's electrical service provider. Licensee shall ~~timely~~-pay when due all charges for all utilities furnished to ~~it~~the Equipment.

12. TAXES AND ASSESSMENTS

12.1. Possessory Interest Taxes

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

12.2. Licensee's Tax Obligations

Licensee agrees to timely pay ~~when due~~-(and in all cases 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~~the Equipment that may be imposed on Licensee under Law. Licensee shall not allow or suffer any lien for any taxes assessments, charges, excises or exactions whatsoever to be imposed on the License Area or ~~Licensee's~~the Equipment. In the event that the City receives any tax or

assessment notices on or in connection with the License Area or ~~Licensee's~~the Equipment, the City shall promptly (but in no event later than 30 calendar days after receipt) forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount attributable to ~~Licensee's~~the Equipment.

13. COMPLIANCE WITH LAWS

13.1. Compliance with Current and Future Laws

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

13.2. Licensee's Personnel

13.2.1. Personnel Training and Certification

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

13.2.2. Licensee's Indemnification for Personnel Injuries

Licensee acknowledges that (1) the City has delegated to Licensee control over the License Area at any time in which Licensee or its Agents are installing, operating or maintaining the Equipment; and (2) the City is not a co-employer of any employee of

Licensee or any employee of Licensee's Agents, and the City shall not be liable for any Claim by Licensee's or its Agent's employee(s-), except where such Claim is directly caused by the negligence or willful misconduct of the City, its Agents or Invitees. Licensee agrees to fully indemnify, defend and hold the City harmless in the same manner as provided in Section 18 (Licensee's Indemnification Obligations) against any Claim by any employee of Licensee or its Agents that ~~arises in connection with~~ is caused by Licensee's or its Agents' access, uses or other activities on or about the License Area.

13.3. Compliance with CPUC GO 95

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

13.4. Compliance with Building and Electric Codes

Licensee shall conduct all activities on the License Area in accordance with the requirements of the California Building Code, the California Electric Code, National Electric Safety Code IEEE C2 (the "NESC") and any applicable local building or electrical code, as those codes exist now or may be amended in the future. To the extent that CPUC General Order 95 does not address cellular telephone antenna installations on Poles carrying electrical lines, Licensee shall apply applicable provisions of the NESC, with particular attention to paragraphs 224, 235C, 235F, 238, 239 and 239H and sections 22, 41 and 44. Where any conflict exists between the California Building Code, the NESC, the California Electric Code, any local code and CPUC General Order 128, the more stringent requirements will apply, as determined by the City.

13.5. Compliance with RF Exposure Regulations

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

14. DAMAGE OR DESTRUCTION

14.1. City's Rights After Damage or Destruction

In the event the License Area in whole or in part becomes damaged due to any cause, the City (1) will have no obligation whatsoever to repair or replace the damaged License Area

or Licensee's Equipment, except to the extent where such damage is caused by the negligence or willful misconduct of the City or its Agents or Invitees; and (2) may, in the City's sole and absolute discretion, elect to take any of the following actions:

14.1.1. Election to Repair or Replace Damaged Pole

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

14.1.2. Election to Remove Damaged Pole

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

14.1.3. Election to Remove Equipment from Damaged Pole

If the acts of third parties or an act of nature or other force majeure circumstance outside the control of Licensee or its Agents or Invitees destroys or damages any Pole to such an extent that, in the City's reasonable determination after consultation with Licensee, the Equipment on the Pole cannot be operated, the City may decide to terminate the affected Pole License on ~~30~~60 days' notice to Licensee and require Licensee to remove the Equipment from the damaged Pole before the termination date specified in the City's notice. Notwithstanding anything in this Master License or any Pole License to contrary, the City will have the right to remove any damaged Pole when necessary to protect the public or property from imminent (whether threatened or actual) harm.

14.2. Licensee's Rights upon Termination

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

14.3. Waiver of Statutory Rights

The parties understand, acknowledge and agree that this Master License fully governs their rights and obligations in the event that any licensed Poles become damaged or destroyed, and, to the extent applicable, the City and Licensee each hereby waives and

releases the provisions in California Civil Code §§ 1932(2) and 1933(4) or any similar Laws.

15. CONDEMNATION

15.1. Permanent Takings

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

15.1.1. Termination

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

15.1.2. Award

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

15.1.3. No Statutory Right to Terminate

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

15.2. Temporary Takings

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

16. ASSIGNMENT AND OTHER TRANSFERS

16.1. General Restriction

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

16.2. Proposed Assignment Procedures

16.2.1. Proposed Assignment Notice

~~In Other than with respect to a Permitted Assignment, in~~ the event that Licensee desires to ~~Assign this assign~~ its interests or rights, whether in whole or in part, in connection with this Master License, any Pole License or the License Area, Licensee shall first send written notice (the **"Proposed Assignment Notice"**) to the City, which states in detail the proposed terms and conditions for the Assignment and complete financial information sufficient to show that the proposed assignee (the "Proposed Assignee") has a demonstrated ability to perform all the obligations of Licensee under this Master License and any Pole License issued hereunder. In addition, upon a written request from the City, Licensee or the Proposed Assignee shall provide additional information, which includes without limitation financial statements, business track records, references and other information about ~~the proposed assignee (the "Proposed Assignee")~~ that the City reasonably requires to fully evaluate Licensee's request and render an informed decision. In the event that Licensee does not provide all the such information simultaneously with the Proposed Assignment Notice, the Proposed Assignment Notice shall not be deemed effective until Licensee delivers all such information as the City may reasonably require.

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16.2.2. City Response

The City shall approve or disapprove any request for consent to an Assignment within 30 days after the City receives a complete Proposed Assignment Notice, or 30 days after the deemed-effective date if Licensee delivers an incomplete Proposed Assignment Notice as described in Section 16.2.1 (Proposed Assignment Notice) (in either case, the **"Assignment Response Period"**). The City shall not unreasonably withhold approval if the proposed assignee has a demonstrated ability to perform all the obligations of Licensee under this Master License and any Pole License issued hereunder. If the City fails to respond within the Assignment Response Period, the request for consent will be deemed ~~disapproved~~ approved. If the City delivers to Licensee written consent to the proposed Assignment, then Licensee shall have 100 days from such written consent to complete the Assignment. The City's consent will be deemed revoked if Licensee fails to

complete the proposed Assignment within the 100-day period; provided, however, that the 100-day period may be extended to a date certain in a written agreement, which the City shall not unreasonably refuse. ~~As a condition on the City's consent, Licensee shall pay to the City fifty percent (50%) the amount by which any consideration paid to Licensee by the Assignee exceeds the aggregate sum of all Licensee Fees and Additional Fees that remain payable under the assigned Pole Licenses within 10 days after Licensee receives payment from the Assignee.~~ The parties agree and acknowledge that, notwithstanding anything in this Master License to the contrary, certain Equipment deployed by Licensee in the Rights-of-Way pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Equipment shall be treated as Licensee's Equipment for all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such Equipment; (ii) Licensor's sole point of contact regarding such Equipment shall be Licensee; (iii) Licensee shall have the right to remove and relocate the Equipment; and (iv) such use by Licensee or Carriers does not involve any physical changes to the Equipment other than changes permitted under Section 9.3.2 (Modifications).

16.3. Permitted Assignments

16.3.1. Definition

The City agrees that Licensee will be permitted to enter into an Assignment of this Master License and Pole Licenses issued under it (a "**Permitted Assignment**"), without the City's prior consent but with notice to the City as provided below, to: (i) Licensee's parent; (ii) ~~a~~ Licensee's subsidiary; (iii) an entity that acquires all or substantially all of ~~Licensee's~~ Licensee's assets in the market in which the License Area is located (as the market is defined by the FCC under an order or directive of the FCC); (iv) an entity that acquires Licensee by a change of stock ownership or partnership interest; or (v) an entity that Controls Licensee, is Controlled by Licensee or that, with Licensee, is under the Common Control of a third party.

16.3.2. Conditions

A Permitted Assignment is subject to all the following conditions: (a) ~~The~~ the Assignee uses the License Area only for the Permitted Use and holds all Regulatory Approvals necessary to lawfully install, operate, and maintain Equipment on the License Area; (b) Licensee provides the City with notice 30 days before the effective date of Permitted Assignment, stating the contact information for the proposed Assignee and providing financial information establishing that the proposed Assignee has meets the ~~capital and fiscal~~ qualifications greater than or equal to Licensee's stated in Section 16.3.1; and (c) Licensee is in good standing under this Master License.

16.4. Effect of Assignment

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

16.5. Assumption by Transferee

Each Assignee shall assume all obligations of Licensee under this Master License and each assigned Pole License and will be and remain liable jointly and severally with Licensee for all obligations to be performed by Licensee. until and unless the Assignee signs a written agreement, in a form reasonably acceptable to the City, to unconditionally assume all Licensee's obligations under this Master License and any Pole License issued hereunder. No Assignment will be binding on the City unless Licensee or the Assignee delivers to the City evidence reasonably satisfactory to the City that the Assignee has obtained all required Regulatory Approvals ~~required necessary~~ to operate ~~as a wireless telecommunications service provider on the assigned License Area~~Equipment, a copy of the Assignment agreement (or other document reasonably satisfactory to the City in the event of a Permitted Assignment under Section 16.3 (Permitted Assignments)), and an instrument in recordable form that contains a covenant of assumption by such Assignee satisfactory in substance and form to the City, consistent with the requirements of this Article. However, the failure or refusal of an Assignee to execute such instrument of assumption will not release such Assignee from its liability as set forth in this Section. Except for a Permitted Assignment as provided in Section 16.3 (Permitted Assignments), Licensee shall reimburse the City on demand for any reasonable costs that the City incurs in connection with any proposed Assignment, including the costs of investigating the acceptability of the proposed Assignee and legal costs incurred in connection with considering any requested consent. The City agrees that its right to reimbursement under this Section during the Term will be limited to ~~Insert amount~~Two Thousand and ~~00/100 Dollars (\$Insert amount)~~2,000 for each request.

17. DEFAULT

17.1. Events of Default by Licensee

Any of the following will constitute an event of default ~~by Licensee~~ under this Master License and any Pole Licenses issued under it: (1) Licensee fails to pay any ~~sums~~License Fee or Additional Fees as and when due ~~to, if the City with failure continues for~~ 10 days after notice from the City; (2) Licensee fails to perform or comply with any other material

obligation or representation made under this Master License, if the failure continues for 30 days after the date of notice from the City, or, if such default is not capable of cure within the 30-day period, Licensee fails to promptly undertake action to cure such default within such 30-day period and thereafter fails to use its best efforts to complete such cure within 60 days after the City's notice; (3) Licensee, except where otherwise permitted under this Master License, removes ~~its~~the Equipment or abandons the License Area for a continuous period of more than 60 days, such that the License Area is no longer being used for the Permitted Use; or (4) any of the following occurs: (i) the appointment of a receiver due to Licensee's insolvency to take possession of all or substantially all of the assets of Licensee; (ii) an assignment by Licensee for the benefit of creditors; or (iii) any action taken by or against Licensee under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief Laws, if any such receiver, assignment, or action is not released, discharged, dismissed, or vacated within 60 days.

17.2. City's Remedies

In addition to all other rights and remedies available to the City at law or in equity, the City will have the following remedies following the occurrence of an event of default by Licensee.

17.2.1. License Continuation

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

17.2.2. Pole License Termination

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

17.2.3. Master License Termination

If Licensee's default is of such a serious nature in the City's ~~sole judgment that the default materially affects the purposes of this Master License, the City may terminate this Master License in whole or in part.~~reasonable judgment that the default threatens public health or safety on a majority of the Poles licensed to Licensee, and the default or threatened danger to the public is likely to occur again in the future such that the City's Poles are no longer appropriate support structures for the Equipment or the Permitted Use, the City may terminate this Master License in whole or in part. Examples of reasons for termination may include, but are not limited to, malfunctions in the City's streetlights caused by or attributable to the Equipment and/or structural damage caused to the Poles such that the Poles would need to be replaced to be deemed safe. Termination of this Master License in whole will terminate all Pole Licenses issued under it automatically and

without the need for any further action by the City. In either case, the City will deliver notice to Licensee providing 30-days' notice of termination and specify the reason or reasons for the termination and whether the termination affects the entire Master License or only certain Pole Licenses in the notice. The City will specify the amount of time Licensee will have to remove ~~its~~the Equipment from any affected City Pole, which will be at least ~~3060~~ days after the date of the City's notice ~~for up to 50% of licensed City Poles and an additional 30 days for more than 51% of licensed City Poles.~~ If Licensee does not remove ~~its~~the Equipment within the specified period, the City will be entitled to remove ~~Licensee's~~the Equipment from the City Pole. The City will have the right to make any terminated portion of the License Area available for license to other parties as of the effective date of the termination, even if ~~Licensee's~~the Equipment is still on the Pole.

17.2.4. Default Fees

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

17.3. Licensee's Remedies

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

~~17.4.~~ Cumulative Rights and Remedies

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

18. LICENSEE'S INDEMNIFICATION OBLIGATIONS

Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the City, its Agents, Invitees and their respective heirs, legal representatives, successors and assigns (the “**Indemnified Parties**”), harmless from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, whether direct or indirect (each a “**Claim**”), incurred in connection with or arising in whole or in part from: (1) death or personal injury to any person or property damage or other loss that occurred on or about the License Area ~~or arises in connection with~~ caused by Licensee’s or its Agents’ or Invitees’ authorized or unauthorized uses on or about the License Area ~~in breach of this Master License~~; (2) any failure or refusal by Licensee to observe or perform any term, covenant or condition in this Master License to be observed or performed on Licensee’s part; (3) Licensee’s or its Agents’ or Invitees’ uses or occupancy, or manner of use or occupancy, of the License Area; (4) any exposure to RF emissions or EMFs from ~~Licensee’s~~ the Equipment ~~or uses~~ on or about the License Area; (5) the License Area condition or any occurrence on or about the License Area ~~attributable to~~ caused by the events described in clauses (1), (2), (3) or (4) in this Section 18; or (6) any act, omission or negligence of Licensee, its Agents or Invitees in, on or about the License Area; all whether ~~any negligence may be attributed to the Indemnified Parties or not, and all whether~~ liability without fault is imposed or sought to be imposed on the Indemnified Parties, ~~but except to the extent. In no event shall Licensee have any obligations under this Section 18 with respect to any Claim that such Claim(s) arise~~ arises from the Indemnified Parties’ willful misconduct or ~~gross~~ negligence. Licensee’s obligations under this Section 18 ~~includes~~ include, without limitation, reasonable fees, costs and expenses for attorneys, consultants and experts, ~~and the City’s costs to investigate any Claim~~. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim that actually or potentially falls within this Section 18, even when the allegations in such Claim are groundless, fraudulent or false, and which obligation arises at the time the Indemnified Parties tender such Claim to Licensee and continues at all times until such Claim’s final resolution. Licensee’s obligations under this Section 18 will survive the expiration or termination of this Master License.

19. INSURANCE

19.1. Licensee’s Insurance

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

19.1.1. Required Coverages

Licensee shall procure and keep in effect at all times during the Term, at Licensee’s cost, insurance in the following amounts and coverages: (1) Commercial General Liability insurance (including premises operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability; independent contractors; personal injury) with limits of at least \$2 million combined single

limit for each occurrence; (2) Worker's Compensation Insurance per California statutory limits with Employer's Liability Limits not less than \$1 million each accident or disease; (3) Commercial Automobile Liability Insurance with limit not less than \$2 million each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles.

19.1.2. Required Endorsements

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

19.1.3. Cancellation Notices

All insurance policies required to be maintained by Licensee under this Master License shall be endorsed to provide written notice of cancellation for any reason, including without limitation intent not to renew or reduce coverage to both Licensee and the City. In the event that Licensee receives a notice of intent to cancel or notice of cancellation for any coverage required under this Master License, Licensee shall forward such notice to the City within one business day and promptly take action to prevent cancellation, reinstate cancelled coverage or obtain coverage from a different insurer qualified under Section 19.1.7 (Insurer Qualifications).

19.1.4. Claims-Made Policies

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

19.1.5. General Aggregate Limit

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

19.1.6. Certificates

On or before the Effective Date, Licensee shall deliver to the City all insurance certificates and additional insured endorsements from Licensee's insurance providers in a form satisfactory to the City that evidences all the required coverages under this Master License, together with complete copies of all policies. In addition, Licensee shall promptly deliver to the City all certificates and policies after Licensee receives a request from the City.

19.1.7. Insurer Qualifications

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

19.1.8. Effective Dates

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

19.1.9. Licensee's Self-Insurance Alternative

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

19.1.10. No Limitation on Indemnification Obligations

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

~~19.1.11. Right to Terminate~~

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

19.2. City's Insurance

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

19.3. Subrogation Waiver

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

19.4. Contractors' Bonds and Insurance

Licensee shall require its contractors that install, maintain, repair, replace or otherwise perform any work on or about the License Area: (1) to provide bonds to guarantee the performance of the work and the payment of subcontractors and suppliers for any installation of Equipment, and (2) to have and maintain insurance of the same coverage and amounts as required of Licensee.

20. LIMITATIONS ON THE CITY'S LIABILITY

20.1. General Limitations on the City's Liability

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

20.2. Consequential Damages

Licensee expressly acknowledges and agrees that the License Fees and Additional Fees payable under this Master License do not take into account any potential liability of the City for consequential or incidental damages. The City would not be willing to enter into

this Master License or issue any Pole Licenses in the absence of a complete waiver of liability, to the fullest extent permitted by Law, for consequential or incidental damages due to the acts or omissions of the City or its Agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Licensee or other waivers contained in this Master License and as a material part of the consideration for this Master License, ~~Licensee fully releases, waives and discharges forever any and all Claims against the City for consequential and incidental damages arising out of this Master License or any Pole License, including lost profits arising from the disruption to Equipment, any interference with uses conducted by Licensee under this Master License and Pole Licenses, regardless of the cause, and whether or not due to the active or passive negligence or willful misconduct of the City or its Agents, and covenants not to sue for such damages the City, and the City's other departments, and all City agencies, officers, directors and employees, and all persons acting by, through or under each of them~~ the parties agree that neither party will be liable to the other in connection with this Master License or any Pole License for any consequential, special, indirect or incidental or punitive damages (including lost revenues, loss of equipment, interference, interruption or loss of service, or loss of data, inconvenience, disturbance, lost business, nuisance or other damages) 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.

20.3. No Relocation Assistance

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

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

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

20.5. Licensee's Waiver

Licensee acknowledges the City's rights under this Section and waives any Claims arising from the City's exercise of ~~theirsuch~~ rights. In connection with the ~~preceding sentence and~~ releases and waivers under Section ~~8.1 (City's Access to~~

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

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

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

21. RECORDS

21.1. Accounting Records

Licensee shall maintain throughout the Term and for at least ~~four~~three years after this Master ~~Agreement~~License expires or terminates the following records in physical format at Licensee's place of business within the ~~Bay Area~~State of California and in an electronic format: (1) site identification and location for all Poles under active Pole Licenses; (2) the amount and payment date for all License Fees paid to the City pursuant to this Master License; (3) all Regulatory Approvals issued in connection with the Equipment on Poles; and (4) all correspondence with the City in connection with any matter covered under this Master License. The City, or its designee, will have the right to inspect and audit Licensee's records at Licensee's place of business during regular business hours on 10 days' notice to Licensee, provided, however, that said inspection and audit shall not occur more than once every calendar year.

21.2. Estoppel Certificates

Licensee, at any time and from time-to-time on not less than 30 days' notice from the City, shall execute, acknowledge and deliver to the City or its designee, a certificate of Licensee stating: (a) that Licensee has accepted the License Area (or, if Licensee has not done so, that Licensee has not accepted all or any part of the License Area and specifying the applicable portions of the License Area and reasons for non-acceptance); (b) the

Commencement Dates of any Pole Licenses then in effect; (c) the Effective Date and Expiration Date of this Master License; (d) that this Master License and Pole Licenses are unmodified and in full force and effect or, if modified, the manner in which they are modified; (e) whether any defenses then exist against the enforcement of any of Licensee's obligations under this Master License (and if so, specifying the same); (f) whether any of the City's obligations under this Master License are outstanding (and if so, identifying any City obligations that Licensee believes that the City has failed to meet); ~~(g) the dates, if any, to which the License Fees and Additional Fees have been paid; and (h) any other information that may be reasonably required by any such persons.)~~

22. RULES AND REGULATIONS

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

23. ~~SECURITY DEPOSITS~~SURETY BOND

23.1. ~~Provision of Surety Bond~~Amount

~~At the time~~The City may require Licensee tenders to the City the first Acknowledgement Letter, Licensee must also tender to the City for deposit/furnish a sum equal to ~~[insert surety bond in the amount]~~ of **Seventy-Five Thousand and 00/100 Dollars** ~~(\$[insert amount])~~ **(\$75,000.00)** (the "**Surety Bond**") as security to provide recourse for the City (at its option) in the event of a default in the "**Security Deposit**") to secure Licensee's faithful performance of all terms, covenants and conditions in any of Licensee's obligations under this Master License. Such bond shall be with a company and in a form and ~~any Pole License~~amount reasonably satisfactory to the City Manager and the City Attorney.

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23.2. ~~Further Deposits~~Replenishment of Surety Bond

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

23.3. Application

Licensee agrees that the City may use the ~~Security Deposit~~Surety Bond in whole or in part to remedy any damage to the License Area caused by Licensee, its Agents or Invitees or any failure by Licensee to perform any term, covenant or condition in this Master License or any Pole License (including without limitation any failure to pay any

License Fee or other sums due under this Master License or any Pole License either before or after any default). In the event that the City uses the ~~Security Deposit~~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 section 1950.7 or any similar Law and agrees that the City may retain from the ~~Security Deposit~~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. ~~The City's obligations with respect to the Security Deposit shall be in the nature of a debtor, and the City shall not be deemed to hold the Security Deposit in trust for any reason. The City may (but shall not be obligated to) keep the Security Deposit separate from general funds. Licensee shall not be entitled to any interest on the Security Deposit.~~

24. SURRENDER OF LICENSE AREA

24.1. Surrender

No later than 3060 days after the Expiration Date or other termination of this Master License or any Pole License, Licensee shall, ~~at its sole cost and expense~~, peaceably remove ~~its~~the Equipment from the applicable portion of the License Area ~~(except for any fiber optic cable to which the City will obtain title under Section 7.8 (Title to Equipment and Other Improvements))~~, repair any damages caused by the removal work and surrender ~~it~~ the applicable portion of the License Area to the City in good order and condition, normal wear and tear and casualty excepted, free of debris and hazards, and free and clear of all liens and encumbrances. ~~Immediately before the Expiration Date or other termination of this Master License, Licensee shall, at its sole cost and expense, remove all of Licensee's Equipment except for any fiber optic cable to which the City will obtain title under Section 7.8 (Title to Licensee's Equipment and Other Improvements) and repair any damage to the License Area and any City facilities resulting from the installation or removal of Licensee's Equipment.~~ Licensee's obligations under this Section 24.1 will survive the Expiration Date or other termination of this Master License.

24.2. Abandonment

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

24.3. Holding Over

Any holding over after the Expiration Date with the express consent of the City will be construed to automatically extend the Term of this Master License for a period of one License Year at a License Fee equal to 150% of the License Fee in effect immediately before the Expiration Date, and the Master License otherwise will be on its express terms and conditions.

Any holding over without the City's consent will be a default by Licensee and entitle the City to exercise any or all of its remedies, even if the City elects to accept one or more payments of License Fees, Additional Fees or other amounts payable to the City from Licensee after the Expiration Date.

25. HAZARDOUS MATERIALS

25.1. Hazardous Materials in License Area

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

25.2. Licensee's Environmental Indemnity

If Licensee breaches any of its obligations contained in this Section ~~25~~, or if any act, omission, or negligence of Licensee or any of its Agents or Invitees results in any contamination of the License Area or other City Property, or in a Release of Hazardous Material from, on, about, in or beneath any part of the License Area or other City Property, or the violation of any Environmental Law, then Licensee, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless the City, including its Agents, and their respective successors and assigns from and against any and all Claims (including damages for decrease in value of the License Area or other City Property, the loss or restriction of the use of usable space in the License Area or other City Property and sums paid in settlement of Claims, attorneys' fees, consultants' fees, and experts' fees and related costs) arising during or after the Term of this Master License relating to such Release or violation of Environmental Laws; provided, however, Licensee shall not be liable for any Claims to the extent such Release was caused by the gross negligence or willful misconduct of the City or its Agents. Licensee's Indemnification obligation includes costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought onto the License Area or other City Property by Licensee or any of its Agents or Invitees and to restore the License Area or other City

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

26. TERMINATION

26.1. Termination for Failure to Obtain Regulatory Approvals

In the event that Licensee cannot obtain all Regulatory Approvals required for any Pole License after one year from the subject Pole License effective date, then either the City or Licensee may terminate that Pole License on 60 days' notice to the other party delivered within 10 days after the first anniversary of that Pole License's effective date. The parties agree that the Commencement Date will be deemed to have not occurred for any Pole License terminated under this ~~Section 26.1~~section, and Licensee will have no obligation to pay the applicable License Fee for that Pole License.

26.2. Licensee's Termination Rights

26.2.1. Master License Termination Rights

Licensee may, in Licensee's sole discretion, terminate this Master License on one year's written notice to the City at any time after the Effective Date, or upon any uncured breach of this Master License by the City.

26.2.2. Pole License Termination Rights

Licensee may, in Licensee's sole discretion, terminate any Pole License on ~~90~~30 days' written notice to the City at any time ~~after 12 months from the subject Pole~~without any further liability for any License ~~Commencement Date~~Fees attributable to the subject Pole License so long as Licensee is not in default with respect to the subject Pole License.

provided, however, that Licensee shall not be entitled to a refund of any Pole License Fee it has paid for the year in which said termination occurs.

26.2.3. Termination Rights after Pole Replacement

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

26.3. City's Absolute Right to Terminate Pole Licenses

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

26.4. Licensee's Rights after Termination

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

27. INTERFERENCE

27.1. ~~Licensee's~~ Obligation Not to Cause Interference

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

against Licensee to enjoin such interference or to terminate all Pole Licenses where the Equipment is causing interference or impairment, at the City's election. Notwithstanding any other provision of this Master License, City agrees that City and/or any other user, tenant or licensee of a License Area shall be permitted to install only such equipment that is of the type and frequency which will not cause interference to the Equipment. The parties acknowledge that there will not be an adequate remedy at law for noncompliance with the previous sentence, and, therefore, Licensee shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

27.2. Impairment Caused by Change in City Use

Subject to City's obligations under Section 27.1 of this Master License, if any change in the nature of the ~~City's~~City's use of the License Area during the Term results in measurable material adverse impairment to Licensee's normal operation of ~~the~~ Equipment making it necessary to alter the Equipment to mitigate the adverse effect, Licensee shall notify the City and provide evidence of the claimed impairment. Upon receipt of such notice, the City will have the right to make its own reasonable determination and, if it agrees with Licensee, investigate whether it can reasonably and economically mitigate that interference. The City will provide notice to Licensee of the City's determination- within 15 days of receiving Licensee's notice hereunder.

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

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

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

27.3. Impairment Caused by City Access

Licensee agrees that it will not be entitled to any abatement of License Fees if the City exercises its rights of access under Section 8.1 (~~City's~~City Access to License Area)

unless the City's activities cause Licensee to be unable to operate Equipment on the License Area for its permitted use for a period of more than 10 days, in which case, subject to proof, License Fees will be abated ratably for the entire period that Licensee is unable to operate any Equipment on any affected City Pole.

28. MISCELLANEOUS PROVISIONS

28.1. Notices

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

TO CITY:

Telephone: *[insert]*

Facsimile: *[insert]*

Email: *[insert]*

with a copy to:

Telephone: *[insert]*

Facsimile: *[insert]*

Email: *[insert]*

TO LICENSEE:

Telephone: *[insert]*

Facsimile: *[insert]*

Email: *[insert]*

with a copy to:

Telephone: *[insert]*

Facsimile: *[insert]*

Email: *[insert]*

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

28.2. Waiver; No Implied Waivers

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

28.3. Amendments

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

28.4. Interpretation

The following rules of interpretation apply to this Master License.

28.4.1. General

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

28.4.2. Joint and Several Liability

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

28.4.3. Captions

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

28.4.4. City Actions

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

28.4.5. Words of Inclusion

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

28.4.6. Laws

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

28.5. Successors and Assigns

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

28.6. Brokers

Neither party has had any contact or dealings regarding the license of the License Area, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the license contemplated herein ("**Broker**"), whose commission, if any is due, is to be paid pursuant to a separate written agreement between such Broker and the party through which such Broker contracted. In the event that any Broker perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, Licensee shall indemnify the City from all Claims brought by the Broker. This Section ~~28.6~~ will survive expiration or earlier termination of this Master License.

28.7. Severability

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

28.8. Governing Law; Venue

This Master License must be construed and enforced in accordance with the laws of the State of California and the City Charter, without regard to the principles of conflicts of law. This Master License is made, entered and will be performed in the City of Concord, County of Contra Costa, State of California. Any action concerning this Master License must be brought and heard in Superior Court for the County of Contra Costa.

28.9. Attorneys' Fees

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

28.10. Time for Performance

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

28.11. Survival

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

28.12. Recording

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

28.13. Counterparts

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

28.14. Approval Authority

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

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

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

THE CITY:

City of Concord,
a California municipal corporation

By: _____

Its: City Manager

Date: _____

LICENSEE:

[insert licensee name],
a [insert licensee's corporate form]

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

[name]
City Attorney

Date: _____

APPROVED BY CITY COUNCIL
RESOLUTION ~~No~~NO. [insert]

ATTEST:

By: _____

[name]
City Clerk

Date: _____

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

EXHIBIT A

FORM OF POLE LICENSE AGREEMENT

POLE LICENSE NO. [INSERT NUMBER IN CONSECUTIVE ORDER]

Pursuant to that certain Master License between the City of Concord, a California municipal corporation (the "City") and [insert licensee's corporate form name], a [insert licensee's corporate form] ("Licensee"), Licensee submits to the City two partially executed counterparts of this Pole License, together with all the following materials listed below, as its Pole License Application in accordance with Section 6 (Pole Licenses) under the Master License:

1. Exhibit A-1, which designates all Pole Locations that Licensee seeks to be included in the License Area under this Pole License;
2. Exhibit A-2, which includes complete, detailed and final plans and specifications for all ~~Licensee's~~ Equipment to be installed in the License Area, subject to Regulatory Approvals;
3. an Administrative Fee equal to [insert amount] \$500 multiplied by number of pole locations];
4. an RF Compliance Report, if not previously provided;

Licensee acknowledges that: (1) this Pole License will not be effective until the City returns a fully executed copy to Licensee; (2) the City may require Licensee to supplement the Administrative Fee on conditions specified in Section 4.23 under the Master License; (3) Licensee will not have the right to access or install Equipment on the License Area until after Licensee has: (a) submitted a complete Acknowledgment Letter to the City with all information and funds required, ~~which includes the applicable License Fee specified in Schedule A-4~~; (b) submitted insurance information to the City as specified in Exhibit A-3; and (c) the City has provided notice to proceed by returning to Licensee a countersigned copy of the Acknowledgment Letter.

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

THE CITY:

City of Concord,
a California municipal corporation

By: _____

LICENSEE:

[insert licensee name],
a [insert licensee's corporate form]

By: _____

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~~DRAFT FOR DISCUSSION PURPOSES ONLY~~
~~CONFIDENTIAL ATTORNEY WORK PRODUCT~~

Its: _____

Its: _____

Date: _____

Date: _____

DRAFT

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EXHIBIT A-1

POLE LOCATIONS / LICENSE AREA

Pole License No.

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

| _____

EXHIBIT A-2

LICENSEE'S PLANS AND SPECIFICATIONS

Pole License No. [REDACTED]

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

EXHIBIT A-3

FORM OF ACKNOWLEDGEMENT LETTER

[Licensee to complete and submit with Pole License Application]

[insert date]

[insert addressee information]

RE: Pole License No. []

Dear City Manager:

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

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

[insert name]

[insert title]

Enc.

- [] [insert all required Regulatory Approvals]
- [] Insurance certificates
- [] Contractor's bonds and insurance certificates
- [] ~~Security Deposit~~
- [] First License Year's License Fee

SCHEDULE A-4

LICENSE FEE AND DEFAULT FEE SCHEDULE

Pole License No.

LICENSE FEE SCHEDULE	
annual License Fee per City Pole	<u>Amount</u> amount
2017	\$[insert amount] \$2,000
2018	\$[insert amount] \$2,060
2019	\$[insert amount] \$2,121.8 0
2020	\$[insert amount] \$2,185.4 5
2021	\$[insert amount] \$2,251.0 2
2022	\$[insert amount] \$2,318.5 5
2023	\$[insert amount] \$2388.1 1
2024	\$[insert amount] \$2,459.7 5
2025	\$[insert amount] \$2,533.5 4
2026	\$[insert amount] \$2,609.5 5
2027	\$[insert amount] \$2,687.8 3

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DEFAULT FEE SCHEDULE		
VIOLATION	INITIAL NOTICE	EACH FOLLOW-UP

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		NOTICE
unauthorized installations	\$350	\$400
failure to make required repairs	\$300	\$350
access violations	\$300	\$350
insurance violations	\$300	\$350

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EXHIBIT B

DESIGN GUIDELINES PRE-APPROVED DESIGN

[City to insert Design Guidelines that include detailed equipment specifications
and drawings in this Exhibit B]

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MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

May 5, 2017

VIA EMAIL

Afshan Hamid
Senior Planner
Planning Division
City of Concord
1950 Parkside Drive
Concord, California 94519

Re: Draft Wireless Communications Facilities Ordinance and Draft Master License Agreement for Wireless Facilities on City Poles in the Right-of-Way

Dear Afshan:

We write on behalf of Verizon Wireless regarding the draft wireless communications facilities ordinance (the “Draft Ordinance”) and draft master license agreement (the “Draft MLA”) to be discussed at a City meeting on May 8, 2017. Verizon Wireless appreciates the invitation to participate in development of the Draft Ordinance and Draft MLA. We provide initial comments on the Draft Ordinance, including suggestions to streamline permitting of right-of-way facilities and remove conflicts with state and federal law such as RF compliance requirements and procedures for eligible facilities requests. We also briefly comment on provisions of the Draft MLA regarding design standards and permit requirements.

As acknowledged in the Draft MLA, wireless carriers have developed new “small cell” facilities that provide needed network capacity to targeted areas with minimal visual impact. The City can encourage small cells in the right-of-way through processing as an encroachment permit, with referral by Public Works to the Planning Department for review under objective aesthetic criteria. Design standards for right-of-way facilities should also accommodate small cell equipment on poles, and Verizon Wireless can advise the City regarding reasonable design standards for the Draft Ordinance and the Draft MLA.

Our specific comments on the Draft Ordinance and Draft MLA are as follows:

CHAPTER 18.205 – NEW AND SUBSTANTIALLY CHANGED WIRELESS FACILITIES

§18.205.040 – Approvals Required

Right-of-Way Facilities

The Draft Ordinance requires either a Planning Division administrative permit or minor use permit for wireless facilities in the right-of-way, however, the Planning Division should not be issuing permits for right-of-way facilities. As we explain, right-of-way facilities should be approved through an encroachment permit issued by the Public Works Department.

For facilities installed pursuant to a master license agreement, the Draft MLA and individual pole license agreements will provide the City with ample review for conformance with development standards, and an encroachment permit would ensure conformance with Public Works requirements. Public Works may wish to refer encroachment permit applications to the Planning Division to ensure they conform to design guidelines referenced in Draft MLA Section 6.2 that are yet to be developed.

For facilities on joint utility poles and other right-of-way structures, the City should not require a use permit because Verizon Wireless's use of the right-of-way is already authorized under California Public Utilities Code §7901. The City may exercise limited aesthetic review of right-of-way facilities, and we suggest that the City consider the example of San Francisco where the Department of Public Works permits right-of-way wireless facilities, referring applications to Planning Department staff for review and recommendation under objective aesthetic standards. *See* San Francisco Public Works Code Article 25.

§18.205.050 – Application Requirements

(B) Application Content

2. Title Report

Title reports provide numerous details unrelated to findings and standards for approval of wireless facilities, which occupy only a small area of a parcel. Title reports would include irrelevant covenants or easements elsewhere on a property. Site plans required under Draft Ordinance Section 18.205.050(B)(6) would depict property lines and relevant utility and access easements. This requirement should allow applicants to submit other types of evidence of current property ownership.

9. RF Compliance Demonstration

Any requirement that RF compliance reports account for cumulative emissions from “other transmitters in the area” must not exceed requirements in FCC guidelines for calculation of exposure.

This provision requires a statement of compliance with FCC exposure standards under penalty of perjury that is inappropriate and impossible to obtain. Registered engineers certify maximum calculated exposure based upon formulas provided by the FCC. After making the calculations, no engineer supplying the FCC compliance report will have control over how a facility is built and operated, and none can provide the requested certification under penalty of perjury simply due to the fact that such information is unavailable at the time the engineer is asked to make the sworn statement. The FCC has jurisdiction over matters related to RF compliance, and this requirement exceeds the City’s authority. The requirement for an affirmation under penalty of perjury should be stricken.

11. Project Purpose Statement

The City cannot require Verizon Wireless to demonstrate the need for right-of-way facilities through a description of technical objectives and propagation maps because Verizon Wireless’s use of the right-of-way is authorized by Public Utilities Code §7901. Established case law confirms Verizon Wireless’s right to use the right-of-way without demonstration of need. Most recently, a California appellate court affirmed that a local jurisdiction cannot condition issuance of a permit for a wireless facility in the right-of-way on technological necessity. *See T-Mobile West LLC v. City and County of San Francisco*, 3 Cal.App 5th 334, 342-343 (Cal. App. 2016). This requirement should be revised to exempt right-of-way facilities.

12. Alternatives Analysis

There is no reason to require applicants to review alternatives to collocations, fully-concealed facilities that pose no land use impacts or facilities in most-preferred locations. Such facilities are not intrusive by design and should be encouraged with no requirement to explain how they constitute the best placement. This submittal requirement should be revised to include an exception for collocations, fully-concealed facilities and facilities in the most-preferred locations specified in Draft Ordinance §18.205.090(A).

With respect to right-of-way facilities, an alternatives analysis should not be required for facilities placed on City property pursuant to a license agreement.

12. Materials Samples

Certain wireless facilities—particularly small cells in the right-of-way—involve only small equipment components that require no concealment measures as they pose minimal visual impacts. This provision should be revised to allow staff to waive the materials sample requirement for such installations.

(C) Procedures for a Duly-Filed Application

1. Pre-Submittal Conference
2. Submittal Appointment
3. Appointment Scheduling Procedures

While Verizon Wireless appreciates the option for a pre-application meeting for certain applications, any required pre-submittal appointments and the application appointment requirement are inconsistent with procedures outlined in a recent FCC order. *See In Re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Etc.*, FCC 14-153 (FCC October 17, 2014) (the “Spectrum Act Order”). The Spectrum Act Order stipulates that the time period for review of wireless facility applications commences when an application is first filed. *See* Spectrum Act Order ¶258. The FCC “Shot Clock” time period for review of wireless facility applications incorporates an initial 30-day review period during which the City may issue a notice of incomplete application that will halt the Shot Clock until an applicant responds. Appointment requirements may delay for over three weeks applications that could otherwise be filed on a walk-in basis, particularly given the unreasonable timeframe of five to 15 working days for applicants to wait for appointments. At a minimum, appointments must be available on a daily basis.

(E) Applications Deemed Withdrawn

The Spectrum Act Order does not allow a local jurisdiction to terminate an application while the time period for review is tolled pending an applicant’s response to a request for information. Indeed, the Spectrum Act Order plainly states that “The shot clock will begin running again after the applicant makes a supplemental submission.” *See* Spectrum Act Order ¶259. This provision terminating applications after 180 days with no response is in direct conflict with federal regulation and should be stricken, even though there is a provision for limited further tolling (at the sole discretion of the Planning Division). At a minimum, notice should be provided before an application, paid for by the applicant, is closed.

§18.205.070 – Decisions

(A) Required Findings for Approval

As noted above, an alternatives review should not be required for collocations, fully-concealed facilities and facilities in most-preferred locations. Accordingly, Findings (4) and (5) related to alternatives should not apply to such facilities.

§18.205.080 – Standard Conditions of Approval

(N) Permit Renewal

Renewal applications should be processed administratively for facilities that have operated without complaint during their prior term, including legal non-conforming facilities. In accordance with California Government Code Section 65964(b), renewals should be granted in 10-year increments.

§18.205.090 – Site Location Guidelines

(A) Preferred Locations

(B) Discouraged Locations

While the City can offer its own assets to interested carriers, this provision favoring City-owned parcels over all other locations is inconsistent with California Government Code Section 65964(c) which bars the City from limiting wireless facilities to sites owned by particular parties. Items 1 and 2 of this list of preferred locations should be stricken. The City may incentivize wireless carriers to use its assets by offering reasonable terms in the Draft MLA.

We suggest that the list of more-preferred areas should include residentially-zoned parcels with only an established non-residential use. This would capture such facilities as churches which are ideal structures for camouflaged or concealed wireless facilities.

§18.205.100 – Development Standards

(A) Generally Applicable Development Standards

(2) Overall Height

Limiting wireless facilities to zoning district height limits restricts their coverage footprint and leads to the unintended consequence of more facilities overall to achieve service objectives. Rooftop antennas must be able to propagate signal over building parapets. At a minimum, a height exception of 10 feet should be allowed for fully-

Page 6 of 10

concealed facilities, rooftop facilities with minimal visual impacts and right-of-way facilities with small antennas mounted to the tops of poles. Alternately, a height exception approved by the approval authority should be allowed where required for a wireless carrier to meet coverage objectives.

(7) Backup Power Sources

The City should encourage backup power sources (batteries) for right-of-way facilities in order to guarantee continued wireless service during emergencies when it is needed most. The ban on generators within 250 feet of any residence is unnecessary as wireless facility generators are not a principal power source; rather, they provide continued service during power outages or emergencies and are routinely operated only twice per month for 20 minutes during a weekday for testing purposes. This provision should be revised to allow the approval authority to permit generators and other backup power sources for facilities in any location.

(11) Utilities

Undergrounding of new utility runs is unwarranted where short extensions of existing aerial utilities pose minimal visual impacts. This provision should be stricken.

(D) Right-of-Way Wireless Facilities

Many new right-of-way wireless facilities, particularly small cell facilities that provide network capacity in high-usage areas, involve only small equipment boxes developed by carriers with an aim to minimize visibility. Rather than requiring undergrounding, the City should favor such deployments and accommodate small pole-mounted boxes subject to reasonable standards such as rotation away from sightlines, painting to match pole color and concealment behind existing signage where available. The Draft MLA contemplates pole-mounted equipment for facilities on City-owned poles, suggesting that the City is comfortable with such installations (see, for example, Draft MLA Section 4.1.2). With respect to facilities mounted on utility poles, the Draft Ordinance should acknowledge that exceptions may be allowed to comply with Public Utility Commission General Order 95 which mandates certain safety clearances for wireless equipment.

§18.205.110 – Temporary Wireless Facilities

(A) General Requirements for Temporary Wireless Facilities

(3) Required Findings

(g) 90-Day Limit

We encourage the City allow a longer period than 90 days for temporary facilities approved by the Planning Manager. Occasionally, carriers must deploy temporary facilities to provide continued service during relocation or substantial repair of permanent facilities. San Francisco recently adopted amendments to its Planning Code allowing the Planning Department to approve temporary facilities administratively for up to one year if sited to avoid residential areas to the extent feasible. *See* San Francisco Planning Code §205.2(d).

CHAPTER 18.____ – ELIGIBLE FACILITIES REQUESTS

§18.____.040 – Prior Approvals Required

(A) Section 6409 Approval

Eligible facilities requests should be processed as stand-alone administrative approvals, not amendments to underlying use permits. First, not all wireless facilities are approved with a use permit under Draft Ordinance §18.205.040; some are approved with an administrative permit. Second, a use permit is a discretionary permit subject to a wide range of conditions of approval, whereas an eligible facilities request involves a ministerial determination subject only to the clear criteria for “substantial change” adopted by the FCC in the Spectrum Act Order. Further, conditions of approval related to eligible facilities requests are limited to those that require compliance with generally applicable building, structural, electrical or safety codes or other objective health and safety standards. *See* Spectrum Act Order, ¶ 202. We suggest that the Planning Division process eligible facilities requests as a zoning clearance.

§18.____.050 – Application Requirements

(B) Application Content

- (2) Title Report**
- (4) Environmental Compliance**

The FCC limited the type of information local governments can require for eligible facilities requests. Under 47 C.F.R. §1.40001(c)(1), a “local government may require the applicant to provide documentation or information only to the extent

reasonably related to determining whether the request meets the requirements of this section...[a] local government may not require an applicant to submit any other documentation....” To this end, the City may not require a title report, which, as noted above, may describe property details such as easements and covenants affecting other areas of a property that are unrelated to the actual structure being modified. Environmental compliance is not related to the City’s determination of whether an eligible facilities request constitutes a “substantial change” under FCC criteria; those criteria impose strict limits on facility expansion. These requirements should be stricken.

(8) RF Compliance Demonstration

As noted in our comments to Draft Ordinance Section 18.205.050(B)(9), the City cannot require affirmation of RF exposure compliance under penalty of perjury as that exceeds the City’s authority in an area regulated by the FCC.

(C) Procedures for a Duly Filed Application

Our comments to Draft Ordinance Section 18.205.050(C) apply to these provisions as well. The FCC has set a 60-day review period for eligible facilities requests, and the unnecessary delays due to appointments and scheduling are unwarranted, particularly for very minor modifications that can be processed quickly. *See* C.F.R. §1.40001(c)(3). These scheduling and appointment requirements for eligible facilities requests should be eliminated.

(D) Applications Deemed Withdrawn

As noted above, the FCC has ruled that an application review period tolled for incompleteness recommences upon an applicant’s response to a timely information request. This applies to eligible facilities requests as well, and there is no provision allowing a jurisdiction to terminate an application. *See* C.F.R. §1.40001(c)(3)(ii). This provision must be stricken.

§18. .060 – Decisions

(A) Public Notice; Administrative Review

As noted above, the FCC has limited the type of information a local government may require for eligible facilities requests. Public notice is not a requirement of FCC rules and is not pertinent to the determination of whether an eligible facilities request involves a “substantial change.” Determinations regarding eligible facilities requests are administrative and do not require public input. The City cannot require applicants to post notice of an eligible facilities request. This requirement must be stricken.

§18. .070 – Standard Conditions of Approval

As noted above, conditions of approval for eligible facilities requests are limited to those that require compliance with generally applicable building, structural, electrical or safety codes or other objective health and safety standards. Because of this constraint of federal regulation, the City cannot subject eligible facilities requests to conditions of approval regarding build-out period, maintenance agreements, indemnification, performance bonds, recall to approval authority, revocation or records retention.

(A) Permit Term

This provision suggests that an eligible facilities request permit will have a term of less than 10 years, however, under California Government Code §65964(b), permit durations of less than 10 years are generally presumed to be unreasonable. An eligible facilities request permit should be granted with a term of a minimum of 10 years, and we suggest that the term of the underlying land use permit also be extended to be coterminous. At a minimum, the sentence preventing extension of underlying permits should be revised to allow underlying permit terms to be extended at request of the applicant and at the discretion of the Planning Division.

(B) Compliance Obligations Due to Invalidation

Early termination of an approval issued pursuant to an eligible facilities request would violate the vested rights of wireless carriers who have obtained a building permit and constructed their improvements. A federal circuit court has upheld FCC rules interpreting 47 U.S.C. §1455. This provision should be deleted.

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

6.2 Design Guidelines

The City has not yet developed design guidelines to be incorporated as Exhibit B to the Draft MLA. As noted above, the Draft MLA contemplates pole-mounted equipment, and Verizon Wireless would be pleased to work with the City to develop design guidelines that allow for small cells and other antenna and equipment installations on poles that minimize visual impacts while providing needed network capacity to high-usage areas.

7.2 Prior Regulatory Approvals Required

This provision of the Draft MLA requires a use permit prior to construction work; however, as noted in our comments to Draft Ordinance Section 18.205.040, right-of-way facilities installed on City assets pursuant to a license agreement should be processed

Afshan Hamid
City of Concord
May 5, 2017

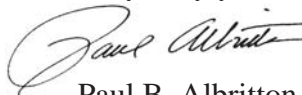
Page 10 of 10

through an encroachment permit and not an administrative permit, and no right-of-way facility should require a use permit as Verizon Wireless's use of the right-of-way is authorized under Public Utilities Code §7901. The City can encourage wireless carriers to use its own assets with reasonable permit requirements for facilities installed under a license agreement.

Conclusion

The Draft Ordinance must be revised to eliminate conflicts with state and federal law. Whether located on City-owned assets or not, right-of-way facilities should be permitted with an encroachment permit, not an administrative permit or use permit. Verizon Wireless would be pleased to provide further input on design standards of the Draft Ordinance and Draft MLA. We look forward to working with the City to revise these documents.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul Albritton".

Paul B. Albritton

cc: Suzanne Brown, Esq.
Laura Simpson



Concord *Connected*

March 17, 2017

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Agenda

- Introductions
AT&T Team, J-5, and City of Concord Officials
- Small Cell Overview
- Examples of AT&T Small Cell Proposals in Concord
- City of Concord Permitting Process
- Attachment Agreement With City of Concord

People are choosing wireless technologies faster than ever before:



U.S. adults spent an average of **5.5 hours** a day watching video in 2015.¹



U.S. Android and iPhone users in the U.S. spent **9x** more time each month using digital media in 2015 than they did in 2008.²



As of 1Q2016, there were **7.4 billion** mobile subscriptions worldwide.³

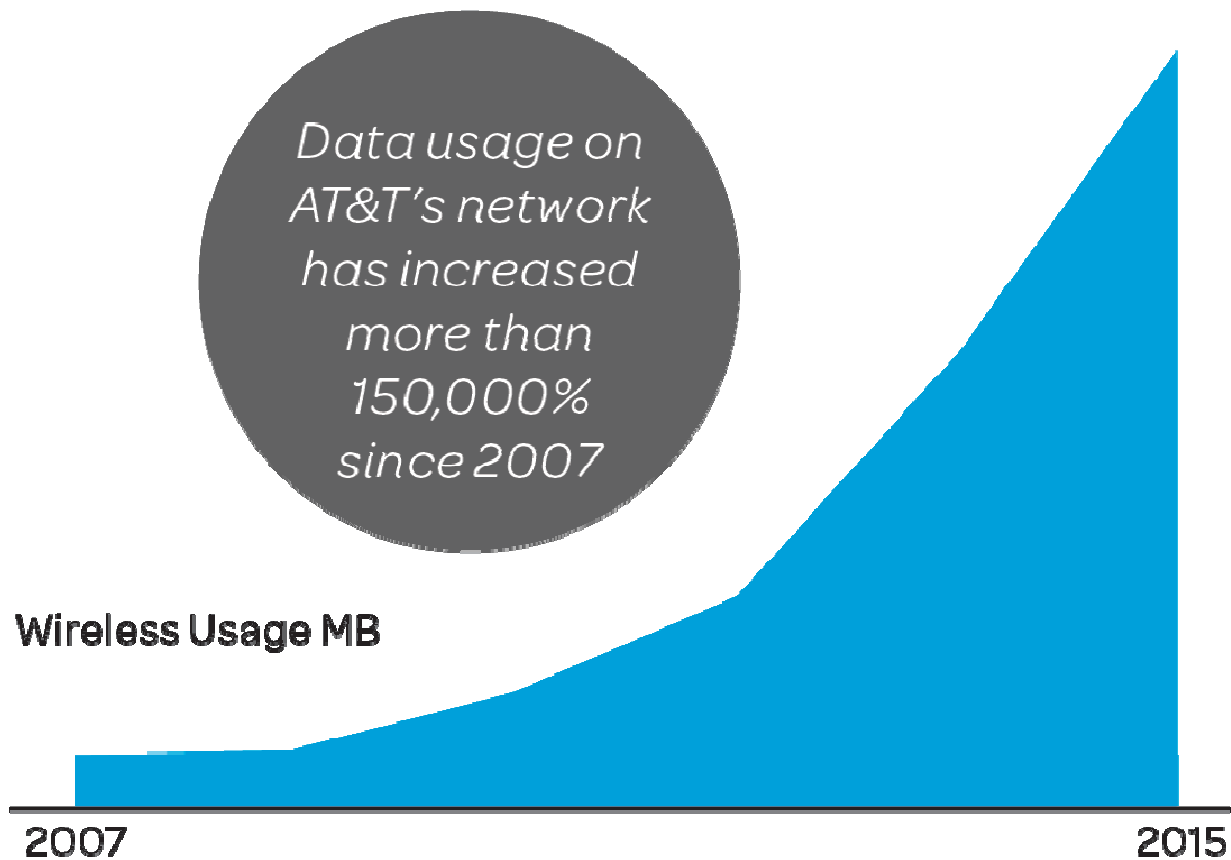
¹eMarketer, Adults Spend 5.5 Hours with Video Content Daily, <http://www.emarketer.com/Article/US-Adults-Spend-55-Hours-with-Video-Content-Daily/1012362>

²Mary Meeker, Internet Trends 2016- Code Conference, June 1, 2016

³Ericsson, Mobility Report (June 2016)



Consumer and business demand for wireless data is on the rise.



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Consumer and business demand for wireless data is on the rise.

- Nearly all Californians (92%) have a cell phone and 68 percent have a smartphone. ¹
- More than 62% of American households rely on wireless as their primary means of communication. ²
- 76 percent of all 911 calls came from cell phones. ³
- Over 150,000% increase in data traffic from January 2007 through December 2015. ⁴
- 98% of small businesses rely on wireless technology. ⁵
- Existing macro sites have limited capacity.
- Residents use smartphones, tablets, laptops at home—all drive the need for reliable and expanded connectivity.

1. <http://www.pewresearch.org/fact-tank/2015/11/25/device-ownership/>
2. <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201605.pdf>
3. <https://www.911.gov/pdf/National-911-Program-2015-ProfileDatabaseProgressReport-021716.pdf>
4. http://about.att.com/story/att_details_5g_evolution.html
5. <https://smallbiztrends.com/2013/05/small-business-use-wireless.html>



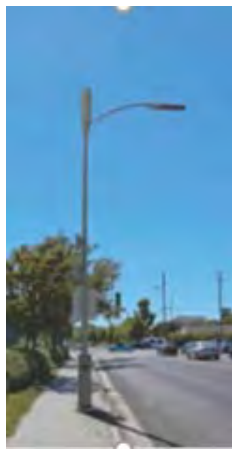
Different types of cell sites

Macro Cells



Larger coverage radius,
Seen located on free standing towers, faux trees, buildings, water tanks

Small Cells



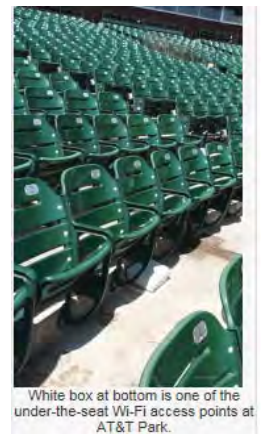
Provides enhanced voice and data services by helping to bolster network capacity

Distributed Antenna



Coverage solution in areas with challenging terrain, or in high-use areas like arenas, stadiums, convention centers

Wi-Fi Hot Zones



Delivers high speed internet access, mainly for outdoor coverage



What's the difference?

Key Differences between "Cell Towers " and Small Cells

<i>Comparison</i>	<i>Cell Towers</i>	<i>Small Cells</i>
<i>Size</i>	Large antennas, support equipment	Typically less than 1% of the volume of cell tower antennas, support equipment
<i>New towers</i>	Requires new, taller towers or placement on top of existing tall buildings/structures	Placed on utility/light poles in the public right-of-way
<i>Power Output</i>	High Power	Low to Moderate
<i>Coverage Area</i>	Up to several miles	Up to 1500 feet (1/3 mile}
<i>Network configuration</i>	Separate, independent sites	Deployed as a part of a connected network





Why Small Cells?

A new network architecture is needed

There are generally three ways to increase capacity in the network:

- License more spectrum from the FCC.
- Upgrade existing cell sites to use new technology.
- Build more cell sites.

Small cells are **flexible** network solutions that can be readily deployed to specific locations, including:

- Where customers are prone to experience connectivity issues
- Heavily populated areas that need more network capacity
- Areas that can't effectively be served by a traditional macro cell



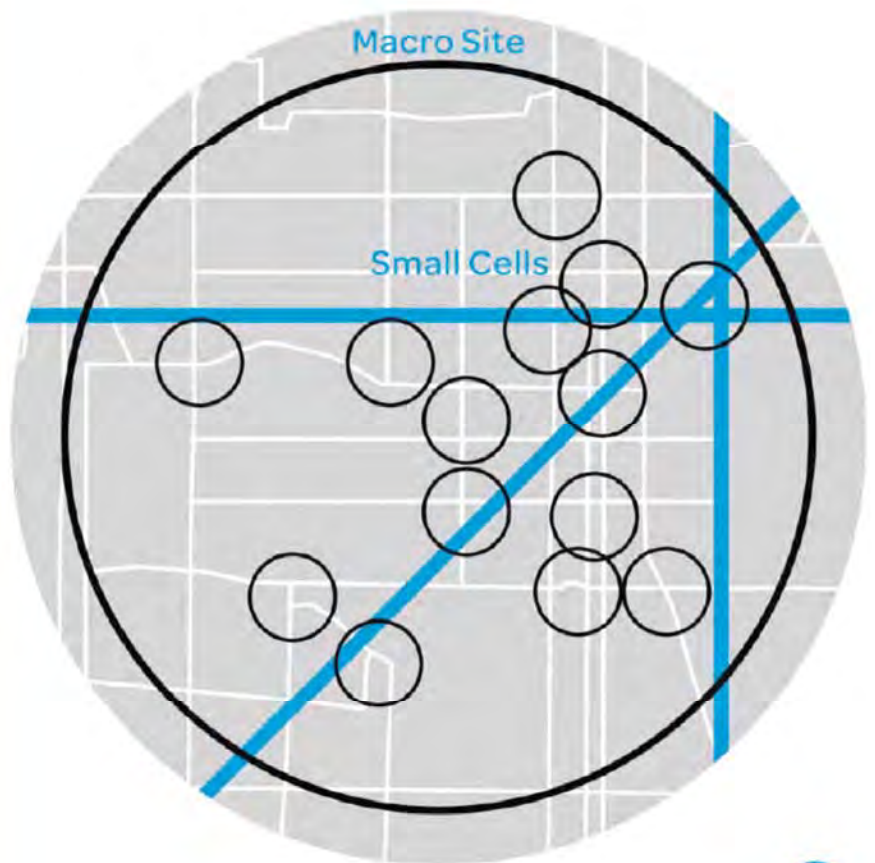
A photograph of a person's hands holding a white smartphone and a white coffee cup with a brown sleeve. The background is a blurred outdoor scene with warm, golden light, suggesting a sunny day. The person has red nail polish. A blue text box is overlaid on the left side of the image.

Small cells and future technologies

Small cells are used to “densify” AT&T’s network and to bring the network “closer” to its users. This allows us to provide a better LTE experience today while also allowing us to prepare for the technologies of the future—such as 5G, smart cities and new developments in the Internet of Things (IoT).



Small cells can
densify our
network to meet
customer
demand



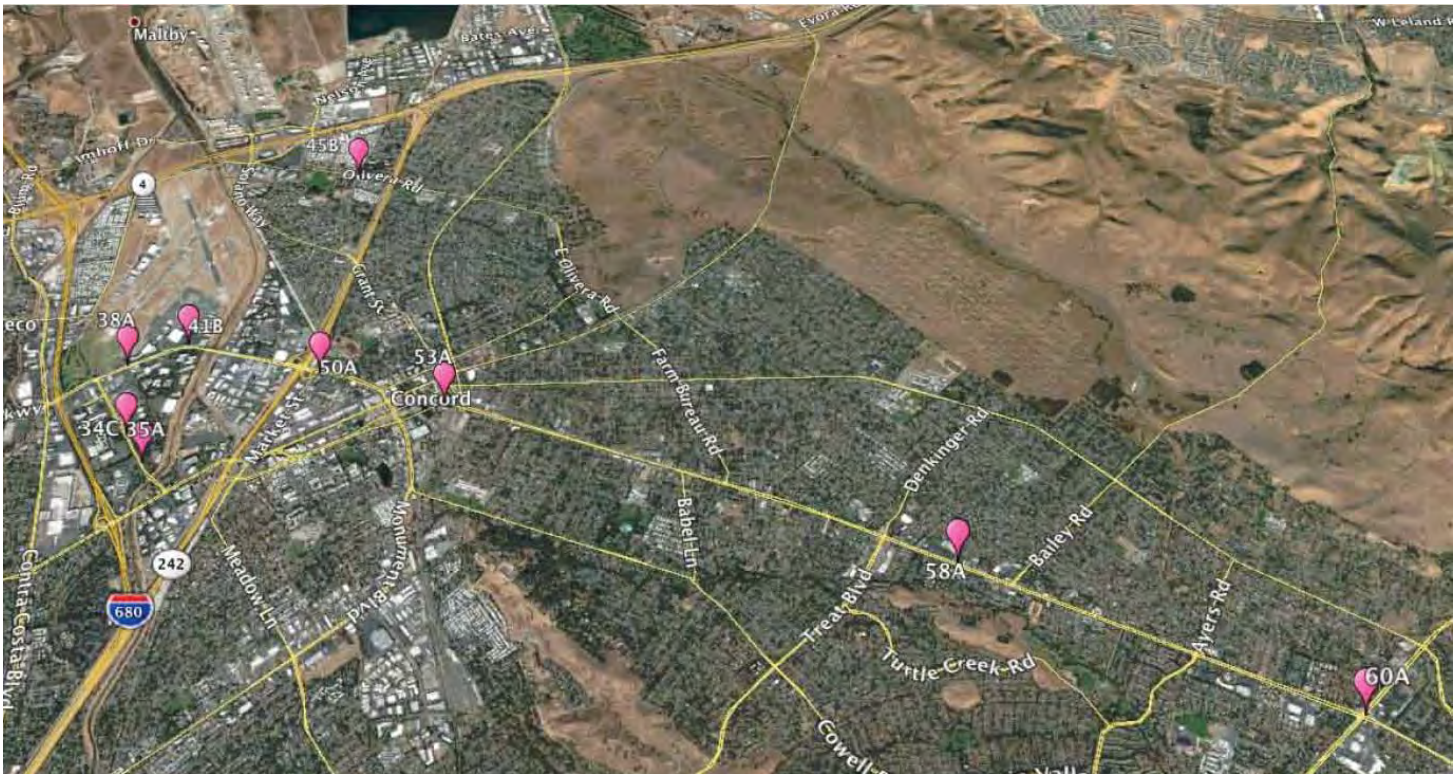


Smart public policy can facilitate deployment and more quickly bring the benefits of small cells to your community.

- Local officials and leaders can facilitate the deployment of small cells to bring their citizens enhanced coverage and capacity, while helping us prepare our network to accommodate future technologies in their city by:
 - ✓ Establishing universal Master Attachment Agreements (MAAs) for small cell deployment
 - ✓ Establishing streamlined permitting processes
 - ✓ Ensuring pole attachment rates and fees are reasonable



9 Proposed City of Concord Traffic Signals



View 1

Example: Proposed City of Concord Traffic Signal Installation



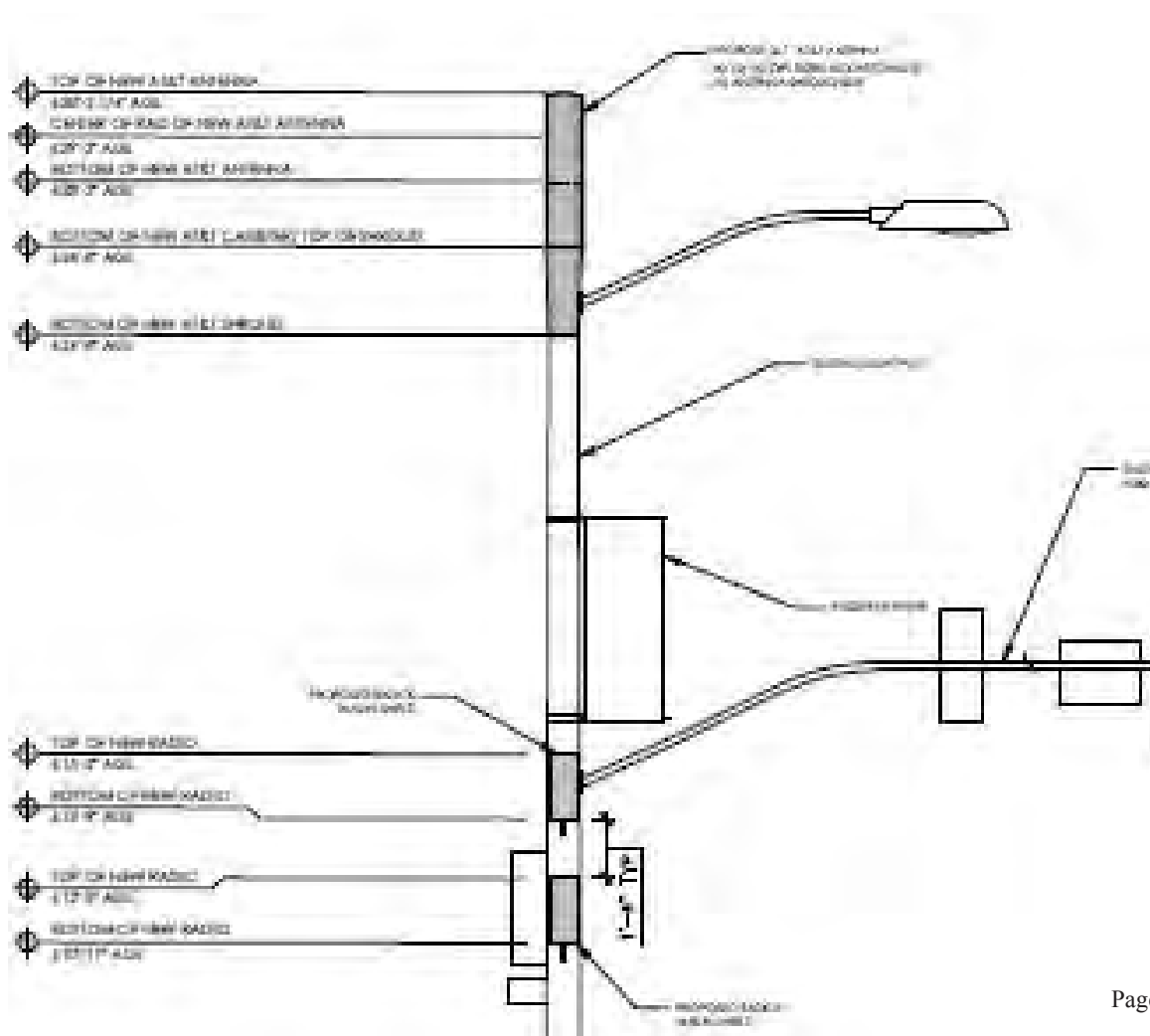
View 2

Example: Proposed City of Concord Traffic Signal



NORTHWEST ELEVATION (LOOKING SOUTHEAST)

Proposed City of Concord Traffic Signal Installation

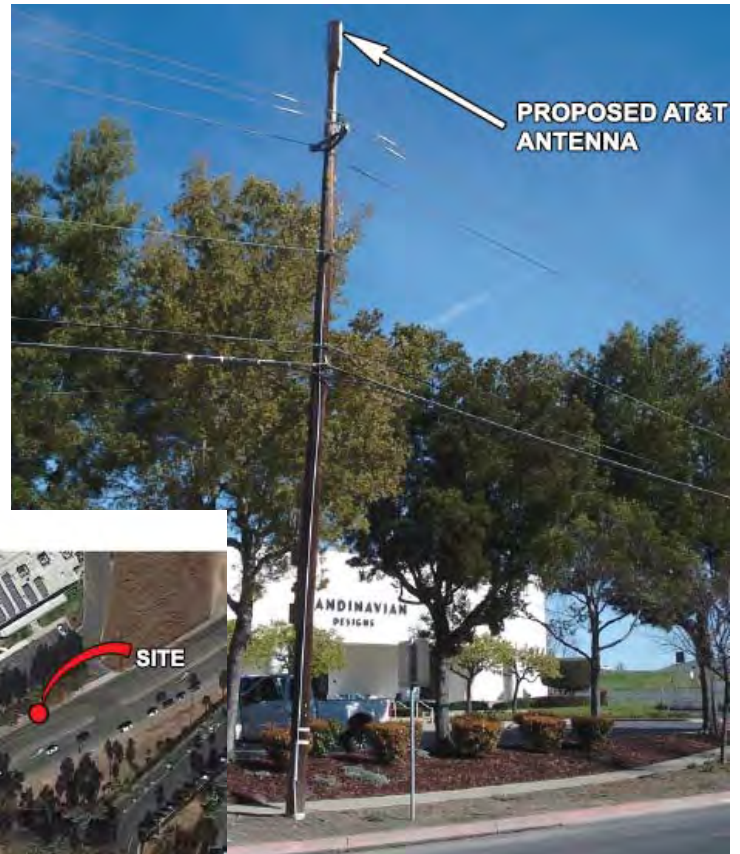


17 Proposed PG&E Wood Utility Poles



View 1

Example: Proposed PG&E Wood Utility Pole Installation

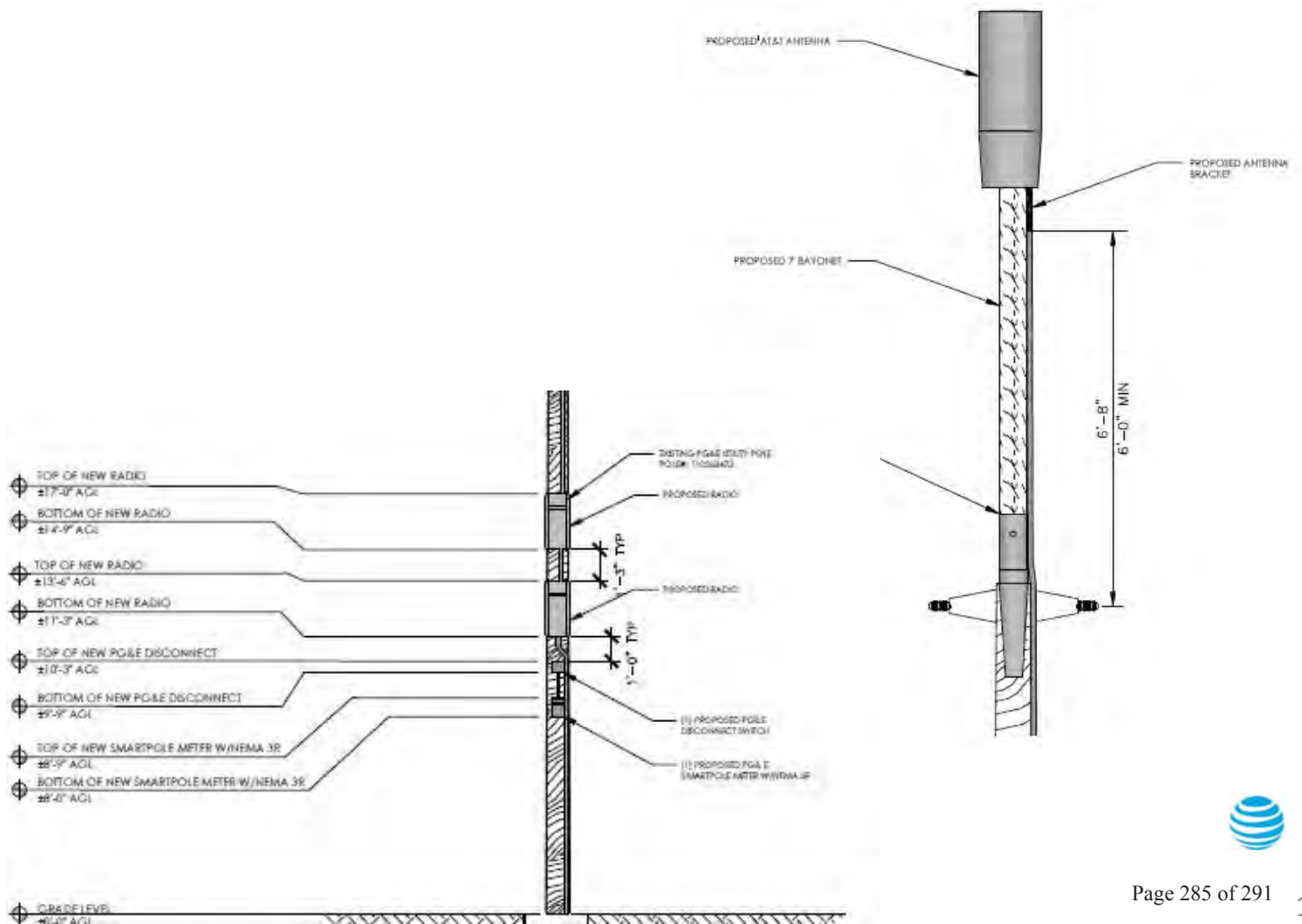


View 2

Example: Proposed PG&E Wood Utility Pole Installation



Proposed City of Concord Traffic Signal Installation





Benefits of a Master Attachment Agreement with AT&T

- Improved Wireless Service & Technology to the Community
- Leverage Existing City Infrastructure for Revenue Stream
- Possibility to Create Streamlined License Agreement Application Process
- Possibility to Establish Streamlined Permit Review Process
- Ability to Impact Installation Standards and Consistency
- Potential to Initiate LED Conversion





Requests for Streamlined Application Processing:

- Pre-Approval of Proposed Designs and City Owned Pole Locations
- Permit Application Processing in Clusters or Batches





Appendix



Sample Small Cells Deployed



COMPLIANCE WITH FCC RULES FOR RADIO FREQUENCY

- *AT&T Mobility ensures that all its small cell sites meet FCC rules for radio frequency exposure.*
- *This small cell construction will typically place transmitting antennas more than 30 feet above areas accessible beneath the antennas. The low transmit power levels emitted by small cell installations drop off rapidly by the distance to accessible areas beneath the antennas and produce exposure levels well below the FCC's maximum permissible exposure (MPE) levels for the general population (GP). **Typically, this is .05% of the existing FCC MPE at ground level for deployment of two 5 watt radios.***
- *At the physical antenna levels, appropriate precautions, such as warning signs and labels, are used to protect workers ensuring that exposure in those areas don't exceed the FCC's MPE limits.*





Master License for Small Cells on City-Owned Poles

City Council
City of Concord
July 25, 2017

Recommendation:

Consider adoption of Resolution No. 17-58

Approving wireless Master License Agreement form

Authorize City Manager to execute Master License Agreements to issue licenses for City-owned poles in the public right-of way

Intent & Purpose:

Increase consumer demand for wireless capacity and faster speed.

MLA: Establish procedures, terms & conditions pole licenses.

Allow: More robust wireless broadband network for residents & businesses.

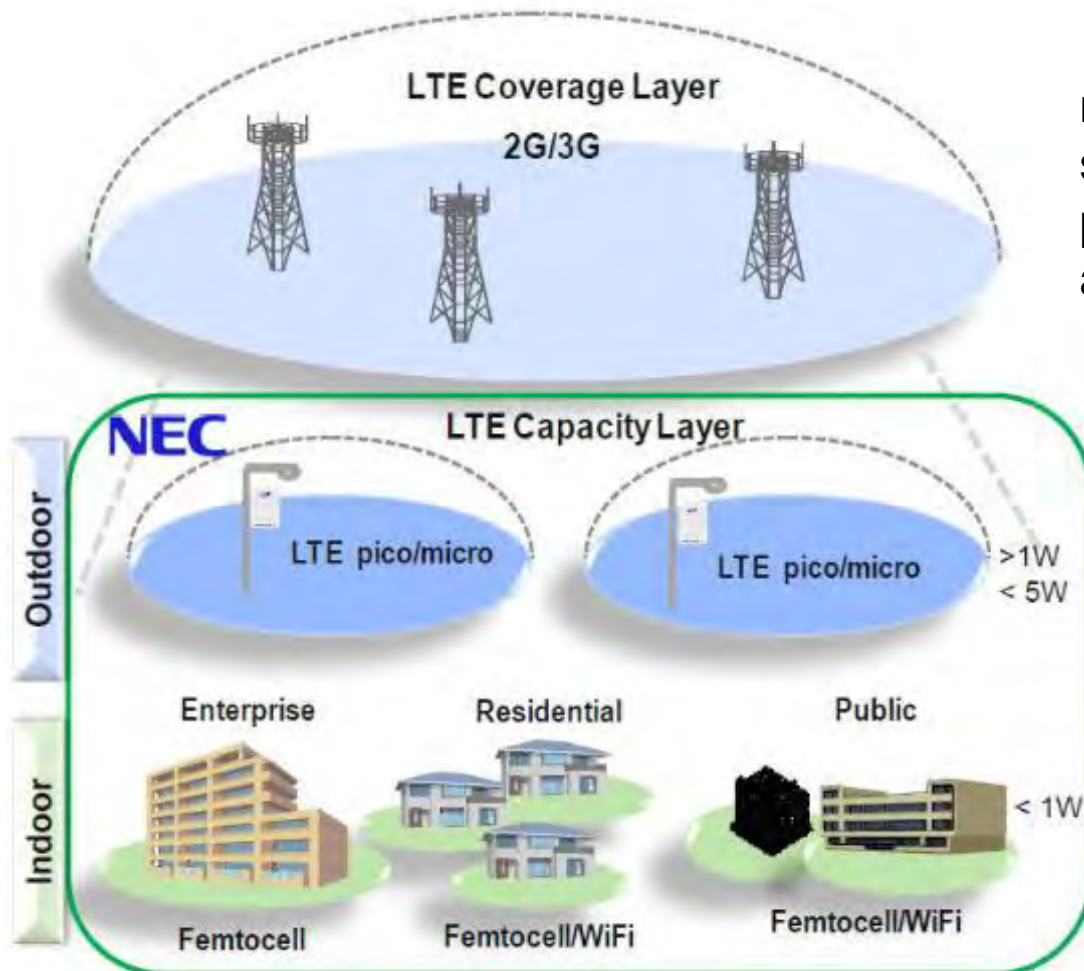
Public Process:

4/10: Infrastructure & Franchise Committee

5/8: Stakeholder and public meeting

Continued feedback and meetings to review MLA

Network Densification and Het-Nets



macrocells provide coverage
small cells and femtocells
provide enhanced capacity
and data throughput

het-nets
(heterogeneous networks)
allow users (both
human and machine) to
access core networks thru
multiple cell layers and/or
technologies based on the
fastest connection



Castle Hills

5476







what about historic districts?







Follow
To T

concealed
antennas

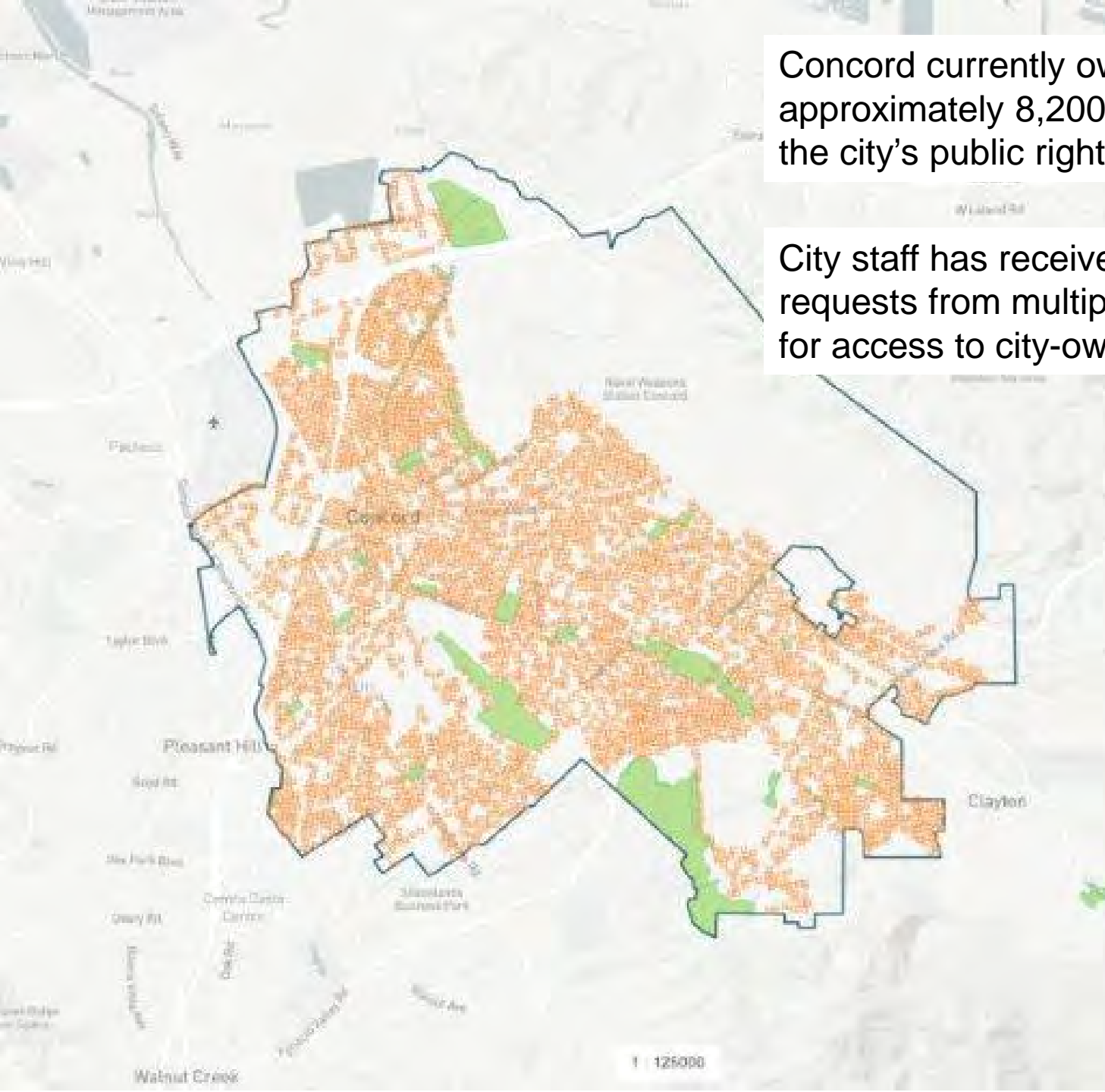
radios,
batteries and
other equip. in
the base





Concord currently owns approximately 8,200 poles in the city's public rights-of-way.

City staff has received multiple requests from multiple providers for access to city-owned poles.



Staff's Recommendation

- receive the staff report
- open the public hearing, receive public comments
- approve proposed resolution

Aligned Interests and Opportunity for Partnerships

Carrier Needs

- access to existing infrastructure near users
- power/fiber
- predictable licensing and permitting decisions
- speed-to-market

Municipal Assets

- existing infrastructure in the ROW
- utilities at most sites
- control over permitting process
- a single license relationship

Master License Overview

- **Master License Agreement**

- one MLA per carrier
- substantially the same terms for all carriers
- sets out basic relationship between the parties; procedures for pole licenses
- does not grant property rights
- does not exempt installations from Muni Code

- **Pole Licenses**

- grants attachment rights to specific poles; contains approved site plan, insurance, fee schedule, etc.
- attached to MLA after approval
- concurrent license term with MLA

How Does the MLA Work?

- **Step 1: Master License Execution**
 - interested licensee approaches City
 - parties use approved MLA as template
 - City Manager authorized to negotiate certain terms
 - parties may agree on pre-approved designs
- **Step 2: Pole License Applications**
 - licensee submits “Pole License Application” with proposed site plans for each requested location
 - requests may be batched applications
 - City Mgr or designee in consultation with staff approves or disapproves each request

How Does the MLA Work?

- **Step 3: Building Permit Applications**
 - licensee submits permit applications for equipment under approved Pole Licenses
 - no change in the permit review process
 - Pole License expires if licensee cannot obtain permits within one year from approval
- **Step 4: Acknowledgement and Construction**
 - licensee submits Acknowledgement Letter to the City with approved plans, permits, insurance certificates, security deposit and first year's license fee
 - City Manager countersigns, which marks the Pole License commencement date and serves as notice to proceed with installation

Benefits from MLA

- streamlined deployment process
- fewer obstructions in the public ROW
- more consistent form factor
- closer coordination between City and carriers
- new revenue streams from license fees
- improved services to residents and businesses
- level playing field with same rules, terms and conditions for all competitors

Staff's Recommendation

- receive the staff report
- open the public hearing, receive public comments
- approve proposed resolution

Questions?