

MASTER FACILITIES LICENSE AGREEMENT

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MASTER FACILITIES LICENSE AGREEMENT	Agreement #:
<p>This Master Facilities License Agreement For Small Wireless Installations On Municipal Facilities (the "Agreement") is made and entered into as of "Effective Date" _____, by and between City of Menlo Park, California, a California municipal corporation (collectively "Licensor" or "City"), and XXX ("Attacher" or "Licensee"). Licensor and Licensee may be referred to hereafter individually as a "Party" and collectively as the "Parties."</p>	
RECITALS	
<p>WHEREAS, Licensee seeks to affix small wireless communication antennas and related equipment to certain Municipal Facilities, as defined herein;</p> <p>WHEREAS, Licensor is willing to accommodate Licensee's non-exclusive use of such Municipal Facilities in accordance with all applicable law and the terms of this Agreement;</p> <p>NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth in this Agreement, the Parties hereby agree as follows:</p>	
CERTAIN DEFINED TERMS	
<p>As used herein, the following capitalized terms have the meaning ascribed to them below:</p> <p>"Authorized Licensee Installation" means any Licensee Installation placed on a Municipal Facility by Licensee pursuant to a Site License (as detailed in Section 3.1) authorized by Licensor.</p> <p>"Emergency" means a situation in which there is an imminent threat of injury to person or property, or loss of life.</p> <p>"FCC" means the Federal Communications Commission;</p> <p>"Federal Telecommunications Law" means the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as the same may be amended or supplanted from time to time) and the published rules, regulations, and decisions of the FCC adopted to implement or interpret that Act and as may be further ruled upon and construed by the courts;</p> <p>"Hazardous Substance" means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.</p> <p>"Licensee Installation" means Wireless Installations (as defined below) and associated equipment, affixed by Licensee to a Municipal Facility owned or controlled by Licensor.</p> <p>"Make-Ready Work" has the meaning ascribed to it in Section 4.1, and generally refers to work required on or in a Municipal Facility to create space for a Licensee Installation, and/or replacing and/or reinforcing the existing Municipal Facility to accommodate the Licensee Installation including but not limited to, rearrangement or transfer of existing attachments and facilities of other entities, Municipal Facility relocation and replacement.</p> <p>"Municipal Facility(ies)" means a Licensor-owned pole or poles located in the public right-of-way or a public utilities easement including but not limited to poles utilized to support streetlights, traffic signals,</p>	

flags, banners and/or signage, and associated facilities, including Replacement Poles as defined in Section 4.1(b); billboard(s); trash receptacle(s); bus stop(s); and any other similar structure(s) capable of accommodating a Wireless Installation. Municipal Facility does not include any Licensor pole used for the function of electricity distribution;

"Permitted Services" means the provision of wireless communications services over Licensee's network;

"Person" or "Persons" means any person or entity;

"Small Wireless Facilities" means a small wireless facility, as defined in 47 CFR Part 1, Subpart U, §1.6002(1); and

Other defined terms have the meaning ascribed to them in the body of this Agreement.

1. SCOPE OF AGREEMENT

- 1.1 License. If Licensee is not in Default (as defined in Section 14.1) and complies with all of its obligations hereunder, then subject to the terms and conditions of this Agreement:
- (a) Subject to issuance and full execution of a Site License (in the form in Exhibit C hereto) for each Authorized Licensee Installation on each Municipal Facility, Licensee shall have the right to install its Authorized Licensee Installations on Municipal Facilities for Permitted Services throughout the Term (as detailed in Section 13); and
 - (b) Except where otherwise permitted herein, Licensor shall not intentionally disturb Licensee's Authorized Licensee Installations during the Term. No use, however extended, of Licensor's Municipal Facilities under this Agreement shall create or vest in Licensee any ownership or property rights in those Municipal Facilities. Licensee's rights in Licensor's Municipal Facilities shall be and remain a mere license for the purposes specified herein.
- 1.2 Scope of Agreement. Licensee acknowledges and agrees that nothing in this Agreement grants Licensee any right to make any Licensee Installation, or to install other facilities, including Wireless Installations that do not conform to this Agreement. Licensee agrees not to attempt any such installation by virtue of this Agreement or to access, install or maintain its facilities upon, or across the property of any third party absent an independent agreement between Licensee, on the one hand, and, on the other hand, Licensor and/or such third party.
- 1.3 Interference with Licensee Installations. Licensor will not grant, after the date of this Agreement, and except as required by law, a permit, license or any other right to any third party if, at the time such third party applies for access to a Municipal Facility, the Licensor knows or has reason to know that such third party's use may in any way adversely affect or interfere with the Licensee's existing Licensee Installations or Licensee's ability to comply with the terms and conditions of this Agreement.
- 1.4 Existing Uses. Licensee acknowledges and agrees that the primary purpose of the Municipal Facilities is to serve the public. Licensor is willing to permit the installation of Licensee Installations on Municipal Facilities only where such use will not interfere with the existing and future primary service requirements and facilities, or the primary service requirements of Licensor and others authorized to use the Municipal Facility as of the date of the applicable Site License. Licensee shall not materially interfere in any manner with the existing uses of the Municipal Facilities or other Licensor property including public rights-of-way and public utility easements, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner(s) of the affected property or properties.

2. GENERAL OBLIGATIONS

2.1 Requirements and Specifications.

- (a) At its own expense, Licensee must erect, install, repair and maintain its Licensee Installations in safe condition and good repair in accordance with:
 - (i) The requirements and specifications of the National Electrical Safety Code ("NESC"), the National Electrical Code ("NEC") and any and all other applicable regulatory codes for safe practices when performing work on or near Municipal Facilities (collectively, "Safety Codes");
 - (ii) The safety and design specifications for Small Wireless Facilities shown in Exhibit A hereto and such other instructions as may be mutually agreed upon by Licensee and Licensor ("Licensor Practices");
 - (iii) Any amendments or revisions of the Safety Codes or Licensor Practices, provided however that amendments or revisions shall not apply retroactively unless required by law;
 - (iv) Any current or future rules or orders of the FCC, the State public utility commission, or any other federal, state or local authority having jurisdiction;
 - (v) The terms and conditions of the applicable Site License, and any applicable federal, state or local permits and other authorizations for the Licensee Installation;
 - (vi) Applicable federal, state and local law and regulations including but not limited to the Menlo Park Municipal Code requirements.

- (b) Licensee shall ensure that all work performed by it or on its behalf is performed in accordance with the NESC and all applicable safety and health standards, including, without limitation, occupational safety and health standards promulgated by the Occupational Safety and Health Administration of the United States Department of Labor.

- (c) Licensor, as the owner of Municipal Facilities, may, for reasonable cause and in accordance with applicable City of Menlo Park Municipal Code and federal law requirements, including but limited to, on the basis of location, aesthetics or technical grounds such as insufficiency of capacity, safety, reliability and/or generally applicable engineering purposes, deny all or part of a Wireless Facilities Permit, or limit the number and/or technical characteristics (e.g., weight or size) of any Licensee Installation on any and applicable Municipal Facilities or place reasonable conditions on any approval to address aesthetic, technical or other concerns or require relocation, replacement or removal of Licensee Installations or take any other actions authorized hereunder and Licensee agrees to comply with any and all of its concomitant obligations hereunder in any such event or events.

2.2 Safety Precautions. Licensee shall take all necessary precautions, including installing protective equipment, performing "Tree Trimming", (as defined in Section 5.2) in coordination with City Arborist, or taking other measures, to protect Persons and property against injury or damage that may result from Licensee Installations, and to guard against interference with normal operation of the Municipal Facilities.

2.3 No Liens Permitted. Licensee agrees that it will not, directly or indirectly, create, incur, assume or suffer to exist any lien, mechanics, materialman or other, with respect to any Municipal Facility or other Licensor property or facility resulting from any work performed by Licensee or on its behalf pursuant to this Agreement or any act or claim against it or any of its contractors, agents, or customers, and will, at its sole expense, promptly take any action as may be necessary to discharge any such lien, in all events within thirty (30) days of first being notified in writing of its existence.

2.4 Worker Qualifications; Responsibility for Agents and Contractors. Each party shall ensure that each and every one of its workers and, to the extent that either may employ agents or contractors, their workers, are adequately trained and skilled to access the Municipal Facilities in accordance with all applicable industry and governmental standards and regulations. Licensor may deny access to its Municipal Facilities to any such worker who is not so qualified, or does not act in a safe and professional manner when accessing any Municipal Facility. In such event, the Licensee shall take such reasonable and necessary action so as to ensure that such worker does not continue to access the Municipal Facility on Licensee's behalf, until and unless such worker is qualified to Licensor's

reasonable satisfaction. In no event, however, shall a party be liable or otherwise responsible for the competence or conduct of the other party's workers or those of the other party's agents or contractors.

- 2.5 Payment and Performance. Unless otherwise stated herein, Licensee shall pay its liabilities hereunder within sixty (60) days of receipt of invoice and shall otherwise fully perform its covenants, agreements, obligations and liabilities herein.
- 2.6 Utilities. The Equipment must have its own electrical meter. Licensee is solely responsible for the payment to the utility service provider of all electrical utility charges that are attributable to the Equipment's usage of electricity, including the cost of installing meters for any item of Equipment. Notwithstanding the foregoing, City, if feasible and subject to Licensor's prior written approval, which shall not be unreasonably withheld, will provide Licensee with use and access to Licensor's existing power supply, conduit or other form of infrastructure for the delivery of power to a Municipal Facility to allow Licensee to obtain electricity for the operation of Licensee's Equipment with such electricity being paid for by Licensee and subject to City charges and a separate agreement: street light pull box, pole foundation conduit and street light service wire.
- 2.7 Additional License and Permits Required by Code. All Licensee Installations will be installed, operated and maintained by or on behalf of Licensee in accordance with applicable provisions of the City of Menlo Park Municipal Code. Licensee or its designee shall be required to apply for and obtain all required permits issued by the Licensor for work performed pursuant to this Agreement, and in accordance with the plans submitted by Licensee and approved by the Licensor in issuing such permits. Execution of this Agreement or any Site License does not constitute the issuance of a permit. Nothing in this Agreement shall limit in any way Licensee's obligation to obtain any required regulatory approvals from any Licensor department, board, or commission or other governmental agency that has regulatory authority over the Licensee's proposed activities involving use of the Municipal Facilities in the public rights-of-way and Licensee's obligation to obtain any required proprietary approvals or agreements to use Licensor property other than Municipal Facilities covered by this Agreement. All work performed pursuant to the rights granted by this Agreement is subject to the prior review and approval of the Licensor in accordance with its customary permitting procedures.

3. APPLICATION FOR SITE LICENSE

3.1 Application for Site License.

- (a) Before placing any new or additional Licensee Installation onto any Municipal Facility, Licensee shall apply for and must receive a "Site License" from Licensor. Licensee shall apply for the Site License using the form required by Licensor, which may be revised or amended by Licensor from time to time in its reasonable discretion ("Application for Site License"). The Application for Site License shall mature into an authorized Site License once an authorized employee of Licensor signs and dates the Site License as approved. The current Application for Site License is set forth in Exhibit B. Any revisions or amendments to the Application for Site License shall become effective and shall be used thereafter by Licensee upon written notice by Licensor to Licensee. Any Application for Site License shall be accompanied by such other information as is required by this Agreement or the Application for Site License (including any instructions thereto). Each Application for Site License shall be applicable to only one Municipal Facility and shall be submitted in conjunction with a Wireless Facilities Permit and Building Permit applications for the Licensee Installation.
- (b) In addition to a Site License, any Licensee Installation shall require a Wireless Facilities Permit, Encroachment Permit and Building Permit and any other applicable permits or approvals pursuant to the City of Menlo Park Municipal Code. Licensee shall pay the then-applicable permit application fees for a. Wireless Facilities Permit. Licensee has the option to either submit an application for an Encroachment Permit to conduct work in the public right-of-way at the time of applying for the Site License, Wireless Facilities Permit and Building Permit or after obtaining the Site License, Wireless Facilities Permit and Building Permit. Under no circumstance shall Licensee perform work in the public right-of-way without first obtaining an Encroachment Permit.

- 3.2 Licensors Review and Other Site License Processing Costs. Licensee shall pay the then-applicable fees for such permits, as adopted from time-to-time by Licensor's City Council, but shall not pay any additional fee for review of the Application for Site License.
- 3.3 Multiple Requests. If more than one entity (each an "Applicant"), including Licensee, has submitted a completed Application for Site License to attach to the same Municipal Facility(ies), priority shall be determined in accordance with the time and date on which the complete Applications for Site License, Wireless Facilities Permit, and Building Permit were submitted with associated fees.
- 3.4 Rights of Third Parties. Nothing contained in this Agreement shall be construed as affecting any rights or privileges previously or subsequently granted by Licensor to other entities not parties to this Agreement to use any Municipal Facilities covered by this Agreement. Subject to Section 1.3, Licensor reserves the right to grant, continue and extend such rights or privileges.

4. PREPARATION OF MUNICIPAL FACILITIES FOR ATTACHMENT; COMPLETED INSTALLATIONS; RELOCATION

- 4.1 Make-Ready Work and Costs. The Parties acknowledge that Licensor's preferred approach to Make-Ready Work would be for Licensee to complete such work; however, if Licensor, in its sole discretion, agrees to perform the Make-Ready Work, the provisions of Section 4.1(a)(i)-(iii), 4.2 and 4.3 shall apply. If Licensee performs the Make-Ready Work, the provisions of Section 4.1(a)(ii) and (a)(iii) shall apply, but the provisions of Section 4.1(a)(i), 4.2 and 4.3 shall not apply.
- (a) Identification of Municipal Facility and estimated costs:
- (i) Licensor will provide Licensee with a written estimate ("Make Ready Cost Estimate") of the direct costs to prepare the Municipal Facility for attachment by Licensee ("Make-Ready Costs") within thirty (30) days of Licensor authorizing the Site License in accordance with Section 3.1. Licensor will not begin Make-Ready Work until it has received Licensee's signed approval of the Make-Ready Cost Estimate ("Approved Make-Ready Cost Estimate") and full payment thereof.
 - (ii) If a Person, other than Licensor, would have to rearrange or adjust any of its facilities in order to accommodate a new Wireless Installation, the party performing the Make-Ready Work shall coordinate such activity, at Licensee's sole expense to coordinate such activity. Licensee shall be responsible for directly paying such other Person for its charges for the same.
 - (iii) The Wireless Installation shall be conditioned on the completion of all Make-Ready Work needed to establish full compliance with NESC, and with Licensor Practices and engineering standards; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct third party or Licensor attachments that are non-compliant with said standards at the time of Licensee's Application. If Licensee is requested by another Person, in comparable circumstances, to relocate or adjust any Wireless Installation to accommodate that Person's facilities, subject to Licensor's written approval of such relocation, the Licensee shall reasonably cooperate with such request and charge no more than Licensor would be permitted to charge for the relocation of its facilities on the applicable Municipal Facility under section 4.1(a)(i) above.
- (b) When Licensee and Licensor have agreed on an existing Municipal Facility location as a suitable site for a Licensee Installation, but the existing Municipal Facility needs to be replaced to accommodate the Licensee Installation, then Licensee shall pay all costs related to replacing the Municipal Facility, including but not limited to installation of the replacement pole (the "Replacement Pole"), transfer of the streetlight fixtures, traffic signal, and/or other items attached to the existing Municipal Facility to the Replacement Pole, and removal and salvage of the existing Municipal Facility to the Licensor. Payment of the pole replacement costs does not provide Licensee with any ownership interest in the Replacement Pole. Licensor will be deemed to own the original Municipal Facility and the Replacement Pole. The Licensee shall bear all Make-Ready Costs necessary to replace and/or otherwise prepare the Municipal Facility for the Licensee Installation. Nothing in this Agreement shall obligate Licensor to replace any Municipal Facility for the sole purpose of accommodating any Licensee Installation.

(c) If a Person, other than Licensor, would have to rearrange or adjust any of its facilities in order to accommodate a new Licensee Installation, Licensor shall use reasonable efforts, at Licensee's sole cost (part of Site License Processing Expenses) to coordinate such activity. The Licensee shall, however, be responsible for separately paying such other Person, in advance, for its charges for the same, it being understood that the Make-Ready Costs referenced above would not include such costs, and that such rearrangement or adjustment must be completed before the Licensee Installation may be made. The Licensee Installation shall be conditioned on the completion of all Make-Ready Work needed to establish full compliance with NESC, and with Licensor Practices and engineering standards; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct attachments that are non-compliant at the time of Licensee's Application. If Licensee is requested by another Person, in comparable circumstances, to relocate or adjust any Licensee Installation to accommodate that Person's facilities, subject to Licensor's written approval of such relocation, the Licensee shall reasonably cooperate with such request and charge no more than Licensor would be permitted to charge for the relocation of its facilities on the Municipal Facility under section 4.1(a) above.

- 4.2 Completion of Make-Ready Work. Upon its agreement to perform such Make-Ready Work, Licensor will complete all requested Make-Ready Work described in the Approved Make-Ready Cost Estimate within sixty (60) days after receiving the Approved Make-Ready Cost Estimate and payment thereof. Licensor shall be granted additional time if reasonably necessary to complete the said work.
- 4.3 Make-Ready Cost Reconciliation. If the actual and reasonable costs incurred by Licensor in conducting Make-Ready Work exceeds the pre-paid Make-Ready Cost Estimate, Licensee shall pay Licensor the shortfall amount of such costs within sixty (60) days of receipt of the invoice. If such Make-Ready Costs were less than the pre-paid Make-Ready Estimate, Licensor will refund the excess Make-Ready Payment to Licensee within sixty (60) days following completion of the make-ready work. Licensee's failure to make a timely payment will result in interest accrual consistent with Section 6.5.
- 4.4 Notification of Completion of Installation. Within twenty (20) business days of completing the installation of each Licensee Installation, Licensee shall notify Licensor of such completion.
- 4.5 Relocation. Notwithstanding the forgoing, Licensor shall not, unless required by law, require Licensee to relocate any part or all of a Wireless Installation installed pursuant to a Site License and valid permits to allow a third party to install a Wireless Installation at the same Municipal Facility.

5. OPERATION AND MAINTENANCE; RESERVATION OF RIGHTS

- 5.1 Reservation of Rights. Licensor reserves to itself, its successors and assigns, the right to operate and maintain its Municipal Facilities and other facilities, to discontinue such maintenance, and to remove its Municipal Facilities and other facilities, in the best manner required to fulfill its own service requirements, and its public, employee, and worker safety obligations.
- 5.2 Tree Trimming.
- (a) For purposes of this Agreement, "Tree Trimming" is defined as:
- (i) initial tree trimming done by Licensee in coordination with the City Arborist necessary to make its own Licensee Installations free and clear in a situation involving an overhead right-of-way under which no ground clearing is required (e.g., along town and city streets); and
 - (ii) maintenance trimming performed by Licensee necessary to keep the Licensee Installations free and clear, irrespective of whether the right-of-way requires ground clearing.
- (b) At no expense to Licensor, Licensee shall perform Tree Trimming in coordination with City Arborist to provide adequate clearance around Licensee Installations. Initial Tree Trimming will be performed prior to installation of Licensee Installations. By mutual written agreement, one contractor may perform Tree Trimming in coordination with City Arborist for Licensee, Licensor, and other Municipal Facility users. In that case, the Cost for such Tree Trimming will be divided evenly among the Persons using the Municipal Facilities being cleared. No additional Site License is required, from Licensor, for Licensee to perform any Tree Trimming or cutting necessary to safeguard or maintain Licensee Installations.

5.3. RF Emissions.

- (a) Licensee is solely responsible for the radio frequency ("RF") emissions emitted by its equipment and will comply with all Federal Communications Commission (FCC) regulations regarding RF emissions and exposure limitations. To the extent required by FCC rules, Licensee shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions.
- (b) Licensee is under a duty and obligation in connection with the operation of its own facilities, now existing or in the future, to protect against RF interference to the RF signals of any other attachers, as applicable, as may emanate or arise. Licensee shall endeavor to correct any interference to the RF signals of any other attachers created by its RF emissions. In the event Licensor's operations interfere with Licensee's RF signals, Licensor and Licensee shall cooperate to stop such interference to the extent feasible without compromising or limiting Licensor's use of the Municipal Facility for its intended purposes.
- (c) Licensee shall install a power cut-off switch on every Licensor Municipal Facility to which it has attached Licensee Installation(s). Licensor, or its authorized field personnel, may temporarily power down Licensee's Wireless Installation if its desires to perform work on a Municipal Facility and a shut-down is required due to health and safety reasons. However, prior to shutting down Licensee's Wireless Installation, Licensor's authorized field personnel will contact the Licensee, pursuant to Section 17.1, not less than 48 hours in advance to inform the Licensee of the need for a temporary power shut-down and Licensee shall be given the opportunity to power-down prior to any action by Licensor. In the event of an unplanned power outage or other unplanned cut-off of power, or an Emergency, the power-down will be with such advance notice as may be practicable. In all instances, once the work has been completed and the worker(s) have departed the exposure area, the party who performed the work shall inform Licensee as soon as possible and the power shall be restored at Licensee's direction.
- (d) Emergency After Hours Contact Information. Licensee shall provide emergency after hours contact information to Licensor, if different from the contact provided in Section 17.1. Licensee shall be required to include signage, which indicates Licensor emergency contact information, Licensee's emergency contact information, and National Electrical Safety Code ("NESCC") required information.
- (e) Installation and Upkeep of Sign(s). Licensee is responsible for the installation and upkeep of its sign or signs on each Municipal Facility. The signage will be placed so that it is clearly visible to workers who climb the Municipal Facility or ascend by mechanical means. The signs will contain the information approved for such signs by the FCC, or in the absence of FCC approval, the information commonly used in the industry for such signs.

5.4 FCC Antenna Registrations, Federal Aviation Administration ("FAA") Compliance. Licensee acknowledges and agrees that it is solely responsible for ensuring compliance with any and all FCC antenna registration, FAA requirements, or similar requirements with respect to the location of the Licensee's antennas or other facilities. Without limitation, Licensee acknowledges and agrees that, unless specifically disclosed to Licensee during the application process, Licensor's Municipal Facilities are not "antenna structures" under the FCC's rules and that, accordingly, Licensor has no obligation of its own in this regard to register them with the FCC, the FAA, or other agency.

5.5 Compliance with the FCC's Rules. Licensee agrees that it will obtain all required licenses and equipment authorizations and will not operate Licensee Installations in any manner inconsistent with such licenses and authorizations and the FCC's rules.

5.6 Equipment Modification and Replacements. Subsequent to the original installation of the Licensee Installation, Licensee may make modifications to or replace the equipment, or may alter, enhance, and upgrade its equipment with like-kind equipment, so long as such modification, replacement,

substitution, alteration, enhancement, or upgrade does not increase the size or materially change the appearance of the Licensee Installation or increase pole loading beyond the pole loading that was established in the approved application, or involve placement of equipment outside the area designated in the approved design without obtaining prior written consent of Licensor. Licensee shall give Licensor no less than 10 days prior notice of its intent to modify or replace equipment, obtain all necessary permits or permit modifications (if any) prior to performing modifications or replacements of equipment, and provide engineering information to support Licensor's compliance with this Section, upon request. If the proposed modification or replacement does not fit within the parameters set forth in this Section, Licensee shall obtain a permit modification or new permit prior to making the modification or replacement.

5.7 Access Hours. At all times throughout the Term of this Agreement, and at no additional charge to Licensee, Licensee and its employees, agents, and sub• Licensees, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("Access") to, in and on any Municipal Facility used or to be used pursuant for an approved Site License so that Licensee may operate, maintain, or repair its Wireless Installations. Licensor acknowledges that in the event Licensee cannot obtain Access, Licensee shall incur significant damage. If Licensor fails to provide the Access granted by this section, such failure shall be a default under this Agreement. In accessing any Municipal Facility, Licensee shall not block access, encroach, or incommode the public right-of-way without first obtaining an Encroachment Permit pursuant to the City of Menlo Park Municipal Code.

6. CHARGES, BILLING AND PAYMENT

6.1 Annual License Fee For Authorized Licensee Installations.

(a) Licensee shall pay Licensor an annual License Fee ("License Fee") which shall comply with Federal Telecommunications Law. The License Fee shall be Two Hundred Seventy Dollars (\$270.00) per Site License, which shall increase by three percent (3%) on each annual anniversary of the Effective Date of this Agreement; provided, Licensor may perform a cost or fee study to determine Licensor's reasonable, direct and actual costs incurred by Licensor due Licensee's use of the right-of-way (the "Cost Study"). If the Cost Study reveals that Licensor's cost is greater than the current rate as adjusted annually, then Licensor shall deliver to Licensee a copy of Licensor's Cost Study no less than sixty (60) days before the Cost Study is presented to Licensor's City Council for review and approval. Licensee shall have ninety (90) days from its receipt of the Cost Study to review and either accept or object to the new License Fee proposed by the Cost Study. If Licensee fails to object in writing during such period, then Licensee shall be deemed to have accepted the new License Fee. If Licensee delivers a written objection to the new License Fee in a timely manner, then the parties shall resolve the dispute in accordance with Section 15. After acceptance of the new License Fee by Licensee or resolution of a dispute regarding the new License Fee or if Licensee does not respond within the thirty (30) days of receiving the Cost Study (each, a "Fee Approval"), then Licensor's City Council may review and approve the new License Fee and, thereafter, deliver written notice of such approval to Licensee. The new License Fee payable under this Agreement will adjust in accordance with this Section 6.1 starting with License Fee payments that are due at least 90 days after the date of such notice, and shall increase by 3% on each annual anniversary of said adjustment thereafter.

(b) The License Fee may be re-evaluated once every five (5) years in compliance with 6.1(a), above. Notwithstanding anything in this Agreement to the contrary, in no event shall the License Fee ever exceed Seven Hundred Fifty Dollars (\$750) per year, per Site License, exclusive of annual escalations.

6.2 Timing of Payment and Calculation of Number of Authorized Licensee Installations.

(a) The License Fee shall be payable annually in advance for each Site License held on October 1 of each calendar year (the "Record Date"). In addition to the advance payment for the following year for all Site Licenses held on the Record Date, Licensee shall pay a pro-rated License Fee applicable during the prior year for all Site Licenses acquired within the prior year, calculated based on the number of days that the Site License was held by the Licensee. In the event of a change in the License Fee, the change in the amount due shall be reconciled at the next Record

Date. Licensor shall invoice Licensee for all License Fees due on or around sixty (60) days prior to the Record Date.

- (b) If Licensee's records show a different number of Authorized Licensee Installations for which a License Fee payment is required, Licensee shall notify Licensor within thirty (30) days of receipt of the invoice. Licensor will then, following receipt of Licensee's notification, either accept in writing Licensee's revised count/information or notify Licensee in writing that a dispute exists about such count, in which event the provisions of Section 6.5 and Section 15 shall apply to any such amount in dispute.

6.3 Unauthorized Licensee Installation Fee.

- (a) Upon discovery of a Wireless Installation that has not been approved by Licensor by Site License (an "Unauthorized Licensee Installation"), Licensee shall pay to Licensor, within sixty (60) days from the date of invoice, as License Fee due for the period from the original date of each Licensee Installation to the date of such invoice, an amount equal to the number of years since the last jointly conducted audit multiplied by five (5) times the then current License Fee applicable to each of its Unauthorized Licensee Installations, unless Licensee can produce documentation showing installation of the attachment occurred on a later date, in which case Licensee shall pay back rent at a rate five (5) times the current License Fee from that point forward. Licensor shall grant Site Licenses to allow such Unauthorized Licensee Installations to remain when:
 - (i) All applicable Unauthorized Licensee Installation Fees are paid;
 - (ii) All necessary rearrangements have been made in accordance with this Agreement and an Application for Site License is filed by Licensee; and
 - (iii) such Application for Site License is granted in accordance with the standards set forth herein for such Applications and associated requirements (e.g., if the Municipal Facility cannot safely support the Unauthorized Licensee Installation, the Unauthorized Licensee Installation must be removed); and
 - (iv) All applicable permits, including a City Encroachment Permit, are approved and finalized.
- (b) If Licensee fails to pay all Unauthorized Licensee Installation Fees, License Fee, or other costs within sixty (60) days of Licensor's demand to remit the same, Licensor may remove Unauthorized Licensee Installations at Licensee's expense. If Licensor removes such Unauthorized Licensee Installations, those Licensee Installations will be held by Licensor until Licensee pays all fees owed plus an additional 10%. Licensor's removal of Unauthorized Licensee Installations shall not release Licensee from its obligation to pay those Unauthorized Licensee Installation Fees, removal costs, License Fee, other fees, expenses, and other liabilities accruing pursuant to this section 6.4.
- (c) The remedies identified in this section for Unauthorized Licensee Installation may be combined with other remedies, including penalties and fines, for other violations of the Municipal Code.

6.4 Billing and Payment Generally.

- (a) Except as otherwise provided herein, all bills and invoices and other requests for payment rendered under this Agreement shall be paid by Licensee within sixty (60) days from the date of invoice. Interest of ten percent (10%) per month (or the highest amount permitted by law, if found to be less than ten percent (10%) of the total amount due and unpaid will apply to any unpaid amount after sixty (60) days from the invoice date.
- (b) Licensee shall notify Licensor within thirty (30) days of the date of invoice of any dispute, with sufficient particularity so as to identify both the amounts in, and grounds for, dispute. Licensee shall continue to make all required payments regardless of any counterclaim or offset, and notwithstanding any pending or threatened litigation, administrative or regulatory proceeding, dispute resolution proceeding conducted in accordance with Section 15 or any other similar pending or threatened proceeding.

- (c) Unless Licensee notifies Licensor in writing of a change to the address, invoices for the annual License Fees shall be sent to:
XXXX
XXXX
XXXX
- (d) Payments for invoiced annual License Fees shall indicated "City of Menlo Park" as the payee name and will be sent to the address designated on the invoice.

7. AUDITS AND INSPECTIONS

7.1 Audits.

- (a) Licensee and Licensor shall cooperate in determining and tracking the total number of Authorized Licensee Installations. This determination shall be based on an on-going inventory of Site Licenses that shall be maintained by Licensor. Licensor has the right to require a jointly conducted audit of Licensee Installations. Any such audit (as to any particular area) may be conducted no more frequently than once every five (5) years, unless Licensee is responsible for a Default (defined in section 14.1) under this Agreement, in which case Licensor may audit no more frequently than once a year (until such default is cured). Licensor must provide ninety (90) days prior written notice of any such audit. The actual and reasonable cost of such audits will be shared equally by Licensor and Licensee.
- (b) Licensee and Licensor may mutually agree that in lieu of such a jointly conducted physical audit, the number of Authorized Licensee Installations may be determined from existing maps and attachment records, if each Party agrees that an accurate determination can reasonably be achieved using such maps and records, in which case, each Party shall make all relevant maps and records available to the other Party and the number of Authorized Licensee Installations shall be cooperatively determined.

7.2 Safety Inspection. Licensor also reserves the right to conduct inspections of Licensee Installations on Licensor's Municipal Facilities and to conduct inspections in the vicinity of Licensee Installations. Licensor will give Licensee sixty (60) days prior written notice of such inspections and Licensee shall have the right to be present at and observe any such inspections. However, in the event of an emergency, or in cases in which Licensor must promptly provide or restore safe and reliable service of a Municipal Facility, Licensor may conduct such inspections immediately and without prior written notice to Licensee. Notwithstanding the foregoing, Licensee shall pay Licensor for its actual and reasonable costs for safety inspections performed for the purpose of determining if a safety violation of which Licensor has provided written notice to Licensee has been corrected by Licensee.

7.3 No Release of Liability. Audits and inspections, whether conducted or not, shall in no event relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

8. MUNICIPAL FACILITY REPLACEMENT, MODIFICATION AND ABANDONMENT, AND TERMINATION OF LICENSEE INSTALLATIONS TO COMPLY WITH GOVERNMENT REQUIREMENTS

8.1 Replacement or Abandonment of Municipal Facilities or Other Required Removal of Licensee Installations.

- (a) If for safety, reliability or operational reasons Licensor replaces a Municipal Facility to which Licensee Installations are affixed, Licensor will, except in the case of Emergency, provide Licensee with ninety (90) days prior written notice. Within such notice period, Licensee may:
- (i) Remove the Licensee Installation located on the original Municipal Facility, and, provided that the Licensee Installation was an Authorized Licensee Installation, transfer it to the substituted Municipal Facility as approved by the Licensor, and perform any other work in connection with said Licensee Installation that may be reasonably required by Licensor;
 - (ii) Request that Licensor transfer the Licensee Installation(s) from the original Municipal Facility(s) to the substituted Municipal Facility(ies), and perform all work in connection with said Licensee Installation reasonably required by Licensor. Licensor shall not be required to consent to the request. Should Licensor agree to perform the work, Licensee shall reimburse Licensor for its costs associated with the transfer upon invoice from Licensor. Should Licensor

decline to perform the work or fail to respond to the request within thirty (30) days, Licensee shall either transfer the Licensee Installation consistent with 8.1(a)(i), above, or remove the installation consistent with 8.1(a)(iii), below, within the ninety (90) day notice period; or

(iii) Elect to terminate the Site License(s) for the subject Licensee Installation(s) and remove the Licensee Installation(s) within the ninety (90) day notice period.

- (b) Notwithstanding the foregoing, in case of Emergency, Licensor may itself remove, relocate, or replace the Licensee Installations, transfer them to substituted Municipal Facilities, or perform any other work in connection with said Licensee Installations that may reasonably be required to maintain, replace, remove or relocate those Municipal Facilities. In such a case, Licensee shall reimburse Licensor for the costs so incurred by Licensor in this effort. In the event of an emergency, Licensor shall notify Licensee as soon as practicable, but in no event later than 24 hours after the Emergency has ended.
- (c) If Licensor desires to abandon any Municipal Facility(ies), it shall give Licensee sixty (60) days prior written notice, and within such time, Licensee may remove or otherwise dispose of its Licensee Installations.
- (d) Upon sixty (60) days prior written notice from Licensor to Licensee that the use of any Municipal Facility(ies) is forbidden by state, county, municipal authorities or private landowner in the case of a public easement or that the Municipal Facility must otherwise be modified such that the continued presence of a Licensee Installation(s) on the Municipal Facility cannot be maintained consistent with other requirements, the Site License covering the use of such Municipal Facility(ies) shall terminate, and the Licensee Installation(s) shall be removed by Licensee promptly from the affected Municipal Facility(ies) at no expense to Licensor. Notwithstanding the foregoing, if the state, county, municipal authority or landowner requires discontinuance of the Municipal Facility(ies) in less than sixty (60) days, the notice provided by Licensor shall be reduced accordingly.
- (f) If, upon expiration of any required notice period for removal, Licensee Installation(s) has/have not been removed, Licensor may at Licensee's sole cost, remove the Licensee Installation(s). If Licensor so removes Licensee Installations and disposes of the same, such removal and disposition shall be without any liability to Licensee for such removal and disposition.
- (g) Licensor shall be under no notice obligation with respect to removing any Unauthorized Licensee Installation the ownership of which cannot be reasonably determined by Licensor on inspection of the same.

8.2 Removal of Licensee Installations by Licensee. Licensee may at any time terminate a Site License by delivering written notice of such termination to Licensor. Thereafter, Licensee shall remove Licensee Installations from Licensor's Municipal Facilities, subject to permitting and other requirements enumerated herein or in the City of Menlo Park Municipal Code, and shall give Licensor written notice of such removal within thirty (30) days after removal. No refund of any License Fee paid will be due on account of such removal unless that removal is triggered by a Default of this Agreement by Licensor in which event the terms and conditions of section 14.4 shall apply.

8.3 Licensee Installations Safety or Other Violations. If Licensor discovers any regulatory, safety, or other violation of this Agreement with respect to Licensee Installations, it shall notify Licensee in writing and Licensee then shall have sixty (60) days in which to remedy such violations, provided that Licensor may require quicker action, or take immediate action itself, when deemed warranted by Licensor in its reasonable discretion.

8.4 Performance by Licensor and Licensee. If Licensee fails to perform any of its obligations hereunder, Licensor may, at its option (but shall be under no obligation), perform the obligation of Licensee which Licensee has failed to perform, following written notice and a thirty (30) day opportunity to cure. Licensee shall reimburse Licensor the reasonable costs it incurs in any such undertaking, including

(without limitation) if Licensor is required to return to the site to perform its work because of the failure of the Licensee to timely undertake action required hereunder. Payment or performance by Licensor of the obligations or liabilities of Licensee shall not waive or cure any breach occasioned by Licensee's failure or refusal to pay or perform same.

9. INSURANCE

- 9.1 Licensee shall at its sole cost and expense maintain the insurance coverage and limits required by this Section during the Term of this Agreement. Licensee agrees to procure the required insurance from an insurance company having and maintaining an A.M. Best rating of at least A-VII and deliver to a Licensor a Certificate of Insurance evidencing the types of insurance and policy limits required.
- 9.2 Required Insurance.
- (a) Workers' Compensation insurance, as required by statute, with Employer's Liability limits of \$500,000 each accident, \$500,000 by disease policy limits, and \$500,000 by disease each employee. To the extent allowed by law, the policy must include a blanket waiver of subrogation in favor of Licensor.
 - (b) Commercial General Liability insurance written on Insurance Services Office (ISO) Form or a substitute form providing equivalent coverage, with limits of:
 - \$ 5,000,000 General Aggregate Limit
 - \$ 5,000,000 Each Occurrence
 - \$ 5,000,000 Each Occurrence - Personal Injury and Advertising Injury
 - \$ 5,000,000 Products/Completed Operations Aggregate Limit
 - (c) Commercial Automobile Liability insurance with limits of \$ 5,000,000 Combined Single Limit for each Accident for Bodily Injury and Property Damage, extending to all company owned, leased, and non-owned vehicles.
- 9.3 Upon receipt of notice from its insurer(s), Licensee shall provide at least thirty (30) days advance written notice of cancellation of any required insurance that is not replaced. Licensee will require any sublicensees performing work under this Agreement to maintain substantially the same coverage with substantially the same limits as Licensee. Notwithstanding the foregoing, Licensee may self-insure the required insurance under the same terms and conditions as outlined above.
- 9.4 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:
- (a) Additional Insured Status. The Licensor, its officers, officials, employees, and volunteers are to be covered as additional insureds as their interests may appear under this Agreement on the CGL policy, with ISO Forms, or equivalent, with respect to liability arising out of work or operations performed by Licensee including materials, parts or equipment furnished in connection with such work or operations.
 - (b) Primary Coverage. For any claims related to this contract, the Licensee's required insurance coverage shall be the primary insurance with respect to the Licensor, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Licensor, its officers, officials, employees, or volunteers shall be in excess of the Licensee's insurance and shall not contribute with it.
 - (c) Notice of Cancellation. Upon receipt of notice from its insurer(s) Licensee shall give at least thirty (30) days prior written notice (10 days for non-payment) to the Licensor of cancellation of any required coverage that is not replaced.
 - (d) Waiver of Subrogation. Licensee hereby grants to Licensor a waiver of any right to subrogation which any insurer of said Licensee may acquire against the Licensor by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Licensor has received a waiver of subrogation endorsement from the insurer.

- (e) In the event Licensee elects to self-insure its obligation under this Agreement to include Licensor as an additional insured, the following conditions apply:
- (i) Licensor shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Licensor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and (iii) Licensor shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.
- (f) Verification of Coverage. Licensee shall furnish the Licensor with original certificates and blanket additional insured endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Licensor before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them.
- (g) The liability limits of subparagraphs (b) and (c) of Section 9.2 Required Insurance may be met by a combination of primary and umbrella liability policies of insurance.

10. LIMITATION OF DAMAGES

Notwithstanding any provision of this agreement to the contrary, in no event shall either party 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.

11. INDEMNIFICATION

Licensee shall indemnify, defend, and hold harmless the Licensor, its officers, employees, agents and volunteers ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Licensee's performance of its obligations under this agreement or out of the operations conducted by Licensee, except for such loss or damage arising from the active, sole negligence or willful misconduct of the Licensor. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Licensee's performance of this Agreement, the Licensee shall provide a defense to the City indemnitees, or at the Licensor's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 Authority to Enter Agreement. Each of Licensee and Licensor represents and warrants for itself only to the other that it has the authority to enter into this Agreement and to perform all of its obligations hereunder. The Parties have entered into this Agreement in good faith, as a result of arm's length negotiations, and the Parties covenant that they will conduct themselves under the terms of this Agreement reasonably and in good faith.

12.2 Required Authorizations. Licensee represents and warrants that it has obtained and shall maintain all required consents, easements, and property rights from public or private landowners, or other Persons, to erect, operate, maintain and use Licensee Installations ("Required Authorization"). Licensee shall take all actions necessary to maintain, keep in full force and effect, and comply with the Required Authorizations; comply with all applicable laws and conduct its operations in accordance with the Required Authorizations; and shall provide Licensor, at its request, with copies of all applications and other correspondence to or from any Person relating to any Required Authorization in any circumstance when the scope or validity of a Required Authorization may be called into question.

12.3 Limitations on warranties. There are no warranties under this agreement except to the extent expressly and unambiguously set forth herein. The licensor makes no and licensee agrees there shall

be no implied warranties, including the implied warranties of merchantability and fitness for a particular purpose and 'any with respect to the physical, structural, or environmental condition of the municipal facilities. Licensee accepts the municipal facilities identified in any approved site license, or any replacement pole, in its "as is" condition, without representation or warranty of any kind by licensor, or any licensor officer, agent, or employee as to the present or future condition of or suitability of the municipal facilities for licensee's intended use, and subject to all applicable laws, rules and ordinances governing the use of the municipal facilities for licensee's intended purpose. Licensee is solely responsible for investigation and determination of the condition and suitability of any municipal facility for licensee's intended use.

13. TERM

The "Initial Term" of this Agreement shall commence as of the Effective Date, and, if not lawfully terminated sooner, remain in full force and effect for ten (10) years and, provided Licensee is not in default of the Agreement, will automatically renew for two (2) successive five (5) year periods, unless Licensee gives Licensor written notice of termination at least one hundred and eighty (180) days prior to the then current Term, or the Agreement otherwise terminates by reason of default or abandonment. Upon termination of this Agreement, Licensee shall remove Licensee Installations from all Municipal Facilities in accordance with the requirements of the City of Menlo Park Municipal Code within ninety (90) days. If not so removed within ninety (90) days following such termination, Licensor shall have the right to remove such Licensee Installations, and to dispose of same, at Licensee's sole cost and without any liability to Licensee for such removal and disposition. Licensor's removal or disposition of Licensee Installations shall not release Licensee from any liabilities imposed or otherwise incurred by Licensee hereunder or in connection herewith. Upon termination, if any other provision of this Agreement would require Licensee to remove Licensee Installations in some period shorter than the ninety (90) days provided in this Section 13, such shorter period shall apply and the remainder of Section 13 shall be enforceable as set forth herein.

14. DEFAULT AND TERMINATION

14.1 Default Defined. Subject to any applicable notice and cure provisions described in Sections 14.2 and 14.4, for purposes of this Agreement, each of the following constitutes a default ("Default"), and the Party committing the Default is hereafter the "Defaulting Party":

- (a) failure to pay any amount or liability arising hereunder or in connection herewith when it is due (a monetary Default);
- (b) failure to perform any of its material agreements, covenants, or obligations set forth in this Agreement, including any Exhibits hereto;
- (c) making any material representation or warranty in this Agreement which is misleading, untrue or incorrect; or
- (d) if a default occurs in any other agreement, permit, or instrument between Licensee and Licensor.

14.2 Licensee's Default and Licensor's Remedies.

- (a) If any non-monetary Default occurs, Licensee shall have sixty (60) days following written notice from Licensor within which to correct a non-monetary Default to Licensor's satisfaction; provided, however, that if the time to remedy a non-monetary Default takes longer than sixty (60) days and Licensee has diligently commenced and continues to remedy the non-monetary Default, the cure period shall be extended for a reasonable period of time taking into consideration all circumstances causing, caused by or arising from the non-monetary Default but no more than an additional thirty (30) days; provided further that, if Licensee has repeatedly committed serious violations of this Agreement that have threatened the safety of individuals or property of others, or interfered with the provision of Licensor's service, for which violations previous notices of Default have been given, Licensor may, upon notice to Licensee, either shorten or eliminate the cure period for any future such violations.

- (b) In the event of any Licensee Default (after giving effect to any applicable notice and cure provisions), Licensor may, at its reasonable discretion, take any one or more of the following actions:
- (i) suspend Licensee's access to any or all of Licensor's Municipal Facilities;
 - (ii) terminate the specific Site License(s) granted to Licensee covering the Municipal Facilities to which such Default is applicable;
 - (iii) require the obligation to be fulfilled;
 - (iv) remove, relocate, or rearrange Licensee Installations to which such Default relates (all at Licensee's sole cost);
 - (v) deny Application(s) for Site License for additional Licensee Installation(s) under this Agreement until all such Defaults are cured; and/or
 - (vi) exercise its rights with respect to the Surety Bond.

14.3 Effect of Exercising Remedy.

- (a) In the case Licensor takes any of the actions listed under section 14.2(b), such action:
- (i) shall not reduce or eliminate the obligation of Licensee to make payments of any amount due to Licensor under this Agreement, including but not limited to, those fees, charges and expenses set forth in Section 6;
 - (ii) shall not waive any fees, charges or expenses for any Licensee Installation until that Licensee Installation is removed from the Municipal Facility to which it is attached; and
 - (iii) shall not affect Licensee's obligation to procure, carry, and maintain in full force and effect the policies of insurance for as long as required by Section 9.
- (b) Licensor shall incur no liability as a result of taking any or all of the actions enumerated in Section 14.2. The remedies provided by this Agreement for Licensor are cumulative and in addition to any other remedies available to Licensor under this Agreement, at law, or otherwise.

14.4 Licensor's Breach and Licensee's Remedies.

- (a) If Licensor is in Default under this Agreement, Licensor shall have sixty (60) days following receipt of written notice from Licensee within which to correct such Default provided, however, that if the time to remedy the Default takes longer than sixty (60) days and Licensor has diligently commenced and continues to remedy the Default, the cure period shall be extended for a reasonable period of time taking into consideration all circumstances causing, caused by or arising from the Default. If Licensor does not cure its Default within the allotted time period, Licensee may, at its reasonable discretion and in addition to any other remedy at law and equity, may terminate this Agreement, terminate the affected Site License, or demand that the terms of this Agreement be complied with.
- (b) In the event of such termination by Licensee, any such termination shall be effective upon written notice from Licensee to Licensor. Such notice will identify the effective date of termination, which effective date may be as early as the effective date of the notice under section 17.1, or on any later date
- (c) If Licensor Defaults and Licensee elects to terminate the Agreement or any Site License, Licensor shall refund any portion of advanced, prepaid License Fee actually paid by Licensee pro-rated for any period prepaid following the effective date of the termination of this Agreement or the applicable Site License. Licensor shall make such refund within sixty (60) days of the effective date of such termination. Licensor shall be entitled to retain all License Fee and amounts paid by Licensee for the period up to such effective date of termination of this Agreement and Licensee shall remain liable for all Licensee liabilities up to such effective date of termination.

15. DISPUTE RESOLUTION PROCEDURES

As a condition precedent to the initiation of any litigation, the Parties shall in good faith attempt to settle any dispute arising out of or relating to this Agreement through upper management escalation and non-binding mediation. Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. The dispute shall be escalated to upper management to exchange relevant information and attempt to resolve the dispute. If the matter has not been resolved

within thirty (30) business days of receipt of the disputing Party's notice, either Party may initiate mediation. Such mediation shall take place at a mutually agreeable location within either San Mateo County, Santa Clara County, or San Francisco City and County, California. In the event that such dispute is not resolved within ninety (90) calendar days following the first day of mediation, either Party may initiate litigation. In case of a failure of either Party to follow the foregoing, the other may seek specific enforcement of such obligation in the courts having jurisdiction hereunder.

16. HAZARDOUS SUBSTANCES

Licensee agrees that Licensee, its contractors, subcontractors and agents, will not use, generate, store, produce, transport or dispose any Hazardous Substance on, under, about or within the area of a Municipal Facility or the public rights-of-way or public utility easement in which it is located in violation of any applicable federal, state, county, or local law or regulation. Except to the extent of the negligence or intentional misconduct of Licensor, Licensee will pay, indemnify, defend and hold Licensor harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services.

17. MISCELLANEOUS PROVISIONS

17.1 Notices. All notices given hereunder shall be in writing and delivered by certified or registered mail. Except as provided below, all notices shall be effective upon actual delivery to the other party as follows:

To Licensor:
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
Attn: City Manager

In each of the above cases, with a copy sent to:
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
Attn: Public Works Director

To Licensee:
XXXX
XXXX

in each of the above cases, with a copy sent to:
XXXX
XXXX

24/7 emergency contact information

Telephone: XXX-XXX-XXXX
Email: XXXXXX

Contact Number for day to day operations:

Licensor: Licensee: XXXX

650-330-6600

Any Party may change its address or other contact information at any time by giving the other Party, and Persons named above, written notice of said change.

- 17.2 Force Majeure. Except as may be expressly provided otherwise, neither Licensee nor Licensor shall be liable for any delay or failure of performance hereunder due to causes beyond its reasonable control, including but not limited to acts of God, terrorism, fire, explosion, vandalism, storm and preparation therefor, or other similar occurrences that cannot be reasonably prevented, any law, order, regulation, direction, action or request, reasonably challenged by the Party seeking to claim force majeure, of the United States government, or of any other government, including state and local governments having jurisdiction over a Party, or of any department, agency commission, court, bureau, corporation or other instrumentality of any one or more of said governments, or of any civil or military authority, national emergencies, insurrections, riots, or wars, or strikes, lockouts, work stoppage, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay and its effect on its performance. Notwithstanding the foregoing, this, section 17.2 shall not apply to Licensee's obligation to make payments to Licensor under this Agreement nor shall Licensee install any Licensee Installation, and at Licensor's request, Licensee shall remove any Licensee Installation, in circumstances where it is, or to its knowledge will be, prevented from complying with all terms and conditions of this Agreement as to such Licensee Installation.
- 17.3 Assignment and Transfer. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties; provided, however, that Licensee shall not assign, sell, transfer, sublicense or sublet the privileges hereby granted to any Person without the prior written consent of Licensor, which consent shall not to be unreasonably withheld, provided, however, that Licensee, without the prior written consent of Licensor: (i) shall have the right to assign this Agreement, with written notice to Licensor within thirty (30) days of the assignment, to any Person controlling, controlled by, or under common control with Licensee (collectively, an "Affiliate"); and (ii) Licensee may delegate its rights under any License to an Affiliate, provided, however, that Licensee and said Affiliate remains joint and severally liable to Licensor for all rights and obligations under this Agreement with respect to any such Site License. Notwithstanding the foregoing, Licensee may lease any or all of the capacity and/or bandwidth carried by its Wireless Facilities to an affiliate or third party organization so long as the Licensee continues to maintain and own said Wireless Facilities and Licensee remains fully bound by this Agreement, the obligations hereunder, and the obligations of the applicable Site License(s) and permits, and that no access rights are granted or provided to said affiliate or third party organization unless such affiliate or third party has obtained permission from the Licensor to access such Wireless Facilities as required by applicable law.
- 17.4 No Third-Party Beneficiaries. Except with respect to Licensor Indemnities or Licensee Indemnities, this Agreement is intended to benefit only the Parties. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any Persons other than the Parties. The rights and obligations of each of the Parties under this Agreement are solely for the use and benefit of, and may be enforced solely by, the Parties, their successors in interest or permitted assigns.
- 17.5 Applicable Law. This Agreement has been made, and its validity, performance and effect shall be interpreted, construed, and enforced, in accordance with the laws of the State of California, without regard to its conflict of laws principles, and, where applicable, Federal Telecommunications Law and any other applicable Federal law. Further, any litigation initiated by either Party shall be brought in the County of San Mateo, in the State of California.
- 17.6 Taxes. Licensee shall pay all applicable city, county and state taxes levied, assessed, or imposed by reason of this Agreement or related to any of Licensee Installations and Permitted Services.
- 17.7 Incorporation of Exhibits; Capitalized Terms. The Exhibits referenced in and attached to this Agreement form a part of and shall be deemed an integral part of this Agreement to the same extent as if written in whole herein. In the event of any inconsistency between the provisions of this Agreement and any Exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such incorporated Exhibits unless such Exhibit specifies otherwise. Capitalized

terms used in Exhibits but not otherwise defined in the Exhibits shall have the meanings given such terms in this Agreement.

- 17.8 Headings, Construction, Counterparts. The headings contained in this Agreement are solely for the convenience of the Parties and are not to be used or relied upon in any manner in the construction or interpretation of this Agreement. The use of the singular shall include the plural and vice versa, and the use of any gender shall include all genders. References herein to sections and Exhibits mean the sections and Exhibits of this Agreement. This Agreement has been fully reviewed and negotiated by the Parties and their counsel. Accordingly, this Agreement is the joint-product of the Parties and in interpreting this Agreement, no weight shall be placed upon which Party drafted or controlled the drafting of the provision being interpreted. This Agreement shall be construed and enforced without any presumption or construction against the Party drafting the document. Words having well-known technical or trade meanings will be so construed; and all listings of items will not be taken to be exclusive, but will include other items, whether similar or dissimilar to those listed, as the context reasonably requires. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument. This Agreement may also be executed via counterpart facsimiles upon (a) facsimile or email by each Party of a signed signature page thereof to the other Parties, by facsimile or email with return receipt requested and received and (b) the Parties' agreement that they will each concurrently post, by overnight courier, a fully executed original counterpart of the Agreement to the other Parties.
- 17.9 Waiver. Any forbearance or delay in exercising any right hereunder or the failure to exercise such right shall not constitute a waiver. Any covenant, duty, obligation or undertaking required by the terms of this Agreement shall only be waived by the express written consent of the Party granting such waiver. A waiver granted on one occasion shall not be construed to constitute a waiver on any subsequent occasion.
- 17.10 Severability. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 17.11 Survival. The covenants, agreements, indemnifications, representations and warranties contained in or made pursuant to this Agreement (including any Exhibits) shall survive the execution and delivery of this Agreement and any related documents and the closing. Similarly, any covenants, agreements, indemnifications, representations and warranties made by Licensee or on its behalf in any Exhibit, certificate, instrument or other document pursuant hereto or in connection herewith shall survive the execution and delivery of such Exhibit, certificate, instrument or document. All covenants, agreements, indemnifications, representations and warranties shall be considered to have been relied upon by Licensor regardless of any research or investigation made by Licensor or on its behalf. Additionally, all rights and remedies of a Party occasioned by any indemnification provisions or by the failure of the other Party to fulfill any of its obligations or liabilities under, relating to, or in connection with this Agreement shall survive any closing or termination of this Agreement and will continue in full force and effect thereafter.
- 17.12 Entire Agreement; Amendments. This Agreement (including the Exhibits hereto) embodies the entire agreement between Licensee and Licensor with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, oral or written, with respect thereto. Each Party acknowledges that the other Party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified orally, but only by an agreement in writing signed by the Party or Parties against whom any waiver, change, amendment, modification, or discharge may be sought to be enforced.
- 17.13 Licensee Carrier Customers. The Parties acknowledge that Equipment deployed by Licensee pursuant to this Agreement may be owned and/or remotely operated by third-party wireless carrier

customer ("Carriers") and installed and maintained by Licensee pursuant to existing agreements between Licensee and a Carrier. Such Equipment shall be treated as Licensee's Equipment for all purposes under this Agreement. A Carrier's ownership and/or operation of such Equipment shall not constitute an Assignment under this Agreement, provided that Licensee shall not actually or purport to sell, assign, encumber, pledge, or otherwise transfer any part of its interest in the permitted area to a Carrier, or otherwise permit any portion of the License Area to be occupied by anyone other than itself. Licensee shall remain solely responsible and liable for the performance of all obligations under this Agreement with respect to any Equipment owned and/or remotely operated by a Carrier.

Signature Page to Follow

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

By: City Manager

By: Licensee

ATTEST

By: City Clerk

Approved as to Form

By: City Attorney

**Exhibit A-Design, Siting, Engineering Standards
for Small Wireless Facilities in the Public Right of
Way**

- A. Basic requirements. In addition to the requirements in §13.32.010 et seq., all new and substantially changed Small Wireless Facilities located within the Public Right-of-Way and that are not Eligible facilities requests under federal law, 47 U.S.C. §1455(a) and applicable Federal Communication Commission (FCC) rules, or a Collocation facility subject to California Government Code §65850.6 must conform to the requirements identified herein.
1. Colors and materials. All antennas, poles or equipment, including ancillary support equipment, shall have a non-reflective finish and shall be painted “mesa brown” or otherwise treated to match or blend with the primary background and minimize visual impacts. If certain parts of the equipment may not be painted due to RF propagation and cooling, as such that equipment can be “wrapped” to color match. All ground-mounted related equipment shall be covered with a clear anti-graffiti type material of a type approved by the public works director or shall be adequately secured to prevent graffiti.
 2. Signage.
 - i. All Small Wireless Facilities must include signage that accurately identifies basic contact and facility/site information. The Permittee shall notify the City of any changes to the information submitted within 30 days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to name, address and telephone number of a local contact person for emergencies;
 - ii. Small Wireless Facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
 3. Lighting. No Small Wireless Facilities may include artificial lighting, except GPS indicator lights or when either specifically required by the Federal Aviation Administration (FAA) or another government agency, or when the Small Wireless Facility is located on a Pole intended for lighting.
 4. Noise. Any related equipment, including but not limited to air conditioning units, must not emit noise that exceeds the limits specified in §8.06.030 of the City of Menlo Park Municipal Code
 5. Antennas.
 - i. Utility, Standard City Street Light and Traffic Signal Poles. The maximum height of any antenna plus shroud or Cantenna shall not exceed five (5) feet above the height of the pole. Each Antenna shall have a volume of no more than three (3) cubic feet, excluding any Related Equipment. No portion of the Related Equipment shall be mounted on a Pole at a height of less than 10 feet above grade, except as may be necessary to comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised.
 - ii. Antennas may be Pole-mounted or Strand-mounted. Pole-mounted Antennas shall be concealed either within the vertical Pole, within a Cantenna, or behind a Shroud mounted to the top of the Pole. Antennas located at the top of a City Street Light Pole or Traffic Signal Pole shall have smooth transition between the City Street Light Pole or Traffic Signal Pole and the Cantenna or Shroud.

- iii. Strand mounted Antenna shall conform to the following standards:
 - Each strand-mounted Antenna (shrouded) shall not exceed three cubic feet in volume.
 - Only two strand-mounted Antennas are permitted per cable between any two existing poles.
 - The strand-mounted Antennas shall be placed as close as possible to nearest utility Pole, in no event more than 5 feet from the utility Pole unless a greater distance is technically necessary or is required by the pole owner for safety clearance.Strand mounted facilities shall be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).

6. Poles.

- i. Small Wireless Facilities shall be installed on existing Poles whenever technically feasible. If the application proposes a Small Wireless Facility on a new Pole, the applicant must identify all existing potential Poles within 200 feet from the proposed site along the subject right-of-way that is available and technically feasible. The applicant must also demonstrate by clear and convincing evidence in writing that any of these identified existing Poles within 200 feet from the proposed site would be technically infeasible.
- ii. New Poles shall be designed to resemble existing poles in the Public Right-of-Way, including size, height, color, materials and style. To the extent feasible, such new Poles that are not replacement Poles shall be located no closer than 90 feet to an existing Pole. The new poles shall be placed on property lines to the extent feasible

7. Pole Height and Width Limitations.

- i. All Poles shall be designed to be the minimum functional height and width required to support the proposed Antenna installation and Related Equipment.
- ii. Pole-mounted Related Equipment must be mounted as close to the pole as possible to reduce its overall visual profile, and shall not exceed 10 cubic feet in volume.
- iii. If an applicant proposes to replace a Pole in order to accommodate the Wireless Facility, the Pole shall match the appearance of the original Pole to the extent feasible, unless another design better accomplishes the objectives of this section for concealment or provides a Stealth Design. Such replacement Pole shall not exceed the height of the Pole it is replacing by more than 7 feet.

8. Space Occupied. Small Wireless Facilities shall be designed to occupy the least amount of space in the Public Right-of-Way that is technically feasible.

9. Location.

- i. Each component part of a Small Wireless Facility shall be located so as not to cause any physical obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the public Right-of-Way, or safety hazards to pedestrians, bicyclists and motorists.
- ii. A Wireless Facility shall not be located within any portion of the Public Right-of-Way interfering with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve-housing structures, or any other vital public health and safety facility.

10. Related Equipment. With the exception of Antennas, which shall be Pole-mounted or Strand mounted and electric meters, which shall be Pole-mounted, all Related Equipment shall be located underground to the extent feasible.
 - i. When above-ground is the only feasible location for a particular type of Related Equipment and when such Related Equipment cannot be Pole-mounted, such equipment may be ground-mounted but shall be enclosed within an Equipment Cabinet, and shall not exceed a height of 5 feet and a total footprint of 15 square feet, and shall be concealed to the fullest extent possible, including the use of landscaping or alternate screening.
 - ii. If Related Equipment is located above-ground and not Pole-mounted, fences, landscaping, or other screening shall be set back a minimum of 18 inches from the front of the curb.
 - iii. Where feasible, all Pole-mounted Related Equipment, including electric meters and required or permitted signage must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures.
 - iv. Where feasible, all new wires needed to service the Small Wireless Facility must be installed within the width of the existing Pole so as to not exceed the diameter and height of the existing Pole. If it is not feasible to install wiring inside of the Pole due to the Pole material, wires shall be installed in a manner that minimizes the use of visible wiring, minimizes bulk and avoids the spooling of excess cable.
11. Concealment. All Small Wireless Facilities must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.
12. Americans with Disabilities Act compliance. All Small Wireless Facilities shall be built and located in compliance with the Americans with Disabilities Act (ADA) and any applicable state law accessibility standards.
13. If the applicant contends that undergrounding or any other requirement herein is technically infeasible, the applicant shall submit documentation to the Director sufficient for the Director to determine whether, and to what extent, such undergrounding or any other requirement is technically feasible. Mere additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement. Related Equipment shall be installed underground when the Director finds that above-ground equipment would impede pedestrian travel or cause the right-of-way to be inaccessible to pedestrian travel. This undergrounding requirement shall not apply to the cabling and conduit necessary to mount antennas of a Small Wireless Facility.

B. All definitions identified in Menlo Park Municipal Code section 13.32.020.

Exhibit B -Application for Site License

An application for Site License must be accompanied by a complete Wireless Facilities Permit application and a complete Building Permit application to be reviewed in conjunction with the Application for Site License. An Application for Site License may also be submitted with an Encroachment Permit application to attain authorization to perform work at the subject site, however, the Licensee/ Applicant may, in its discretion, apply for an Encroachment Permit after obtaining the other required permits. Fees for all required permits must be submitted for the applications to be considered complete. In addition to the requirements of the permit applications, the Application for Site License shall be submitted with the following information:

- A. Identify with specificity the proposed Municipal Facility to which applicant is seeking approval to attach a Wireless Installation.
- B. Provide a build-out plan to the extent known at the time of Application for Site License is submitted to Licensor, identifying by physical address (or if none, by geographic description) all other sites, regardless of whether now constructed, proposed, or anticipated to be proposed within the next six (6) months within the City of Menlo Park.
- C. Disclose, by Licensee call sign, all contractual build-out requirements/obligations which have yet to be met in the City of Menlo Park, and the known or estimated date when the remaining build-out requirements will be met.
- D. Identify by name, title, company affiliation, work address, telephone number and extension, and email address the key person or persons most knowledgeable regarding this project so that the Licensor may contact them with questions regarding the project.

Exhibit C- Form of Site License

1. Site License. This is a Site License as referenced in that certain MASTER FACILITIES LICENSE AGREEMENT FOR WIRELESS INSTALLATIONS ON MUNICIPAL FACILITIES, between Licensor and Licensee dated _____, ("Agreement"). Licensee has submitted an Application for a Site License pursuant to the Agreement, and Licensor has reviewed the application and grants approval subject to the terms of this Site License. All of the terms and conditions of the Agreement are incorporated here by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification, or inconsistency between the terms of the Agreement and this Site License, the terms of this Site License shall govern. Capitalized terms used in this Site License shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. Project Description and Locations. Licensee shall have the right to attach Licensee Installations to the designated space on the specific Municipal Facility as further described in Exhibit 1 attached hereto (the "Licensed Area").
3. Authorized Licensee Installations. The Licensee Installations to be installed at the Licensed Area are listed and depicted on plans included in Exhibit 1 attached hereto.
4. Term. The term of this Site License shall begin as of the date issued by Licensor and continue until the end of the Term of the Agreement, as defined in Section 13 of the Agreement, or until this Site License is otherwise terminated. Notwithstanding the anticipated term of this Site License, it shall expire one-hundred and eighty (180) days after its issuance if the Licensee Installations authorized by this Site License have not been installed.
5. License Fee. License Fee shall be payable annually in accordance with the Agreement, and as adjusted by Section 6.1 of the Agreement.
6. Miscellaneous.

[Signature Page to Follow]

APPROVED as of the date shown below.

LICENSOR:

City of Menlo Park, a California Municipal Corporation

By: _____

Name: _____

Title: _____

Date: _____

ACCEPTED BY LICENSEE:

LICENSEE:

By: _____

Name: _____

Title: _____

Date: _____

Exhibits:

Exhibit 1 – Licensed Area, Small Cell Equipment List, and Plans

Exhibit 1

Licensed Area, Small Cell Equipment List, and Plans