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SEP 13 2016

EXECUTORY COPY

ACCEPTED
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**MASTER NON-EXCLUSIVE INSTALLATION AND PROPERTY USE
AGREEMENT
(Small – Scale)
BETWEEN
THE CITY OF SAN JOSE
AND**

This MASTER NON-EXCLUSIVE INSTALLATION AND PROPERTY USE AGREEMENT (Small –Scale) ("MASTER AGREEMENT") is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation ("CITY"), and ("COMPANY"), upon mutual execution by CITY and COMPANY (the "EFFECTIVE DATE").

RECITALS

- A. **WHEREAS**, CITY owns a number of properties located in and around the City of San José, County of Santa Clara, California. CITY property includes, but may not be limited to, real property, fire stations, libraries, convention center and out buildings, community centers, corporation yards, police facilities, light poles, street lights, and other CITY-owned buildings (the "PROPERTY"). For the purposes of this Agreement, "PROPERTY" does not include public rights-of-way way owned or controlled by CITY, but does include existing improvements owned by the City that may lie within the right-of-way, such as light poles and utility cabinets; and
- B. **WHEREAS**, COMPANY desires to construct and install, at no cost to CITY, certain small-scale wireless equipment and appurtenant structures that (i) have 1 but not more than 4 antennas, (ii) utilize less than 125 cubic feet of space (including the space for antennas) on a PROPERTY, and (iii) have an output of no more than 360 watts of effective radiated power per sector for the purpose of providing its services consisting of radio and wireless transmission for use by handheld wireless telephones, tablets, mobile computers, global positioning devices and other devices that use a wireless signal for use by the public (collectively, "SERVICES"), and CITY desires to allow the SERVICES in accordance with the terms and conditions contained herein; and
- C. **WHEREAS**, both CITY and COMPANY desire to enter into a MASTER AGREEMENT setting forth the terms and conditions for CITY's granting of rights to use specified PROPERTY for the purposes of installing, maintaining, upgrading, operating and removing telecommunication facilities and associated equipment thereon to provide COMPANY's SERVICES (each such installation shall be referred to as an "ANTENNA FACILITY"); and
- D. **WHEREAS**, the location, size, period of use, USAGE FEE, permissible service area, type of equipment, and other specific terms and conditions with respect to each selected PROPERTY and ANTENNA FACILITY thereon shall be described in a

DOCUMENT A

separate SITE LICENSE AGREEMENT ("SLA") executed for each PROPERTY licensed from CITY by COMPANY, the form of which is attached hereto as **EXHIBIT "A"**; and the specific portion of the PROPERTY licensed and described in the SLA shall be referred to in each case as the "LICENSED AREA"; and

E. **WHEREAS**, this MASTER AGREEMENT and any SLA entered into in connection with MASTER AGREEMENT shall only be used for and apply to small-scale antenna facility configurations having 1 but not more than 4 antennas, utilizing less than 125 cubic feet of space (including the space for antennas), and outputting less than 360 watts of effective radiated power per sector;

F. **WHEREAS**, this MASTER AGREEMENT and any SLA entered into in connection with this MASTER AGREEMENT shall not be used for antenna facility configurations having more than 4 antennas, utilizing more than 125 cubic feet of space (including the space for antennas) or outputting more than 360 watts of effective radiated power;

G. **WHEREAS**, prior to entering into an SLA for an agreed upon LICENSED AREA, CITY and COMPANY shall agree upon the USAGE FEE, location and effective radiated power output of the equipment used within any given LICENSED AREA;

H. **WHEREAS**, Company shall only be permitted to install and operate equipment within the Licensed Area that is approved in each SLA and for which Company has paid the applicable USAGE FEE.

I. **WHEREAS**, the terms, conditions, representations, warranties and indemnities set forth in this MASTER AGREEMENT shall be incorporated into each SLA and compliance with such terms, conditions, representations, warranties and indemnities contained herein shall be a condition to the parties' agreement to enter into any SLA or any renewal or extension thereof.

NOW, THEREFORE, in consideration of their mutual promises, terms, covenants and conditions hereinafter set forth, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. RIGHT TO USE CITY PROPERTY

A. Right to Use.

CITY hereby grants COMPANY the non-exclusive right to use the LICENSED AREA described in each separate SLA executed by CITY and COMPANY, for the purpose of installing, maintaining and operating an ANTENNA FACILITY for the sole purpose of allowing COMPANY to provide SERVICES approved in each SLA and for no other purpose. Any ANTENNA FACILITY installed and operated in any LICENSED AREA licensed to COMPANY pursuant to this MASTER AGREEMENT shall have 1 but no more than 4 antennas, utilize less than 125 cubic feet of space (including the space for antennas) and shall have an output of no more than 360 watts of effective radiated power.

DOCUMENT A

B. Access.

1. COMPANY may access a LICENSED AREA Monday through Saturday between the hours of 7:00 a.m. and 5:00 p.m. ("Business Hours") to inspect, repair, and maintain an ANTENNA FACILITY located within an unlocked and/or unsecured LICENSED AREA, provided that such access does not interfere with traffic, public safety or public health or unreasonably disturb CITY business or operations conducted on CITY PROPERTY. COMPANY shall provide CITY with at least forty-eight (48) hours prior written notice that COMPANY intends to access CITY PROPERTY (which written notice may be delivered by e-mail or other electronic means to the property manager designated by CITY in the applicable SLA). Notwithstanding any of the foregoing to the contrary, CITY may deny COMPANY access for a reasonable time if CITY, in its sole discretion, determines that such access will interfere with the health, safety or welfare of the public or CITY employees. CITY's PROPERTY MANAGER, as described in the applicable SLA, shall be CITY's contact for these purposes, unless CITY otherwise indicates in writing.
2. COMPANY may access a LICENSED AREA at all other times not described in Section 1.B.1 above and for all other purposes only upon obtaining prior permission from CITY, which permission may be withheld conditioned or delayed in CITY's reasonable discretion.
3. Notwithstanding any of the foregoing in Section 1.B.1 and 2 above to the contrary, COMPANY may enter into a LICENSED AREA to perform Emergency Repairs (defined below) as follows: (i) If the affected ANTENNA FACILITY is not located in a secured or locked area within CITY PROPERTY and such Emergency Repairs will be performed without any additional traffic disruption, will not interfere with the health or safety operations of the CITY and will not interfere with any fire, police, transportation or other health and safety operations, then COMPANY may enter the CITY PROPERTY without permission from CITY to perform such Emergency Repairs, but only after COMPANY provides advance notice to City that COMPANY will enter the CITY PROPERTY for the purpose of performing Emergency Repairs. (ii) If the affected ANTENNA FACILITY is located in a secured or locked area within CITY PROPERTY (whether during Business Hours or any other time), then COMPANY must provide advance notice to CITY and CITY will provide access to the CITY PROPERTY as soon as practicable, but COMPANY may only enter the CITY PROPERTY upon being granted access by CITY. For the purpose of this Section 1.B.3, COMPANY may provide notice by telephone or email at the email address or phone number provided by CITY. For the purpose of this Section 1.B.3, "Emergency Repairs" shall mean repairs to restore SERVICES to the applicable ANTENNA FACILITY within 48 hours after the occurrence of an equipment malfunction, property casualty or other act beyond the control of COMPANY. CITY shall provide COMPANY with the phone number of the PROPERTY MANAGER in the applicable SLA.

DOCUMENT A

3. COMPANY shall allow a representative of the CITY to observe any repair, maintenance or removal work performed within a LICENSED AREA or any other portion of the applicable PROPERTY.
4. COMPANY shall not do, or allow, or cause anything to be done whereby CITY's PROPERTY may be encumbered by a construction lien or any other type of lien. Within forty-five (45) days after any lien is filed against CITY's PROPERTY purporting to be for labor or materials furnished to COMPANY, COMPANY shall discharge or bond against such lien of record. Notice is hereby given that CITY will not be liable for any labor or materials furnished to COMPANY on credit and that no construction or other lien for any such labor or materials shall attach to or affect CITY's interest in and to CITY's PROPERTY. COMPANY shall indemnify, defend and hold harmless CITY from all claims, demands costs and liabilities, including reasonable attorney's fees and costs, in connection with or arising out of any such lien or claim of lien. Failure to remove any lien recorded against the PROPERTY within forty-five (45) days of receipt of notice of recordation shall be considered a material breach of the applicable SLA and CITY shall have all available remedies set forth herein or in the applicable SLA.

C. Relocation and Removal.

1. At any time during the term of an SLA, CITY may require the temporary or permanent relocation of an ANTENNA FACILITY to a location designated by CITY. CITY shall coordinate with COMPANY and shall use reasonable efforts to identify an alternative location on CITY PROPERTY that is comparable to the existing LICENSED AREA and CITY and COMPANY shall make reasonable efforts to limit the disruption to COMPANY's SERVICES. CITY will provide no less than one hundred eighty (180) days advance notice prior to any need for any temporary relocation. If the relocation will be permanent, CITY shall provide COMPANY with no less than one (1) year prior written notice that such ANTENNA FACILITY must be permanently relocated. If CITY requests relocation of an ANTENNA FACILITY, COMPANY must remove such ANTENNA FACILITY within ninety (90) days after COMPANY commences construction or installation of any ANTENNA FACILITY at the temporary or alternative permanent location provided by CITY. CITY's Director of Economic Development may provide extensions of such time periods in its sole and absolute discretion. If CITY is unable to provide an alternative location acceptable to COMPANY, COMPANY may terminate the SLA applicable to such ANTENNA FACILITY.
2. If, notwithstanding COMPANY's agreement to relocate an ANTENNA FACILITY, COMPANY fails to relocate the specified ANTENNA FACILITY or repair or restore the affected areas of the applicable LICENSED AREA and PROPERTY within the time period specified in this SECTION, as that period may be extended as provided in this SECTION, City's Director of Economic Development, in his or her sole discretion and without limitation with respect to any other rights or remedies which he/she may have, may terminate the

DOCUMENT A

SLA for the applicable LICENSED AREA and ANTENNA FACILITY, effective no earlier than thirty (30) days after the date of delivery of notice of termination, and CITY may remove any of COMPANY's property, including the specified ANTENNA FACILITY from the applicable PROPERTY.

3. If CITY removes the specified ANTENNA FACILITY pursuant to this SECTION, COMPANY shall pay to CITY all costs associated with CITY's removal of such ANTENNA FACILITY, including any storage costs and costs to repair and restore the PROPERTY, including the applicable LICENSED AREA, plus an administrative fee equal to the greater of 10% of the total costs incurred by CITY for such removal or \$500, within thirty (30) days after receipt by COMPANY of an itemized bill therefor.

D. Title to the ANTENNA FACILITY.

Title to each ANTENNA FACILITY shall be and remain with COMPANY while each such ANTENNA FACILITY is installed and maintained at the applicable PROPERTY in accordance with and in compliance with all of the terms of this MASTER AGREEMENT. Notwithstanding any of the foregoing to the contrary, if COMPANY fails to remove an ANTENNA FACILITY within thirty (30) days after expiration or within thirty (30) days after the termination date set forth in any notice of early termination of the period set forth in the applicable SLA, then such ANTENNA FACILITY shall, at the election of CITY, become the sole property of CITY.

E. Title to improvements to the PROPERTY.

Notwithstanding SECTION 1.D above, title to the infrastructure or utility improvements on or in any PROPERTY or LICENSED AREA required prior to issuance of permits or other approvals by any CITY, County, State or Federal department or agency prior to the placement of an ANTENNA FACILITY on a PROPERTY, including buildings or other structures placed thereon, shall be and remain with CITY and/or shall be deemed the property of CITY in its sole discretion upon delivery of notice from CITY. Title to all equipment installed for purposes of operating and providing SERVICES pursuant to this MASTER AGREEMENT shall be and remain with COMPANY. Notwithstanding any of the foregoing to the contrary, if COMPANY fails to remove an ANTENNA FACILITY within thirty (30) days after expiration or within thirty (30) days after the termination date set forth in any notice of early termination of the period set forth in the applicable SLA, then upon the notice of election from CITY such ANTENNA FACILITY and appurtenant equipment shall, at the election of CITY, become the sole property of CITY.

F. No Warranties of Suitability of PROPERTY.

It is COMPANY's election to install and maintain each ANTENNA FACILITY at the applicable PROPERTY and COMPANY does so solely at its own risk. CITY makes no representations or warranties regarding the suitability, condition or fitness of any PROPERTY or LICENSED AREA for the installation, maintenance or use of an ANTENNA FACILITY. COMPANY and CITY acknowledge and agree that existing future improvements, adjacent to or within the proximity of the PROPERTY or LICENSED AREA may interfere, block or degrade any radio or other wireless telecommunications signal transmitted from such LICENSED AREA by COMPANY and COMPANY expressly waives and releases CITY from any liability or loss that COMPANY may incur as a result thereof and the USAGE FEE shall not be abated as a result of any interference, blocking or degradation.

CITY shall provide written notice to COMPANY prior to entering into any SLA for a LICENSED AREA currently licensed to COMPANY. Thereafter, COMPANY shall cooperate in good faith with the proposed third party licensor to determine if such LICENSED AREA may be shared or apportioned between COMPANY and the proposed licensor. If COMPANY delivers written notice to CITY within forty-five days (45) that COMPANY believes, in its reasonable discretion, that the LICENSED AREA cannot be shared or apportioned due to frequency interference or frequency degradation that will disrupt the delivery of COMPANY's SERVICES from the LICENSED AREA, then CITY shall not enter into an SLA for such space with the proposed licensor. Such notice shall include a description of the interference or degradation and the signals that are being interfered with or degraded. If COMPANY does not deliver such notice that the LICENSED AREA cannot be shared or apportioned, then CITY may enter into an SLA with such proposed licensor and the releases and waivers set forth in this Section shall be applicable to such LICENSED AREA.

G. Right of CITY Access.

CITY reserves and COMPANY agrees to the right of CITY, its authorized officers, employees, agents or contractors, to enter into and access any LICENSED AREA and PROPERTY at any time for the purpose of conducting CITY inspections, maintenance and repairs (including permitting other parties to use the LICENSED AREA to provide services). Without limiting the foregoing, CITY and COMPANY agree that CITY may: (1) inspect any PROPERTY, LICENSED AREA and ANTENNA FACILITY for COMPANY's compliance with the terms of this MASTER AGREEMENT and applicable SLA; (2) make repairs, alterations or additions to any PROPERTY or LICENSED AREA or maintain or use any PROPERTY or LICENSED AREA in any manner not prohibited by the terms of this MASTER AGREEMENT or applicable SLA, all without a claim by COMPANY for any loss of occupation or use of, or any abatement of, the USAGE FEE for use of the applicable LICENSED AREA. CITY will provide no less than fifteen (15) days' notice to COMPANY prior to commencing any work described in clause (2) above. Notwithstanding anything in this Agreement to the contrary, City may access the

DOCUMENT A

LICENSED AREA at any time if it is necessary to protect the safety, health or welfare of the public.

SECTION 2. TERM

A. Term of MASTER AGREEMENT.

The term of this MASTER AGREEMENT shall commence on the EFFECTIVE DATE set forth above, and shall continue for fifteen (15) years, expiring at 11:59 p.m. on the day preceding the fifteenth anniversary of said EFFECTIVE DATE unless earlier terminated pursuant to the terms of this MASTER AGREEMENT or extended by an agreement executed by each of the parties, thereafter this MASTER AGREEMENT shall continue in effect until it is terminated by either party by delivery of written notice no less than one (1) year prior to the termination date specified in such notice (such date is hereby referred to as the "MASTER AGREEMENT EXPIRATION DATE"). At any time prior to the expiration of the Master Agreement Expiration Date, the parties may mutually agree to extend the Master Agreement for an additional term of up to fifteen years, upon each party's sole discretion. After the Master Agreement Expiration Date and upon the request of COMPANY, CITY shall enter into discussions with COMPANY to consider an additional extension of the term of the Master Agreement for an additional period of up to fifteen (15) years at the sole discretion of CITY's Director of Economic Development.

B. Term of SLA.

The term of each SLA shall commence on the date specified in the applicable SLA ("SLA EFFECTIVE DATE"), and shall continue for up to fifteen (15) years ("SLA INITIAL TERM"), expiring at 11:59 p.m. on the day preceding the earlier of (i) the termination date of said SLA EFFECTIVE DATE or (ii) the MASTER AGREEMENT EXPIRATION DATE ("SLA EXPIRATION DATE"), unless earlier terminated pursuant to the terms of this MASTER AGREEMENT. **Notwithstanding anything to the contrary contained in this MASTER AGREEMENT or any SLA, no SLA TERM may extend past the MASTER AGREEMENT EXPIRATION DATE as it may be extended from time to time.**

SECTION 3. USAGE FEE.

A. Charge and Payment.

COMPANY shall pay an annual fee ("USAGE FEE") for each LICENSED AREA in accordance with the CITY's fee schedule as shown in **Exhibit "A"** (the "FEE SCHEDULE") and subject to annual adjustment as provided below. **The USAGE FEE for a particular LICENSED AREA shall be agreed upon between COMPANY and**

DOCUMENT A

CITY prior to the execution of any SLA for such LICENSED AREA. Except as set forth in Section 3.B.1 below, the USAGE FEE shall not be changed unless the ANTENNA FACILITY is modified, changed or upgraded by COMPANY in a manner that has not been agreed to in the applicable SLA for a LICENSED AREA. The USAGE FEE set forth on the FEE SCHEDULE shall be based upon (i) the effective radiated power ("ERP") of COMPANY's equipment installed in the LICENSED AREA, (ii) the location of the LICENSED AREA with the CITY (the "Zone") and (iii) the cubic footage of the LICENSED AREA (including the space for antennas). The USAGE FEE will only be adjusted in accordance with Section B.2 below if COMPANY adjust, modifies or upgrades their approved equipment to increase the ERP or the cubic footage of the LICENSED AREA to an amount or cubic footage that is different from the ERP or cubic footage agreed upon in the applicable SLA for the LICENSED AREA. Any such adjustment, modification or upgrade must be agreed upon and approved in advance by CITY and prior to commencing any work that will result in an increase in ERP or cubic footage and the SLA shall be amended or modified to reflect any increase in the USAGE FEE, the ERP and the cubic footage.

The initial payment of the USAGE FEE shall be due and payable in advance on each SLA Effective Date and shall be prorated for the number of months remaining until June 30 of the year, thereafter the USAGE FEE for each LICENSED AREA shall be due and payable in full and in advance on July 1st of each year to coincide with the City's fiscal year for such LICENSED AREA without offset. COMPANY shall make all payments to CITY at the address below or such other address as CITY may designate upon no less than ten (10) business days advance notice:

City of San José
Real Estate Services
200 E. Santa Clara Street, 12th Floor
San José, CA 95113

Initial payment by COMPANY for adjustments made for addition of antennae (if any), pursuant to **Exhibit "B"** shall be due and payable at the address set forth above on the first day of the month following the SLA EFFECTIVE DATE and shall be prorated to reflect the number of months remaining until the next June 30th which represents the end of the City's fiscal year.

DOCUMENT A

B. Adjustment of USAGE FEE.

1. Annual Adjustment of USAGE FEE. The USAGE FEE for each existing SLA shall automatically increase by three percent (3%) on each July 1st and the USAGE FEE shall increase to the current USAGE FEE applicable under the MASTER AGREEMENT on the first day of each SLA EXTENSION TERM.
2. MODIFICATION OF LICENSED AREA. The USAGE FEE may increase to the amount shown on the Rate Schedule attached on **EXHIBIT A** (as it may be updated or otherwise modified from time to time) as provided in Section 3.A.1 above in the event COMPANY makes adjustments, changes or upgrades in equipment that results in an increase in the ERP or cubic footage approved by CITY in the applicable SLA for the LICENSED AREA. Any such increase shall be applicable if the work is done without the permission of CITY and/or COMPANY fails to notify CITY prior to performing such upgrades, changes or modifications as provided in this Agreement. The increase in the USAGE FEE shall be effective the 1st day of the month following the change and shall be in addition to any late charge and interest due pursuant to Section 15.B. An additional late fee equal to five percent (5%) of the amount due shall apply to any USAGE FEE not paid within thirty (30) days of any increased ERP or cubic footage of the LICENSED AREA whether or not COMPANY receives notice from CITY.
3. Notwithstanding anything in this Agreement to the contrary, prior to executing any SLA, CITY may review COMPANY's design plans and CITY's Director of Economic Development may determine that COMPANY is (A) subject to an increase of up to ten percent (10%) in the USAGE FEE due to one or more of the following: (i) the placement of the ANTENNA FACILITY has a significantly greater impact or burden on CITY PROPERTY or resources than typical installations or placements; (ii) the ANTENNA FACILITY has a significantly greater impact on the environment; or (iii) the ANTENNA FACILITY is abnormally large or unsightly; or (B) eligible for a discount of up to ten percent (10%) in the USAGE FEE in its sole discretion due to one or more of the following: (x) the placement of the ANTENNA FACILITY has a significantly lesser impact or burden on CITY PROPERTY or resources than the typical installation; (y) the ANTENNA FACILITY has a significantly lesser impact on the environment; or (z) or the ANTENNA FACILITY is placed in a specified location at the request of CITY. **CITY and COMPANY shall agree upon the increase or discount in the USAGE FEE as provided in this section prior to execution of the SLA for the LICENSED AREA and COMPANY shall have an opportunity to modify the proposed design of the ANTENNA FACILITY prior to executing the SLA for the LICENSED AREA.** The discount or increase will be applicable for the duration of the term of the SLA, provided that COMPANY does not materially alter the ANTENNA FACILITY during the term.

DOCUMENT A

4. CITY's Director of Economic Development, in its sole discretion, may approve discounts in the USAGE FEE by up to fifty percent (50%) if COMPANY installs an ANTENNA FACILITY in a location determined by the CITY to be an area that is underserved or lacking dependable and consistent radio and wireless services for use by the public. **CITY and COMPANY shall agree upon the discount in the USAGE FEE as provided in this section prior to execution of the SLA for the LICENSED AREA.** The discount will be applicable for up to the duration of the initial term of the SLA, provided that COMPANY does not materially alter the ANTENNA FACILITY during the term and the CITY may agree to extend the discount beyond the initial term in its sole discretion.

SECTION 4. RIGHT TO USE ONLY APPLICABLE TO CITY PROPERTY; ALL OTHER COSTS PAID BY COMPANY.

- A. Right to Use Only Applicable to the CITY PROPERTY. This MASTER AGREEMENT shall not be construed to permit construction, installation, maintenance or use of an ANTENNA FACILITY on any property other than the ANTENNA FACILITY within the LICENSED AREA described in each applicable SLA.
- B. All other Costs Paid by COMPANY. COMPANY acknowledges and confirms that COMPANY is responsible for the design, construction and installation of the ANTENNA FACILITY and any and all infrastructure necessary for the operation and maintenance of each ANTENNA FACILITY. COMPANY shall pay all fees, cost and expenses necessary to construct, operate or maintain each ANTENNA FACILITY, including, without limitation, all construction costs, permit fees, or any other fees and costs arising out of or in connection with the construction, operation or maintenance of the ANTENNA FACILITY. COMPANY acknowledges the waivers made in Section 1.F. above with respect to the Suitability of the PROPERTY.

SECTION 5. COMPLIANCE WITH APPLICABLE LAW AND APPROVALS.

- A. Facility to be Constructed in Accordance with Law.

COMPANY shall construct, install, operate, maintain and remove each and every ANTENNA FACILITY in accordance with all applicable federal, state and local governmental laws, rules and regulations now in existence or as hereafter enacted or amended. Without limiting the foregoing, COMPANY shall obtain, maintain and fully comply with any and all permits or approvals required from CITY.

- B. Telecommunications User's Tax.

COMPANY acknowledges and agrees that CITY requires users of telecommunications services such as the SERVICES to pay to CITY a users' tax pursuant to Chapter 4.70 of Title 4 of the San José Municipal Code, as the same may be amended from time to time. Without limiting the other provisions of this

DOCUMENT A

SECTION, COMPANY agrees that COMPANY shall collect from the users of the SERVICES and remit to CITY said telecommunications users' tax all in the manner described in, and in compliance with, Chapter 4.70 of Title 4 of the San José Municipal Code.

C. Licensing and Authorization.

COMPANY represents that it is licensed by the Federal Communications Commission to operate each and every ANTENNA FACILITY and to provide the SERVICES, and COMPANY agrees to provide documentation evidencing such licensing and authorization within ten (10) business days after receipt of a written request from CITY for such documentation.

D. Data Collection, Storage and Sharing.

COMPANY shall not collect, store, share, sell or distribute any information, data, communications or frequency with any other person, company, government or agency in breach or violation of any State, Federal or local laws applicable to COMPANY.

SECTION 6. MAINTENANCE AND REPAIR.

- A. COMPANY shall maintain and repair each and every ANTENNA FACILITY, at no cost to CITY (except as specifically provided otherwise in this MASTER AGREEMENT), and all damage to the applicable PROPERTY or LICENSED AREA that may result from any relocation or removal of an ANTENNA FACILITY or COMPANY's exercise of any of the rights and privileges hereby granted, including, without limitation, damage to any walls, floors, ceilings, doors or electrical system in the applicable PROPERTY or LICENSED AREA to CITY's reasonable satisfaction. Upon removal of an ANTENNA FACILITY and termination of the applicable SLA, COMPANY shall restore the affected areas of the applicable PROPERTY to at least as good condition and repair as before COMPANY's use thereof, except for ordinary wear and tear.
- B. COMPANY agrees to and shall: (1) keep each and every ANTENNA FACILITY and applicable LICENSED AREA in neat, clean and orderly condition at all times; (2) not cause or permit rubbish, garbage, debris or graffiti to accumulate or remain on or around any ANTENNA FACILITY, LICENSED AREA or PROPERTY at any time; (3) not commit, suffer or allow any acts to be done at or around any ANTENNA FACILITY, LICENSED AREA or PROPERTY in violation of any law, regulation, permit or rule; and, (4) not use or allow the use of any ANTENNA FACILITY, LICENSED AREA or PROPERTY for any illegal or immoral purpose.
- C. COMPANY shall mark cabling every thirty-six (36) inches with identifying ownership markings and identify the antenna with similar ownership markings.
- D. No less than thirty (30) days prior to installation, COMPANY shall submit plans and specifications to the CITY for approval of any proposed cable runs.

SECTION 7. TERMINATION.

A. CITY Termination of Individual SLA.

Except as otherwise provided in this MASTER AGREEMENT (including in Section 15), CITY shall have the right to terminate any SLA as follows:

1. Immediately on written notice if COMPANY fails to pay any USAGE FEE or other monies due under any SLA after the same are due, and such failure shall continue for thirty (30) days after receipt of written notice thereof to COMPANY; or
2. Immediately on written notice if COMPANY fails to cure a material breach of an SLA (the materiality of which shall be determined in CITY's sole discretion) of any term or condition hereof, within thirty (30) days after CITY has notified COMPANY of such breach; or
3. Immediately on written notice if COMPANY's operation of the subject ANTENNA FACILITY is deemed by CITY to endanger or pose a threat to the public health, safety or welfare or interfere with the normal day-to-day operation of any CITY department or service, including, without limitation, and as an example only, if operation of the ANTENNA FACILITY adversely interferes with, or otherwise adversely affects CITY communications or operations; or
4. Immediately on written notice if CITY is mandated by law, a court order or decision, or the federal, state or local government to take certain actions that will cause or require the removal of an ANTENNA FACILITY from a LICENSED AREA; or
5. Upon one (1) years' prior written notice, if the LICENSED AREA or PROPERTY on which an ANTENNA FACILITY is located is needed for another CITY use or purpose or if CITY intends to sell or decommission the PROPERTY.

B. CITY Termination of MASTER AGREEMENT.

1. CITY may, in addition to seeking any other remedy available to it, terminate this MASTER AGREEMENT if COMPANY neglects or refuses to comply with any of the provisions of this MASTER AGREEMENT beyond all applicable cure periods and fails within ninety (90) days after written notice from CITY to correct such neglect, refusal or default. COMPANY shall have an extended period as may be required beyond ninety (90) days if the nature of the cure is such that it reasonably requires more than ninety (90) days and COMPANY commences the cure within the ninety (90) day period and thereafter continuously and diligently pursues the cure to completion. **In the event any default is limited**

DOCUMENT A

solely to one or more SLAs, but not the MASTER AGREEMENT as a whole, the CITY's termination right shall be limited to those SLAs under which COMPANY is in default beyond any applicable cure period.

2. If COMPANY fails to maintain or procure the insurance policy(ies) as required by **EXHIBIT "C"** shall be cause for the CITY to terminate this **MASTER AGREEMENT**. Such termination shall be effective thirty (30) days after delivery of written notice to COMPANY of such failure.
3. This **MASTER AGREEMENT** shall terminate, without notice, (i) upon the institution by or against COMPANY of insolvency, receivership or bankruptcy proceeding or any other proceedings for the settlement of COMPANY's debts which is not terminated or dismissed within ninety (90) days after the filing thereof, (ii) upon COMPANY making an assignment for the benefit of creditors, or (iii) upon COMPANY's dissolution or ceasing to do business.
4. Upon termination of the right to attach an **ANTENNA FACILITY** to **PROPERTY**, neither Party will owe any further obligations to the other under this **MASTER AGREEMENT**, except for the responsibility of COMPANY (i) to remove the **ANTENNA FACILITY** from the **PROPERTY** within ninety (90) days of such termination, (ii) to pay any fees associated with COMPANY's usage of the **PROPERTY** for the time period during which **ANTENNA FACILITIES** were attached, the indemnities and hold harmless provisions contained in this **MASTER AGREEMENT**, and (iii) COMPANY's obligation to reimburse CITY for all costs, expenses and losses properly incurred by CITY pursuant to this **MASTER AGREEMENT**.

C. Removal of ANTENNA FACILITY Upon Expiration or Termination.

1. Expiration of MASTER AGREEMENT. Upon expiration of the **MASTER AGREEMENT**, COMPANY shall at its sole cost and expense remove all **ANTENNA FACILITIES** and repair and restore the affected areas of all **LICENSED AREAS** and all **PROPERTIES** prior to the expiration of this **MASTER AGREEMENT**.
2. Expiration of SLA. Upon expiration of an **SLA**, COMPANY shall at its sole cost and expense remove the applicable **ANTENNA FACILITY** and repair and restore the affected areas of the **LICENSED AREA** and **PROPERTY** prior to the expiration of the **SLA**.
3. Termination of MASTER AGREEMENT. Upon earlier termination of the **Master Agreement** pursuant to **SECTION 7.B** above, the termination of the **Master Agreement** shall automatically result in the termination of each **SLA** and COMPANY shall at its sole cost and expense remove each applicable **ANTENNA FACILITY** and repair and restore the affected areas

DOCUMENT A

of each of the LICENSED AREAs and PROPERTIES no later than sixty (60) days after notice of termination.

4. Termination of SLA. Upon earlier termination of an SLA pursuant to **SECTION 7.A** above, COMPANY shall at its sole cost and expense remove the applicable ANTENNA FACILITY and repair and restore the affected areas of the LICENSED AREA and PROPERTY no later than sixty (60) days after notice of termination.
5. Notwithstanding the foregoing, any termination due to required relocation of an ANTENNA FACILITY shall be governed by **SECTION 1.C**.

D. Prorated USAGE FEE Reimbursement

In the event of the early termination of any individual SLA by CITY, CITY will reimburse COMPANY the unused portion of the applicable USAGE FEE(S) after proration and proper computation based on the number of months remaining in the fiscal year of the term for which payment was made in advance by COMPANY.

SECTION 8. NO LIABILITY.

A. Liability.

COMPANY hereby waives any right of recovery from and affirmatively releases CITY, its agents, officers, employees or contractors from any and all claims, liabilities, losses damages or loss of property or revenue from any cause whatsoever to any ANTENNA FACILITY, specifically including, without limitation, damage, if any, resulting from CITY's maintenance operations adjacent to any ANTENNA FACILITY or from vandalism or unauthorized use of any ANTENNA FACILITY, except as such damage is solely caused by the gross negligence or willful misconduct of CITY, its agents, officers, employees or contractors during the course of performing their official duties.

B. Security.

COMPANY shall take reasonable precautions against damage to or unauthorized use of any ANTENNA FACILITY. CITY shall not be liable for any vandalism or other damage that may occur to any ANTENNA FACILITY or in any LICENSED AREA or any unauthorized use of any ANTENNA FACILITY except as provided in **SECTION 8.A**, above.

This **Section 8** shall survive the expiration or early termination of this Master Agreement.

SECTION 9. PLANS AND SPECIFICATIONS; PERMITS

- A. Prior to the execution of any SLA, the CITY as licensor shall have the right of prior review and approval of all Plans and Specifications, which approval shall not be unreasonably withheld, conditioned or delayed. CITY shall also have the right to inspect each and every ANTENNA FACILITY at any time during and after installation. COMPANY shall not commence installation or alteration of any ANTENNA FACILITY, or any portion thereof, until CITY has approved the applicable Plans and Specifications and COMPANY has obtained all applicable permits and have paid the applicable USAGE FEE. Approval of Plans, Specifications and Permits shall not release COMPANY from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the Plans, Specifications and/or Permits. COMPANY shall be responsible for notifying CITY and all other relevant parties immediately upon discovery of such omissions and/or errors.
- B. COMPANY agrees to perform any work in furtherance of the Plans, Specifications and Permits at COMPANY's sole expense and in accordance with and in a manner CITY is satisfied conforms to Plans, Specifications and Permits as may be approved by CITY in furtherance of this MASTER AGREEMENT and applicable SLA.
- C. COMPANY will submit at least one (1) set of such Plans and Specifications to the CITY as landlord at the address set forth for Notices in **SECTION 15** herein, which CITY shall use for description and acceptance of an ANTENNA FACILITY. COMPANY shall supply the CITY any additional information or copies it may request before approving the Plans and Specifications.
- D. COMPANY shall apply for and obtain all applicable permits as are required by CITY to perform the work described in this MASTER AGREEMENT and applicable SLA, and shall comply with all of the terms and conditions set forth in such permits, including, without limitation, allowing CITY personnel to inspect the installation of each ANTENNA FACILITY on CITY PROPERTY. COMPANY shall arrange for, obtain and bear costs of all: permits (including without limitation any fees as required by any federal, state or local law, statute, ordinance, rule or regulation); plan check and inspection fees; licenses; environmental impact reports; site preparation; surface treatment and relocation of any facilities on the PROPERTY, as necessary or required for health or safety in the construction or alteration of the PROPERTY. As a condition of this MASTER AGREEMENT, COMPANY agrees to perform the covenants and conditions contained in any permit issued or to be issued to COMPANY for an ANTENNA FACILITY by CITY's Chief Engineer or his/her designees.
- E. COMPANY shall not commence physical installation of any ANTENNA FACILITY before approval of Plans and Specifications pursuant to **SECTION 9.A** and obtaining approval of all applicable permits pursuant to **SECTION 9.D**. Approval of Plans and Specifications by CITY Departments shall not release COMPANY from the responsibility for, or the correction of, any errors, omissions or other mistakes

DOCUMENT A

that may be contained in Plans and Specifications. COMPANY agrees to perform any work at COMPANY'S sole cost and at COMPANY'S sole expense and in accordance with and in a manner CITY is satisfied conforms to Plans and Specifications as may be approved by CITY in furtherance of this MASTER AGREEMENT and applicable SLA.

SECTION 10. INDEMNIFICATION.

COMPANY shall protect, defend, indemnify, and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising from or related to any damage, injury or loss caused by, or resulting from, the installation, maintenance, operation or use of each and every ANTENNA FACILITY, the provision of SERVICES, or resulting in any way from COMPANY'S occupation or use of each and every PROPERTY and LICENSED AREA thereon, including, without limitation, that which is due, in whole or in part, to the willful misconduct or negligent acts (active or passive) or omissions by COMPANY, its officers, employees, consultants or agents. COMPANY'S obligation to indemnify and hold harmless excludes only such claim, loss or liability that is due to the sole negligence or willful misconduct of CITY and/or its employees. All of COMPANY'S obligations under this SECTION are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this MASTER AGREEMENT.

In an action or claim against CITY in which COMPANY is defending CITY, COMPANY shall defend CITY at the expense of COMPANY by counsel approved in writing by CITY.

This SECTION 10 shall survive the expiration or termination of this MASTER AGREEMENT or any SLA.

SECTION 11. TAXES.

- A. COMPANY shall pay before delinquency any and all taxes, assessments, licenses, fees and other public charges which may be levied, assessed or imposed upon any of COMPANY'S interests herein, upon COMPANY'S businesses, upon COMPANY for the privilege of conducting business, or upon any property of COMPANY at a PROPERTY. COMPANY is advised that this MASTER AGREEMENT and/or individual SLA may, but is not intended to, create a possessory interest in the applicable LICENSED AREA, for which COMPANY may be subject to payment of possessory interest taxes therefore, for which CITY shall not be liable. Payment of any possessory interest tax shall not reduce in any way any charges or other fees required to be paid by COMPANY hereunder.
- B. COMPANY shall not permit or suffer any liens to be imposed upon any PROPERTY or any portion thereof, without promptly discharging the same, provided, however, that COMPANY may, if it so desires, contest the legality of same following prior written notice to CITY. In the event of a contest of a lien, COMPANY shall provide a bond in an amount and in a form acceptable to CITY immediately following request therefore by CITY.

SECTION 12. INSURANCE.

- A. COMPANY, at COMPANY's own expense throughout the Term of this MASTER AGREEMENT, as extended, shall comply with the insurance requirements attached hereto as **Exhibit "C"** and incorporated by reference herein. The procuring of the policy or policies of insurance required by **Exhibit "C"** shall neither be construed to limit COMPANY's liability hereunder nor to fulfill the indemnification provisions and requirements of this MASTER AGREEMENT. Notwithstanding the policy or policies of insurance, COMPANY shall be obligated for the full and total amount of any damage, injury or loss caused by its negligence or willful misconduct arising out of this MASTER AGREEMENT, individual SLA, or COMPANY's use of any PROPERTY or the LICENSED AREA thereon.
- B. For each and every ANTENNA FACILITY, COMPANY shall deposit with CITY, on or before the commencement date of the applicable SLA, certificates of insurance and the required endorsements in forms reasonably satisfactory to CITY, indicating compliance with the insurance provisions of this MASTER AGREEMENT. COMPANY shall keep the insurance in effect, and the certificates evidencing the insurance on deposit with CITY, during the term of each SLA and as the same may be extended.
- C. The required coverage amounts may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated and coverage follows form as to scope and endorsements in this **SECTION 12**.
- D. Notwithstanding anything to the contrary contained in this Section 12, the CITY's Risk Manager may approve coverage different from the requirements shown on Exhibit C on a case-by-case basis, after a written request from COMPANY and provided such alterations or revisions are consistent with CITY policies in effect at the time of the request.

SECTION 13. FREQUENCY INTERFERENCE.

- A. COMPANY will not cause, permit or allow the installation, operation, maintenance or use of any ANTENNA FACILITY or any other equipment installed pursuant to this MASTER AGREEMENT to interfere with: (1) any CITY use of the applicable PROPERTY; (2) CITY equipment used at the applicable PROPERTY; (3) CITY communications; and/or (4) or, unless approved by such third party, any pre-existing third party uses of the applicable PROPERTY or any other CITY property, including uses of communications equipment, which uses were authorized or planned by CITY prior to the execution of this MASTER AGREEMENT or individual SLA. Upon written request from CITY, COMPANY shall provide within five (5) business days after request therefor, in writing, to the CITY at the address set forth for notices in **SECTION 15**, herein, the frequencies utilized in the operation of each and every ANTENNA FACILITY. COMPANY shall also provide the CITY, at the same address, with written notice of any intended changes in those frequencies, a description of those frequencies and the dates that those frequency changes are

DOCUMENT A

anticipated to occur, at least thirty (30) days prior to the date that those frequency changes are anticipated to occur. COMPANY shall not begin any work on any PROPERTY pursuant to this MASTER AGREEMENT until these frequencies have been approved in writing by CITY's Chief Information Officer or any other person that may be designated to make such approval by CITY's City Manager.

- B. COMPANY shall ensure that its use of each and every ANTENNA FACILITY does not interfere with any of CITY's public safety transmissions, police and fire communications, CITY's internal or external communications, communications used by CITY, or communications used in connection with the San Jose International Airport. At the request of CITY, COMPANY shall operate each and every ANTENNA FACILITY in such a manner that all communications sent or received by the ANTENNA FACILITY shall be separated from all CITY communications frequencies, including without limitation, CITY communications listed in the preceding sentence, by at least 1 megahertz. If CITY makes such a request, CITY shall provide COMPANY with a list of the frequencies used by CITY and CITY and COMPANY shall cooperate to ensure there is no interference with CITY's public safety transmissions, police and fire communications, CITY's internal or external communications or any other communications used by CITY.
- C. If COMPANY's construction, installation, maintenance, operation, use or removal of an ANTENNA FACILITY violates this provision, COMPANY shall immediately eliminate such violation or interference. If COMPANY fails to immediately eliminate such violation or interference, CITY may, in addition to and without compromising any other remedy available to CITY, immediately cut off power to the facility in the manner set forth in **SECTION 14** below. CITY shall immediately provide notice to COMPANY of any interference or the exercise of CITY's shut off rights pursuant to this SECTION, provided, however, if there is no danger to the public health, safety or welfare of the public, then CITY and COMPANY will cooperate to eliminate such interference and CITY may agree to delay any termination or cutting off of power to the ANTENNA FACILITY.
- D. COMPANY shall use its best efforts to operate its communications equipment in a manner that is consistent with all applicable frequencies assigned to it by the Federal Communications Commission ("FCC"), if any, and in compliance with all applicable FCC rules and regulations.

SECTION 14. EMERGENCY

- A. COMPANY understands that emergency situations may develop from time to time that require power to an ANTENNA FACILITY to be shut off. Notwithstanding **SECTION 13**, COMPANY agrees that in the event that such a situation occurs, and there are frequency interferences of any nature between CITY's communication equipment and that of COMPANY, CITY shall have the right to shut off immediately any power to the applicable ANTENNA FACILITY and any equipment of COMPANY's located on the applicable PROPERTY for the duration of the emergency. COMPANY agrees not to hold CITY responsible or liable for and shall protect, defend, indemnify and hold CITY harmless pursuant to

DOCUMENT A

SECTION 10 for any damage, loss, claim or liability of any nature suffered as a result of the loss of the use of the applicable ANTENNA FACILITY or other communication facilities at the applicable PROPERTY or affected by the power outage at the PROPERTY. For the duration of the emergency, COMPANY may request to place a temporary communication facility on the PROPERTY so long as the temporary communication facility does not interfere with the subject emergency situation.

- B. COMPANY agrees to install a master power “cut-off” switch on their equipment at each and every ANTENNA FACILITY for the purpose of assisting CITY in such an emergency.
- C. Unless otherwise specifically provided in a notice of termination of this MASTER AGREEMENT, CITY’s exercise of the right to shut off any power to any ANTENNA FACILITY pursuant to this SECTION is not intended to constitute a termination of this MASTER AGREEMENT or applicable SLA by either party. COMPANY and CITY shall meet after the CITY determines that an emergency situation has ended to establish the time and manner in which power shall be restored to the applicable ANTENNA FACILITY.
- D. CITY shall have the right to determine what constitutes an “emergency situation” pursuant to this SECTION.

SECTION 15. REMEDIES FOR DEFAULT BY COMPANY

- A. Except as otherwise specifically set forth in this MASTER AGREEMENT or each applicable SLA, if: (i) COMPANY shall fail to pay the USAGE FEE or other monies due under this MASTER AGREEMENT or under any SLA after the same are due, and such failure shall continue for fifteen (15) days after receipt of written notice thereof to COMPANY, or (ii) COMPANY shall fail to perform any other term, covenant, or condition contained herein or in any SLA, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless COMPANY shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity, or (iii) COMPANY’s interest in this MASTER AGREEMENT or in any SLA or any part of this MASTER AGREEMENT or any SLA is assigned or transferred, either voluntarily or by operation of law, without permission of CITY when such permission is required by the terms of this MASTER AGREEMENT or the applicable SLA, whether by judgment, statute, operation of law, execution, death or any other means, or (iv) COMPANY shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against COMPANY and such petition remains undischarged for a period of ninety (90) days; or if any receiver of the business or of the property or assets of COMPANY shall be appointed by any court (except a receiver appointed at the instance or request of CITY) and COMPANY fails to obtain dissolution of the receiver within ninety (90) days after appointment of the receiver; or (v) COMPANY shall make a general or any assignment for the benefit of its creditors; then in any of such events CITY shall

DOCUMENT A

have the following options, in addition to any other remedies available to CITY at law or in equity:

1. Continue this MASTER AGREEMENT or the applicable SLA and recover the USAGE FEE or any other monies from COMPANY as it may become due.
 2. To terminate this MASTER AGREEMENT, and all rights of COMPANY hereunder by giving written notice to COMPANY of such intention to terminate, in which event CITY may recover from COMPANY:
 - (a) Any unpaid USAGE FEES or other monies due to CITY that had been earned at the time of such termination; plus
 - (b) Any other amount necessary to compensate CITY for all the detriment directly and/or proximately caused by COMPANY's failure to perform its obligations under this MASTER AGREEMENT or the applicable SLA, or which in the ordinary course of events would be likely to result therefrom, including, without limitation, all costs and expenses reasonably incurred by CITY in (i) retaking possession of the LICENSE AREA, including reasonable attorney fees; (ii) maintaining or preserving the LICENSED AREA; and (iii) preparing the LICENSED AREA for a new licensee, including repairs or alterations to the LICENSED AREA or the CITY PROPTY in connection therewith; plus
 - (c) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.
- B. Notwithstanding anything to the contrary contained in this Section 15 and in addition to any late fee that becomes due as provided in Section 3.b.2 above, COMPANY shall be charged a late charge equal to the greater of \$100 per occurrence or 5% of the amount that is past due (the "LATE CHARGE") for any monetary default of COMPANY under this MASTER AGREEMENT or any SLA. In addition to any LATE CHARGE, interest on any amounts due to City that remains unpaid for a period of ten (10) business days or more shall accrue an interest charge at a rate of 10% per annum until such amount is paid.

SECTION 16. NOTICES

Except as otherwise specifically set forth and allowed under this MASTER AGREEMENT, all notices herein required to be given or which may be given by either party to the other shall be deemed to have been fully given when served personally on CITY or COMPANY, or when made in writing and deposited in the United States Mail, certified mail, return receipt requested, through electronic mail, postage prepaid and addressed as follows:

To CITY: City of San José
Real Estate Services
200 E. Santa Clara Street 12th Floor
San José, CA 95113

With a copy to: Office of the City Attorney
City of San José
200 E. Santa Clara Street
San José, CA 95113-1905
Attn: Real Estate Attorney

To COMPANY:

with a copy to:

Either party may change its address for notice by notifying the other party in the manner provided in this SECTION.

SECTION 17. RIGHT TO USE SUBORDINATE

The right to use any LICENSED AREA herein granted by CITY to COMPANY, and all rights and privileges hereunder, are and shall at all times be subordinate to the rights of CITY to all mortgages, trust deeds and other financing and security instruments that may now or hereafter exist on the PROPERTY or LICENSED AREA, and to other existing tenants to use and occupy, and to any occupancy by them of, the applicable PROPERTY and LICENSED AREA thereon. COMPANY's right to install, maintain and operate an ANTENNA FACILITY, or to remove an ANTENNA FACILITY, shall be

DOCUMENT A

subject at all times to such rights as CITY may have to require the removal or relocation of the subject ANTENNA FACILITY at the sole cost and expense of COMPANY, under the terms stated in **SECTION 1** of this MASTER AGREEMENT.

SECTION 18. ASSIGNMENT

COMPANY shall not voluntarily or by operation of law, directly assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of COMPANY's interest in this MASTER AGREEMENT, any SLA or any LICENSED AREA (collectively, an "Assignment"), without CITY's prior written consent, which will not be unreasonably withheld, delayed or conditioned. Any Assignment of the MASTER AGREEMENT or any SLA pursuant to any court order, administrative proceeding or a settlement thereof ("Court Ordered Assignment") shall be deemed approved by CITY. The USAGE FEE shall automatically be adjusted to CITY's rates in effect as of the effective date of such Assignment. Except for a Court Ordered Assignment, CITY shall not approve an Assignment to any entity that has not entered into a MASTER AGREEMENT with CITY and CITY may require any assignee, successor, transferee or sublessee (collectively, "Assignee") to execute a new SLA for each Licensed Area assigned, sublet or transferred. Any Assignee (including an Assignee pursuant to a Court Ordered Assignment) shall become directly liable to CITY for all obligations of COMPANY and shall be bound by the terms and conditions under this MASTER AGREEMENT and applicable SLA. After the Assignment of the MASTER AGREEMENT or any SLA, COMPANY shall remain liable for the performance of all obligations owed to CITY under the MASTER AGREEMENT and each SLA that existed or accrued prior to the date of the Assignment.

SECTION 19. GOVERNING LAW

This MASTER AGREEMENT shall be construed by, and in accordance with, the laws of the State of California.

SECTION 20. NO INTEREST IN PROPERTY

Nothing herein shall be deemed to create a lease, or grant an easement of any property, or to grant any interest in any PROPERTY, other than a real property license to use the applicable LICENSED AREA, revocable as set forth herein.

SECTION 21. INSPECTION/BOOKS AND RECORDS

COMPANY agrees to make information regarding the equipment listed on each SLA or otherwise used in the operation of the ANTENNA FACILITY to CITY, including, without limitation, information regarding FCC approvals, power consumption, signal output, signal strength, effective radiated power and RF power output. COMPANY shall deliver such information within 60 days after written request therefore. CITY may request that such information be delivered in a summary fashion and/or delivered in a readable electronic format.

SECTION 22. UTILITIES

COMPANY shall be solely responsible for ensuring that each and every LICENSED AREA has adequate electrical power and any other utility service necessary or useful to operation of each and every ANTENNA FACILITY. COMPANY shall install separate meters for utilities. CITY is not obligated to make electricity or other utilities available to COMPANY. COMPANY shall contract with or arrange for utility service to the LICENSED AREA directly with the local utility provider. CITY shall cooperate with COMPANY, at no cost to CITY, to assist COMPANY in obtaining the utility service COMPANY requires. COMPANY shall not do, nor shall it permit anything to be done, which may interfere with the effectiveness or accessibility of the utility, heating, ventilation, diesel exhaust or air conditioning systems or portions thereof of any PROPERTY.

SECTION 23. NOT AGENT OF CITY

Neither anything in this AGREEMENT nor any acts of COMPANY shall authorize COMPANY or any of its employees, agents or contractors to act as agent, contractor, joint venturer or employee of CITY for any purpose.

SECTION 24. RESERVATION OF RIGHTS

COMPANY understands, acknowledges and agrees that any and all authorizations granted to COMPANY under this MASTER AGREEMENT and/or individual SLA are nonexclusive and shall remain subject to all prior and continuing regulatory and proprietary rights and powers of CITY to regulate, govern and use CITY property, as well as any existing encumbrances, deeds, covenants, restrictions, easements, dedications and other claims of title that may affect CITY property. CITY and COMPANY agree that nothing contained in, or contemplated by, this MASTER AGREEMENT and/or individual SLA is intended to confer, convey, create or grant to COMPANY any perpetual interest in any CITY property or in any of CITY's public rights of way.

SECTION 25. CONFLICT OF INTEREST

COMPANY shall avoid all conflict of interest or the appearance of conflict of interest in the performance of this MASTER AGREEMENT and/or individual SLA.

SECTION 26. GIFTS

- A. COMPANY is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. COMPANY agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.

DOCUMENT A

- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this MASTER AGREEMENT by COMPANY. In addition to any other remedies CITY may have in law or equity, CITY may terminate this MASTER AGREEMENT or individual SLA for such breach as provided in **SECTION 7** of this MASTER AGREEMENT.

SECTION 27. DISQUALIFICATION OF FORMER EMPLOYEES

COMPANY is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters, which are connected with former or official responsibilities as set forth in Chapter 12.10 of Title 12 of the San José Municipal Code ("Revolving Door Ordinance"). COMPANY shall not utilize either directly or indirectly any officer, employee, or agent of COMPANY to perform services under this MASTER AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 28. MISCELLANEOUS

- A. This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest. Unless otherwise specified in this Agreement to the contrary, the City Manager, or his or her designee, shall have authority to give any approvals, disapprovals hereunder on behalf of CITY, including without limitation any amendments of this Agreement that do not require additional City appropriation and any adjustments to the Schedule of USAGE FEES in accordance with this Master AGREEMENT.
- B. Whenever the singular number is used in this MASTER AGREEMENT and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- C. If there be more than one entity designated in, or signatory to, this MASTER AGREEMENT, the obligations hereunder imposed upon COMPANY shall be joint and several; and the term COMPANY as used herein shall refer to each and every of said signatory parties, severally as well as jointly.
- D. Time is, and shall be, of the essence for each term and provision of this MASTER AGREEMENT.
- E. Each and every term, condition, covenant and provision of this MASTER AGREEMENT is and shall be deemed to be a material part of the consideration for CITY's entry into this MASTER AGREEMENT and any breach hereof by COMPANY shall be deemed to be a material breach. Each term and provision of this MASTER AGREEMENT performable by COMPANY shall be construed to be both a covenant and a condition.

DOCUMENT A

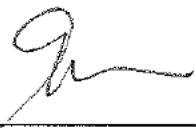
- F. The headings of the several paragraphs and sections of this MASTER AGREEMENT are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this MASTER AGREEMENT and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- G. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either CITY or COMPANY in its respective rights and obligations contained in the valid covenants, conditions and provisions of this MASTER AGREEMENT.
- H. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this MASTER AGREEMENT as if set forth fully herein.
- I. This MASTER Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either party.
- J. Days, unless otherwise specified, shall mean calendar days. The term "business day" shall mean any calendar day that is not a Saturday, Sunday or legal holiday recognized by the Federal Reserve Bank or the City of San José.
- K. Whenever in this MASTER AGREEMENT the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing, and shall be executed by a person having the express authority to grant such approval or consent unless the terms of this MASTER AGREEMENT specifically allow an oral approval or consent of a party.
- L. This MASTER AGREEMENT may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- M. The persons who have executed this MASTER AGREEMENT represent and warrant that they are duly authorized to execute this MASTER AGREEMENT in their individual or representative capacity as indicated.
- N. In the event of a conflict between the terms and conditions contained in this MASTER AGREEMENT and the terms and conditions contained in an individual SLA entered into hereunder, the terms and conditions of the SLA shall supersede.

DOCUMENT A

- O. In computing the time periods within which a right may be exercised or an act is to be performed, such period shall begin on the first day following the last day of such preceding event or delivery, except if the first day is not a business day, in which case the first day of such period shall be deemed to end at 5:00 p.m. California time.

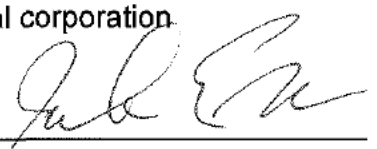
IN WITNESS WHEREOF, the parties have executed this MASTER AGREEMENT as of the EFFECTIVE DATE.

APPROVED AS TO FORM



 Office of the City Attorney

"CITY"
City of San José,
a municipal corporation.

By: 
 Name: JULIE EDMONDS-MARES —
 Title: - Deputy City Manager —
 Date: 9/9/16

APPROVED:

"COMPANY"

DOCUMENT A

EXHIBIT A

FORM SITE LICENSE AGREEMENT

DOCUMENT A

This Site License Agreement (the "SLA") is made this _____ day of _____, 20__ by and between the CITY OF SAN JOSE, a municipal corporation ("CITY"), and _____, a _____, ("COMPANY") pursuant to that certain MASTER AGREEMENT dated _____ 20__ between the parties (the "MASTER AGREEMENT").

All of the terms and conditions of the Master Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Master Agreement. In the event of any contradiction, modification or inconsistency between the terms of the Master Agreement and this SLA, the terms of this SLA shall prevail. Capitalized terms used in this SLA shall have the same meaning described for them in the Master Agreement unless otherwise indicated herein.

Company Name: _____

Company Site ID: _____

Site Location (Address or Intersection): _____

APN: _____

Location Description and Maps: See Attachment A-1

Construction Drawing: See Attachment A-2

Equipment List for ANTENNA FACILITY: See Attachment A-3

Equipment Category: _____

CITY Contact Information:

City of San José
Real Estate Services
200 E. Santa Clara Street 12th Floor
San José, CA 95113
(408) 975-7400
cityownedproperties@sanjoseca.gov

COMPANY Contact Information: _____

DOCUMENT A

Certificate of Insurance: See Attachment A-4

CITY

COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

For City Use Only

Zone: _____ Equipment Size: _____

ERP Output: _____ USAGE FEE Classification: _____

SLA Effective Date: _____ Initial Payment Amount Due: _____

Additional Provisions: _____

DOCUMENT A

Attachment A-1

LOCATION DESCRIPTION AND MAPS

[Insert location description, parcel map, and aerial map here]

DOCUMENT A

Attachment A-2

CONSTRUCTION DRAWING

[Insert construction drawing here]

DOCUMENT A

Attachment A-3

EQUIPMENT LIST FOR ANTENNA FACILITY

[Insert equipment for antenna facility list here]

DOCUMENT A

Attachment A-4

CERTIFICATE OF INSURANCE

[attach copy]

DOCUMENT A

Exhibit B

USAGE FEE SCHEDULE

The Site License Agreement fee schedule below is effective July 1, 2015 through June 30, 2016. Usage Fees shall increase by 3% (three percent) annually on each July 1. The annual payment shall be payable and due in advance on July 1 of each year. The initial payment shall be payable and due on the 1st day of the month following mutual execution of the Site License Agreement and prorated for the months remaining through June 30 of that year.

Zone 1

<i>Enclosure Size (Including Space For Antennas)</i>	<i>Effective Radiated Power (ERP) Output</i>		
	0-20 Watts	21-100 Watts	101-360 Watts
0-30 Cu. Ft.	\$ 2,625	\$ 5,250	\$ 10,875
31-125 Cu. Ft.	\$ 5,063	\$ 6,938	\$ 13,313

Zone 2

<i>Enclosure Size (Including Space For Antennas)</i>	<i>Effective Radiated Power (ERP) Output</i>		
	0-20 Watts	21-100 Watts	101-360 Watts
0-30 Cu. Ft.	\$ 2,975	\$ 5,950	\$ 12,325
31-125 Cu. Ft.	\$ 5,738	\$ 7,863	\$ 15,088

Zone 3

<i>Enclosure Size (Including Space For Antennas)</i>	<i>Effective Radiated Power (ERP) Output</i>		
	0-20 Watts	21-100 Watts	101-360 Watts
0-30 Cu. Ft.	\$ 3,500	\$ 7,000	\$ 14,500
31-125 Cu. Ft.	\$ 6,750	\$ 9,250	\$ 17,750

The above referenced pricing schedule is for antenna facilities containing four (4) or fewer antennas and attaching to existing structures. If mutually agreed by CITY and COMPANY in their respective discretion, the USAGE FEE Schedule may be applied to antenna facilities containing 5 to 8 antennas in which case an additional fee equal to 20% of its respective USAGE FEE shall apply. Antenna facilities requiring a new, non-existing vertical structure will be approved by CITY on a case-by-case basis.

The above referenced schedule is subject to change as approved by CITY. Any changes or modifications to the schedule will not affect Site License Agreements in effect prior to the date of any such change.

DOCUMENT A

Attachment C

INSURANCE REQUIREMENTS

COMPANY, at COMPANY's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, entries onto the Property hereunder by COMPANY, its officers, employees, agents or contractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Property insurance against all risks of loss to any improvements or betterments, Lessees stock, equipment, furniture, business interruption, and fixtures; and
5. Professional Liability Errors and Omissions insurance for all professional services rendered including during the planning and design phase of the project.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

COMPANY shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence or, if five or more sites are owned, operated, or managed by COMPANY, \$5,000,000 per occurrence for bodily injury, personal injury and property damage. Coverage shall include fire legal liability with minimum sublimit of \$100,000. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

DOCUMENT A

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Property insurance in an amount not less than one hundred percent (100%) of the actual replacement value of any materials, property, or stored items on or behalf of, by or through COMPANY at any City owned sites or public right-of-ways, against all perils as are embraced and covered by "special perils" endorsements approve for use in the State of California.
5. Professional Liability Errors and Omissions: \$1,000,000 per claim and \$1,000,000 aggregate limit.

C. **Deductibles and Self-Insured Retentions**

Any self-insured retentions must be declared to CITY's Risk Manager.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. CITY, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, COMPANY; products and completed operations of COMPANY; premises owned, leased or used by COMPANY; and automobiles owned, leased, hired or borrowed by COMPANY. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors as respects damage or injury solely caused by the additional insureds.
 - b. COMPANY's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of COMPANY's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by COMPANY shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that COMPANY's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.

DOCUMENT A

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.

3. All Coverages

COMPANY shall provide at least thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium or cancellation of insurance that is not replaced.

Notwithstanding the forgoing, COMPANY may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event COMPANY 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 COMPANY with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide COMPANY with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) CITY shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Company; and (iii) CITY shall fully cooperate with COMPANY in the defense of the claim, demand, lawsuit, or the like but not at CITY's expense.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager or with an A.M. Best's rated carrier of A-, VII or better.

F. Verification of Coverage

COMPANY shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance Department
Risk & Insurance Program
200 East Santa Clara St., 13th Floor
San Jose, CA 95113-1905

DOCUMENT A

G. **Contractors**

COMPANY shall include all contractors as insured under its policies or shall obtain separate certificates and endorsements for each contractor. Coverage should be maintained for the design and planning stage as well as for the duration of the Master Agreement and any License Agreements.