



CITY OF SAN LEANDRO

**MASTER LICENSE AGREEMENT FOR
SMALL CELL POLE ATTACHMENT INSTALLATION**

between

THE CITY OF SAN LEANDRO

and

EXTENET SYSTEMS (CALIFORNIA) LLC

For City of San Leandro in San Leandro, California

Effective as of _____, 20__

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EXHIBIT A	Form of Pole License Agreement
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EXHIBIT A-2	Licensee's Plans and Specifications
EXHIBIT A-3	Form of Acknowledgment Letter
SCHEDULE A-4	Licensee Fee and Default Fee Schedule
EXHIBIT B	Design Guidelines
EXHIBIT C	Dark Fiber License Agreement

CITY OF SAN LEANDRO

BASIC LICENSE INFORMATION	
City:	City of San Leandro, a California charter city
Licensee:	ExteNet Systems (California) LLC, a California Limited Liability Company
Term (§ 3.1.1):	Five (5) years, beginning on the Effective Date, with subsequent renewal terms thereafter.
Master License Effective Date (§ 3.1.1):	The first day of the month after the date the parties have fully executed this Master License.
Master License Expiration Date (§ 3.1.1):	The day before the 10th anniversary of the Effective Date.
Pole License term and effective dates (§ 3.1.1):	For each Pole License, the effective date shall be the first day of the month after the date the parties have fully executed it.
Pole License application deadline (§ 3.1.3):	Licensee may submit Pole License applications at any time during the Term.
License Fee Commencement Date (§ 4.1); Acknowledgment Letter (§ 4.1.2):	For each Pole License, the earlier of: (a) the first anniversary of the effective date of the Pole License; and (b) the first day of the month after the date on which Licensee has obtained all Regulatory Approvals. The City will confirm the Commencement Date for each Pole License in the countersigned Acknowledgment Letter.
License Fee rate (§ 4.2.1):	As of the License Fee Commencement Date, Licensee will be obligated to pay City an annual License Fee at a rate based on the number of City Poles licensed under each Pole License. City will provide the License Fee schedule for each Pole License with the signed Acknowledgment Letter, and the schedule will be deemed to be attached to the Pole License as Exhibit A-4.
Integrated Pole License Fee discount (§ 4.2.4):	20% discount to the License Fee rate per City Pole upgraded to an Integrated Pole over the remaining term of each applicable Pole License.
License Fee Adjustment Dates (§ 4.3):	License Fee rates will escalate by three percent (3%) on January 1 of each year of the Term.
Master License Application Processing Payments (§ 4.6):	\$4,000, to be delivered with Licensee's partially executed counterpart of this Master License. The payment, and any additional amounts required, will be used for City's

	ordinary processing and administrative costs related to the Master License application as deposited in a Customer Number account established by the City's Finance Department.
Pole License Administrative Payments (§ 4.7):	\$1,865 per Standard City Pole, to be delivered with Licensee's application for each Pole License. This includes a \$65 non-refundable application fee, and a \$1,800 deposit. This initial payment, and any necessary replenishment(s) thereof, will be used to cover the City's actual and reasonable costs to review and administer the application process upon delivery of each Pole License application. City will identify the amount of the deposit for Nonstandard City Poles after receiving any Pole License application requesting their use. Funds will be deposited in a Customer Number account established by the City's Finance Department.
Permitted Use (§ 5.1):	Installation, operation, maintenance of, and access to, Equipment on the License Area specified in each Pole License and no other location. Use of the License Area for any other purpose without City's prior consent is prohibited.
Equipment installation (Art. 7):	All Equipment to be installed on the License Area is subject to City's final approval through the applicable Pole License. Licensee shall install Equipment at its sole cost only at the Pole Location specified in each Pole License.
Utilities (§ 12.1):	Licensee shall be solely responsible for obtaining and maintaining electric service for the Equipment, including, but not limited to, making payments to electric utilities and installation of separate electric meters, if necessary.
Emissions Report (§ 13.7):	As a condition to issuance of any Pole License, Licensee must provide City a copy of the Emissions Report submitted for Licensee's Encroachment Permit.
Default Fee schedule (17.2.4):	Exhibit A-4 to each Pole License.
Security Deposit (Art. 24):	Cash deposit, letter of credit, or surety bond in the amount of \$50,000, to be delivered with Licensee's Acknowledgment Letter for the first Pole License issued under this Master License. Licensee shall provide additional security in the amount of \$25,000 upon delivery of its Acknowledgment Letter for its tenth (10th) Pole License.

With a copy to:	Meyers Nave 555 12th Street, Suite 1500 Oakland, CA 94607 Attn: Richard Pio Roda, Esq. Re: Master License - ExteNet Systems
Project manager and day-to-day contact for City (§ 7.6):	Michael Stella, Principal Engineer Telephone No.: 510-577-3433
Emergency contact for City (§ 9.4):	During Business Hours: Public Works Department Telephone No.: 510-577-3440 Off-Hours Police Dispatch Telephone No.: 510-577-2740
Instructions for payments due to City:	Checks should be made payable to "City of San Leandro" and delivered to: City of San Leandro Finance Department 835 East 14th Street San Leandro, CA 94577 Attn: Finance Director Re: Master License - ExteNet Systems (California) LLC Wire transfers should be directed as follows: Routing Number: 121000248 Account Number: 4121676340
Notice address of Licensee (§ 28.1):	ExteNet Systems (California) LLC 3030 Warrenton Road Suite 340 Lisle, Illinois 60532 Attn: CFO_____
With a copy to:	General Counsel at same address
Project manager for Licensee (§ 7.6):	Charles Lindsay External Relations – Pacific NW ExteNet Systems (California) LLC Telephone No.: 510-910-7787
On-call and emergency contact for Licensee (§§ 9.3, 9.4):	Telephone No.: 866-892-5327

NOTICE TO LICENSE APPLICANTS: The City's acceptance of the application payment(s) will not obligate the City to enter into any Master License if the City in its sole discretion determines that disapproval is warranted. If the City disapproves any Master License, it will notify the applicant by a letter specifying the reasons for disapproval. Disapproval will not disqualify the applicant from re-applying.

CITY OF SAN LEANDRO

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CITY OF SAN LEANDRO

MASTER LICENSE AGREEMENT FOR SMALL CELL POLE ATTACHMENT INSTALLATION

This **MASTER LICENSE AGREEMENT FOR SMALL CELL POLE ATTACHMENT INSTALLATION** ("**Master License**"), effective as of _____, 20____, is made by and between the **CITY OF SAN LEANDRO**, a California charter city (the "**City**") and ExteNet Systems (California) LLC, a California Limited Liability Company ("**Licensee**").

BACKGROUND

A. The City owns and operates approximately 4,730 street light poles and other traffic control and safety poles (each, a "**City Pole**") in San Leandro, California, many of which are suitable sites for installing equipment to enhance wireless telecommunications services in San Leandro. The City purchases electricity to power each street light from Pacific Gas & Electric Company (PG&E). Certain street lights are powered from PG&E's unmetered electrical grid, while others are attached in series to various electrical meters. The City can provide Licensee information on how individual streets lights are powered upon request.

B. Licensee has requested to use City Poles to install, maintain, access, and operate communications facilities as specified in this Master License.

C. This Master License Agreement is intended to manage the license of existing City Poles for installation of outdoor distributed antenna systems, including small cells or microcells to be installed and operated by wireless telecommunications carriers using licensed and unlicensed spectrum and third-party hosts certificated by the California Public Utilities Commission. The City reserves the right to evaluate usage of unlicensed spectrum (e.g. 5 Ghz) and to assess coexistence with its Public Wi-Fi equipment. Licensee agrees to work with City to ensure such coexistence is achieved. The Master License has been approved by the following City actions, all of which are now final and binding:

1. The City Council concluded that City approval of the Master License and Pole License would not commit the City to authorize use of specific City Poles. Therefore, the City actions described in Paragraph C.2 did not fall with the definition of a "project" under the California Environmental Quality Act (CEQA) Guidelines section 15378.

2 The City Council adopted Resolution No. _____ authorizing its City Manager or his or her designee to enter into this Master License with and to issue Pole Licenses to wireless telecommunications carriers in a manner consistent with all required approvals on _____, 20____.

D. Licensee has the authority under applicable Laws to install and maintain communications facilities in the public right-of-way to provide wireless telecommunications services.

NOW THEREFORE, IN RECOGNITION OF MUTUAL CONSIDERATION, THE ABOVE PARTIES AGREE TO THE FOLLOWING:

AGREEMENT

1 PURPOSE, DEFINITIONS, AND BASIC LICENSE INFORMATION

1.1 Purpose.

1.1.1 Master License. This Master License: (i) establishes the legal relationship and framework under which Licensee may apply to the City for and obtain a revocable, nonpossessory license to use the License Area identified in Pole Licenses issued under this Master License for the Permitted Use; (ii) governs the fees, charges, procedures, requirements, terms, and conditions by which the City will issue Pole License(s) to Licensee; and (iii) authorizes Licensee to engage in the Permitted Use only after Pole Licenses are issued under this Master License.

1.1.2 Pole Licenses. Pole Licenses that the City issues under this Master License will: (i) authorize Licensee to engage in the Permitted Use; (ii) specify approved Pole Locations, any site constraints, and any additional installation, operation, access, and maintenance requirements specific to those Pole Locations; (iii) grant a license, but not a leasehold interest, to Licensee only as a part of and subject to the terms and conditions of this Master License; and (iv) not amend any term or condition of this Master License.

1.1.3 Non-City Poles. The parties agree that Licensee may seek to install Equipment on poles owned by any other public or private party, or as otherwise permitted by Laws, as long as Licensee obtains all necessary permits for such installation, including, without limitation, a City-issued Encroachment Permit.

1.2 Basic License Information.

The Basic License Information in the preceding pages is intended to provide a summary of certain provisions relating to the licenses that the City will grant to Licensee in accordance with this Master License and is for the parties' reference only. If any information in the Basic License Information conflicts with any more specific provision of this Master License or any Pole License issued under it, the more specific provision will control.

1.3 Definitions.

Capitalized and other defined terms used in this Master License and all exhibits have the meanings given to them in this Section or in the text where indicated below, subject to the rules of interpretation set forth in **Section 28.4** (Interpretation of Licenses).

"Acknowledgment Letter" is defined in **Subsection 4.1.2**.

"Additional Fees" is defined in **Subsection 4.8.1**.

"Adjustment Date" is defined in **Section 4.3**.

"Administrative Payments" is defined in **Section 4.7**.

"Affiliate" means an entity that directly or indirectly controls, is controlled by, or is under the common control with Licensee.

"Agents" when used with respect to either party includes the agents, employees, officers, contractors, subcontractors, and representatives of that party in relation to this Master License and the License Area.

"Approved Plans" is defined in **Subsection 7.1.1**.

"Assignee" is defined in **Section 16.2**.

"Assignment" means any of the following: (a) a merger, acquisition, or other transfer of a controlling interest in Licensee, voluntarily or by operation of Law; (b) Licensee's sale,

assignment, encumbrance, pledge, or other transfer of any part of its interest in or rights with respect to the License Area; and (c) any action by Licensee to permit any portion of the License Area to be occupied by anyone other than itself, including a sublicensee.

"Assignment Response Period" is defined in **Subsection 16.3.1.**

"Basic License Information" means the summary attached in chart form immediately preceding the text of this Master License.

"Bonus Rent" is defined in **Section 16.3.1.**

"Broker" is defined in **Section 28.6.**

"Business Day" is defined in **Subsection 28.4.4.**

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), also commonly known as the "Superfund" law.

"City" is defined in the preamble.

"City Pole" is defined in **Recital A.**

"Claim" is defined in **Section 18.1.**

"Commencement Date" is defined in **Subsection 4.1.1.**

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

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

"CPUC" is defined in **Subsection 13.2.1.**

"Default Fee" is defined in **Subsection 17.2.4.**

"Effective Date" means the effective date of this Master License as specified in the Basic License Information.

"EMFs" is defined in **Section 13.7.**

"Emissions Report" is defined in **Section 13.7.**

"Encroachment" is defined in **Section 6.2.**

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

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

"Expiration Date" means the last day of the Term of this Master License and any Pole Licenses issued under it as specified in the Basic License Information.

"FCC" is defined in **Section 7.1.2.**

"Hazardous Material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any Regulatory

Agency to pose a present or potential hazard to human health, welfare, or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” in CERCLA or section 25316 of the California Health & Safety Code; and any “hazardous waste” listed in section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

“Indemnified Parties” means the City, its Agents, its Invitees, and their respective heirs, legal representatives, successors, and assigns.

“Indemnify” means to indemnify, defend (with counsel reasonably acceptable to an Indemnified Party), and hold harmless.

“Integrated Pole” means a Pole designed to house street lighting and wireless communications equipment intended to provide efficient lighting and wireless communications signals in an integrated, aesthetically coherent structure. An Integrated Pole shall function as street lighting even if Equipment is not connected or is removed from the Integrated Pole, and said Integrated Pole shall be aesthetically compatible with street lights within the immediate vicinity.

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

“Invitees” when used with respect to either party includes the clients, customers, invitees, guests, tenants, subtenants, licensees, authorized assignees, and authorized sublicensees of that party in relation to the License Area.

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

“License Area” means, individually and collectively for all licensed City Poles, the portion of the City Poles approved for installation of Equipment, including pole tops, conduits housing the circuits delivering power to the City Poles and street light pull boxes and other City Property necessary for access.

“License Fee” is defined in Subsection 4.2.1. **“License Year”** is defined in Subsection 4.1.1. **“Licensee”** is defined in the preamble.

“Master License” is defined in the preamble, and where appropriate in the context, includes all Pole Licenses issued under it.

“NESC” is defined in Section 13.4.

“Nonstandard City Pole” means a City Pole other than a Standard City Pole, including historic, decorative, or concrete City Poles, traffic signal poles, or intersection traffic control and safety poles.

“Notice of Proposed Assignment” is defined in Section 16.2.

“Permitted Assignment” is defined in Subsection 16.6.1.

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

“Pole” means a street light pole or other utility pole in San Leandro (excluding traffic signal poles), whether owned and operated by the City or another entity.

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

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

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

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

“Regulatory Approvals” means licenses, permits, and other approvals necessary for Licensee to install, operate, and maintain Equipment on the License Area, including any applicable permits relating to wireless facilities or encroachments.

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

“RFs” is defined in **Section 13.7**.

“Security Deposit” is defined in **Section 24.1**.

“Standard City Pole” means a standard steel tapered City street light pole installed in the city right-of-way. Standard City Poles conform to then-applicable City standards, as may be amended from time to time. Said standards include San Leandro Standard Drawings 500A, 500B, 500C, and 500D.

“Subsidiary” means an entity controlled by Licensee.

“Term” is defined in **Subsection 3.1.1**.

2 SCOPE OF LICENSE

2.1 License Areas.

2.1.1 Issuance of Pole Licenses. Subject to the terms, covenants, and conditions set forth in this Master License, the City will issue to Licensee one or more Pole Licenses, each of which will be effective as of the first day of the month after the date on which both parties have executed it. Each Pole License will grant Licensee a contractual license to use the License Area specified in the Pole License.

2.1.2 No Competing Licenses. The City will not license to any third party any City Pole that is licensed to Licensee under a Pole License.

2.1.3 Limitation on Scope. This Master License applies only to City Poles identified in final, fully executed Pole Licenses. This Master License does not authorize the Permitted Use on any other City Property except the License Areas specified in the Pole Licenses.

2.1.4 Limitation on Nonstandard City Poles. Licensee acknowledges that: (i) any Pole License application that requests installation of Equipment on a Nonstandard City Pole imposes a greater administrative burden on the City in the Pole License application

review and approval process; and (ii) for any other Nonstandard City Pole that is historic or decorative, the City has the right the absolute right in its sole discretion to deny for any reason an application for a Pole License solely on aesthetic grounds to the extent permitted by Laws.

2.1.5 Exclusions. Licensee acknowledges that the City will not license any of the following to Licensee for any purpose: (i) Nonstandard City Poles that are concrete; (ii) electrical wires servicing City Poles; and (iii) a City Pole that the City has already licensed to a third party. Notwithstanding the preceding sentence, City may approve, in its sole discretion, a Pole License that allows the replacement of a concrete Nonstandard City Pole with a Standard City Pole or Integrated Pole at Licensee's sole cost and expense, subject to the City's prior approval of plans, specifications, cost estimates, materials, and acceptance of completed improvements.

2.2 No Property Interest in License Area or City Poles.

2.2.1 Limited Interest. Licensee acknowledges and agrees that neither this Master License nor any Pole License issued under it creates a lease, possessory interest, easement, franchise, or any other real property interest in any part of the License Area. Licensee further acknowledges and agrees that in the absence of a fully executed Pole License, Licensee does not have the right to use any City Pole for any purpose.

2.2.2 Limited Rights. Pole Licenses that the City issues under this Master License grant to Licensee only a nonpossessory, revocable license to enter onto and use the License Area for the Permitted Use, which means that:

(a) the City retains possession and control of all License Areas and City Poles for City operations, which will at all times be superior to Licensee's interest;

(b) the City may terminate a Pole License in whole or in part at any time, but only in accordance with this Master License;

(c) except as specifically provided otherwise in this Master License, this Master License does not limit, restrict, or prohibit the City from entering into agreements with third parties regarding the use of other City facilities, including City Poles or other City Property in the vicinity of any License Area;

(d) neither this Master License nor any Pole License creates a partnership or joint venture between the City and Licensee; and

(e) Licensee has no ownership or property right in any Pole whatsoever.

2.2.3 No Impediment to Municipal Use. Except as limited in this Master License, neither this Master License nor any Pole License limits, alters, or waives the City's right to use any part of the License Area as infrastructure established and maintained for the benefit of the City, and for such purpose, City may require Licensee to relocate its equipment and facilities at Licensee's sole expense pursuant to Section 27.3.4 of this Agreement.

2.3 Signs and Advertising.

Licensee agrees that its rights under Pole Licenses do not authorize Licensee to erect or maintain, or permit to be erected or maintained by anyone under Licensee's control, any signs (except as provided in **Section 7.1.2** (Identification of Licensee's Equipment)), notices, graphics, or advertising of any kind on any part of the License Area.

2.4 Light and Air.

Licensee agrees that no diminution of light, air, or signal transmission by any structure (whether or not erected by the City) will entitle Licensee to any reduction of the License Fees or Additional Fees under any Pole License, result in any liability of the City to Licensee, or in any other way affect this Master License, any Pole License, or Licensee's obligations, except as specifically provided in this Master License.

2.5 As-Is Condition of the License Area.

Licensee's attention is directed to the following:

2.5.1 As-Is Condition. Licensee expressly acknowledges and agrees to enter onto and use each License Area in its "as-is, with all faults" condition. The City makes no representation or warranty of any kind as to the condition or suitability for Licensee's use of any License Area.

2.5.2 Licensee Due Diligence. Licensee represents and warrants to the City that Licensee has conducted a reasonably diligent investigation, either independently or through Agents of Licensee's choosing, of the condition of the License Area and of the suitability of the License Area for Licensee's intended use, and Licensee is relying solely on its independent investigation. Licensee further represents and warrants that its intended use of the License Area is the Permitted Use as defined in **Section 1.2** (Definitions) and as described in the Basic License Information.

2.5.3 No City Representations or Warranties. Except as may be expressly provided herein, Licensee agrees that neither the City nor any of its Agents have made, and the City disclaims, any representations or warranties, express or implied, with respect to the physical, structural, or environmental condition of the License Area, the present or future suitability of the License Area for the Permitted Use, or any other matter relating to the License Area.

2.5.4 Disclosure. Under California Civil Code section 1938, to the extent applicable to this Master License, Licensee is hereby advised that a Certified Access Specialist (as defined in that Law) has not inspected any License Area to determine whether it meets all applicable construction-related accessibility requirements.

3 TERM

3.1 Term of Master License and Pole Licenses.

3.1.1 Term. The term of this Master License shall be five (5) years commencing on the Effective Date and ending at midnight on the last day of the term, unless earlier terminated by City or Licensee pursuant to the express terms of this Agreement (the "Term"). Provided that Licensee is not in breach of this Agreement, the Term will be extended for one (1) five (5) year period commencing immediately upon the expiration of the Term (the "First Renewal Term"). Following the First Renewal Term, the Agreement will be extended for one (1) additional five (5) year period commencing immediately upon the expiration of the First Renewal Term (the "Second Renewal Term"). Following the Second Renewal Term, the Agreement shall be renewable for one (1) subsequent five (5) year period (the "Third Renewal Term"), subject to each parties' option to not renew the Master License, for any reason, upon one hundred and eighty (180) days' written notice to the other party. Following the Third Renewal Term, the Agreement shall be renewable for one (1) subsequent five (5) year period (the "Fourth Renewal Term"), subject to each parties' option to not renew the Master License, for any reason, upon one hundred and eighty (180) days' written notice to the other party. Following the Fourth Renewal Term, the Agreement shall be renewable for one (1) subsequent five (5) year period (the "Fifth Renewal Term"), subject to each parties' option to not renew the Master License, for any reason, upon one hundred and eighty (180) days' written notice to the other party. The Term shall include, if exercised, the First Renewal Term, the Second Renewal Term, the

Third Renewal Term, the Fourth Renewal Term, and the Fifth Renewal Term. By way of example, upon the expiration of the Term after fifteen (15) years, if the Third Renewal Term takes effect, the Term along with all rights and obligations of the parties shall include the additional five (5) year period under the Third Renewal Term. Each Pole License will be effective the first day of the month after the date the parties have fully executed it and terminate upon the Expiration Date or earlier termination of this Master License, which may result in a partial License Year at the end of the Pole License Term.

3.1.2 Minimum Term. The minimum Term for the purpose of establishing the License Fee for each Pole License will be one License Year immediately following the Commencement Date under **Section 4.1** (Commencement Date). This minimum Term provision will prevail over any rights of abatement or termination afforded to Licensee under this Master License except as otherwise expressly stated herein.

3.1.3 Deadline to Apply for Pole Licenses. Licensee may submit Pole License applications at any time during the Term. All Pole Licenses will end on the Expiration Date, regardless of their effective dates

4 LICENSE FEES; ADDITIONAL FEES; AND OTHER CHARGES

4.1 Commencement Date.

4.1.1 Definition. Licensee shall pay an annual License Fee under each Pole License beginning on its “**Commencement Date**,” which will be the earlier of: (i) the first anniversary of the effective date of the Pole License; and (ii) the first day of the month after the date on which Licensee has obtained all Regulatory Approvals necessary for the Permitted Use on the License Area. Each 12-month period (or shorter, for the period immediately preceding the Expiration Date) beginning on the Commencement Date of each Pole License is a “**License Year**” for that Pole License.

4.1.2 Acknowledgment Letter. For each Pole License approved by the City pursuant to Section 6.4 (Pole License Application), within 60 days after obtaining all Regulatory Approvals for the Permitted Use on any License Area, Licensee shall deliver to the City a letter in the form of **Exhibit A-3** to the Pole License (each, an “**Acknowledgment Letter**”). The purposes of the Acknowledgment Letter are to: (i) confirm the Commencement Date; (ii) tender or confirm payment by wire transfer of the License Fee for the first License Year, and the Security Deposit (by check, wire transfer, surety bond, or letter of credit), all in the amounts specified in the Basic License Information; (iii) provide to the City copies of all Regulatory Approvals; and (iv) provide to the City copies of required insurance certificates and endorsements related to the requirements under **Article 19** (Insurance).

4.1.3 City Demand for Acknowledgment Letter. If Licensee has not delivered to the City the complete Acknowledgment Letter by the first anniversary of the effective date of any Pole License, the City will have the right to: (i) demand that Licensee deliver the Acknowledgment Letter, together with copies of all Regulatory Approvals, within 10 business days after the date of the City’s demand; and (ii) to determine the Commencement Date if Licensee does not deliver the complete Acknowledgment Letter within that 10-business day period.

4.1.4 Correct Commencement Date. In all cases, the City will have the right to correct the Commencement Date stated in Licensee’s Acknowledgment Letter after examining Regulatory Approvals. The City will notify Licensee of any such correction by notice delivered in accordance with **Section 28.1** (Notices). The City’s determination under this subsection or under **Subsection 4.1.3** (City Demand for Acknowledgment Letter) will be final for all purposes under this Master License unless the City’s determination is demonstrably arbitrary and capricious.

4.1.5 Countersigned Acknowledgment Letter. The City will use reasonable efforts to deliver to Licensee a countersigned copy of the Acknowledgement Letter or its determination of the Commencement Date under **Subsection 4.1.4** (Correct Commencement Date) within ten (10) business days of the City's receipt of the Acknowledgement Letter from the Licensee. The fully executed Acknowledgement Letter or the City's Commencement Date determination letter, as applicable, will be the City's notice to proceed under **Section 7.2** (Installation).

4.2 License Fees.

4.2.1 License Fee Schedule. Licensee shall pay to the City the License Fee for each License Year at the rates specified in the License Fee schedule attached to each Pole License (the "**License Fee**"). The License Fee schedule will reflect annual calendar-year adjustments as provided in **Section 4.3** (Adjustments in License Fee). The License Fee must be delivered in cash or its equivalent in the manner specified in **Section 4.9** (Manner of Payment).

4.2.2 Amount of License Fee; Proration. Licensee must take into account annual License Fee adjustments under **Section 4.3** (Adjustments in License Fee) when calculating the amount of each annual License Fee. Each annual License Fee is payable in advance without prior demand or any deduction, setoff, or counterclaim, except to account for a partial year at the beginning of a Pole License, at the end of the Term or earlier termination of this Master License or a right of abatement or refund expressly granted under this Master License. The adjustment provided in this Section will be effective even if the first License Year was for less than a full calendar year.

4.2.3 Due Dates.

(a) Licensee shall submit the first License Year's License Fee with the Acknowledgment Letter without deduction for any reason.

(b) The annual License Fee for each subsequent License Year of the Term of each Pole License will be due and payable to the City on January 1 and will be late if the City has not received payment by the due date. As an illustration, and not a limitation, if the Commencement Date for a Pole License falls on July 1, then the License Fee due in the first License Year will be prorated 50% (to account for the six-month difference between January and June) and will be due on the Commencement Date. The full License Fee for the second License Year, and each subsequent year thereafter, will be due on January 1.

4.2.4 Discount for Integrated Poles. If the use of Integrated Poles becomes feasible at any time during the Term, Licensee may request that the City amend any Pole License to authorize Licensee to replace one or more licensed City Poles with Integrated Poles, subject to the City's prior approval of plans, specifications, cost estimates, materials, and completed improvements in accordance with **Section 8.1** (Licensee's Alterations). As an incentive for Licensee to upgrade City Poles to Integrated Poles, beginning in the License Year following the License Year in which the City accepts the Integrated Pole and continuing for the remainder of the Term of each affected Pole License, the City will discount by twenty percent (20%) the annual License Fee for each Integrated Pole that the City has accepted.

4.3 Adjustments in License Fee.

On January 1 of each year of this Master License (each, an "**Adjustment Date**"), the License Fee will be increased by three percent (3%).

4.4 Late Charge.

If Licensee fails to pay any License Fee, Additional Fee, or other amount payable to the City under this Master License within 10 days after the City's delivery of notice that the same is due and unpaid, such unpaid amounts will be subject to a late charge equal to 6% of the unpaid amounts. For example, if a License Fee in the amount of \$40,000 is not paid on its due date and remains unpaid after the 10-day cure period has expired, the late charge would be \$2,400.

4.5 Default Interest.

Any License Fee, Additional Fee, and other amount payable to the City (except late charges), if not paid within 10 days after the due date, will bear interest from the due date until paid at the default rate of 10% per year. Payment of default interest and the applicable late charge alone will not excuse or cure any default by Licensee.

4.6 Master License Application Processing Payments.

Licensee shall deposit funds with the City to cover the City's ordinary processing and other administrative costs related to the Master License application. Such funds shall compensate the City for all of the reasonable and actual costs of processing the Master License application, including, but not limited to, all time and materials costs of City employees, agents, consultants, and the City Attorney's office.

4.6.1 Initial Payment. Licensee shall deposit with the City an initial payment in the amount of \$4,000 upon delivery of a partially executed counterpart of this Master License to the City. The City will not be obligated to process the Master License until the initial payment is submitted. The initial payment, and any subsequent payments, as provided below, shall be held by City in a Customer Number account for the reimbursement of City's reasonable and actual costs incurred in processing the Master License application. Upon Licensee's request, City shall provide to Licensee a monthly accounting of the account with a description of City's costs and expenses withdrawn from the account.

4.6.2 Subsequent Payments. If there is a reasonable need for additional funds to facilitate review and processing of the Master License application as requested by City, Licensee shall submit payment to the City for the anticipated cost of such extra work. If Licensee refuses or fails to submit payment for the extra work upon City's written request, City shall have the right to cease all processing of Licensee's application until such time as the funds are received.

4.6.3 Early Termination. Licensee shall have the right to terminate processing of the application by providing written notice to the City. Upon receipt of such notice by City (for purposes of this section, "**Termination Date**"), City shall cease all processing on Licensee's application as of the Termination Date and Licensee shall pay all costs reasonably and actually incurred by City prior to such Termination Date from the account.

4.6.4 Refunding of Excess Amounts. Any funds remaining in the account will be refunded to Licensee. No refunds will occur until a 90-day period has passed without processing costs.

4.7 Pole License Administrative Processing Payments.

Licensee shall deposit funds with the City to cover the City's costs to review and administer the Pole License application process (the "**Administrative Payments**"). Such funds shall compensate the City for all of the reasonable and actual costs of processing each Pole License application, including, but not limited to, all time and materials costs of City employees, agents, consultants, and the City Attorney's office.

4.7.1 Initial Payment. Licensee shall pay to City an initial Administrative Payment in the amount of \$1,865 which includes a \$65 non-refundable Administrative Fee (subject to increase annually according to the City's adopted Fee Schedule) upon

delivery of each Pole License application to the City. City will not be obligated to begin its review of any Pole License application until the initial Administrative Payment, including any supplement under subsection (b) (Nonstandard City Poles) below, is paid.

(a) Standard City Poles. The amount of the initial Administrative Payment per Standard City Pole is specified above and in the Basic License Information.

(b) Nonstandard City Poles. If the Pole License application includes Nonstandard City Poles, the City will negotiate the amount of the initial Administrative Payment for each Nonstandard Pole upon receipt of the application. Pending negotiation, Licensee must submit an initial Administrative Payment for each Nonstandard City Pole at the Standard City Pole rate. Licensee must submit the negotiated supplement to the Administrative Payment within 10 days after the amount is set.

4.7.2 Account. The initial Administrative Payment, and any subsequent payments, as provided below, shall be held by City in a Customer Number account for the reimbursement of City's reasonable and actual costs. Upon Licensee's request, City shall provide to Licensee a monthly accounting of the account with a description of City's costs and expenses withdrawn from the account.

4.7.3 Subsequent Payments. If there is a reasonable need for additional funds to facilitate review and processing of a Pole License application as requested by City, Licensee shall submit additional Administrative Payment(s) to the City for the anticipated cost of such extra work. If Licensee refuses or fails to submit payment for the extra work upon City's written request, City shall have the right to cease all processing of Licensee's application until such time as the funds are received.

4.7.4 Early Termination. Licensee shall have the right to terminate processing of the application by providing written notice to the City. Upon receipt of such notice by City (for purposes of this section, "**Termination Date**"), City shall cease all processing on Licensee's application as of the Termination Date and Licensee shall pay all costs reasonably and actually incurred by City prior to such Termination Date from the account.

4.7.5 Refunding of Excess Amounts. Any funds remaining in the account will be refunded to Licensee. No refunds shall occur until a 90-day period has passed without processing costs.

4.8 Additional Fees.

4.8.1 Defined. Sums payable to the City by Licensee, including any late charges, default interest, costs related to a request for the City's consent to an Assignment under Section 16.2 (Notice of Proposed Assignment), and Default Fees under Subsection 17.2.4 (Default Fees), are referred to collectively as "**Additional Fees**." Additional Fees are not regulatory fees.

4.8.2 Exclusions. Licensee's payment of any of the following will not be considered Additional Fees under this Master License: (i) application fees (**\$ 4.6**); (ii) Administrative Payments (**\$ 4.7**); (iii) any other amount paid to the City in compensation for reviewing Licensee's applications and coordinating and inspecting its installation of Equipment on the License Area under Pole Licenses; (iv) License Fees; and (v) any other payments to the City.

4.9 Manner of Payment.

Licensee shall pay License Fees, Administrative Payments, Additional Fees, and all other amounts payable to the City under this Master License in cash or other immediately available funds by: (i) check payable to the "*City of San Leandro*" and delivered to the City in care of the

Finance Director of the City of San Leandro at the address for payment specified in the Basic License Information; or (ii) wire transfer in accordance with the instructions in the Basic License Information, unless the City directs otherwise by notice given in accordance with **Section 28.1** (Notices). A check that is dishonored will be deemed unpaid.

4.10 Reasonableness of Liquidated Charges and Fees.

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

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

5 USE RESTRICTIONS

5.1 Permitted Use.

5.1.1 Licensee shall use the License Area solely for the Permitted Use and for no other use, subject to all applicable Laws and conditions of Regulatory Approvals. Licensee shall not interfere with the City's use and operation of any portion of the License Area or any other City Property for any purpose. Each Pole License will be subject to and conditioned upon Licensee obtaining and maintaining throughout the Term all Regulatory Approvals to use the License Area for the Permitted Use. Licensee acknowledges that City Laws and Regulatory Approvals include design review, engineering, radio interference, and zoning or telecommunications ordinances.

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

5.2 Prohibition on "Macro Cell" Uses.

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

5.3 No Illegal Uses or Nuisances.

Licensee shall not use or occupy any of the License Area in any unlawful manner or for any illegal purpose or in any manner that constitutes a nuisance as determined by the City in its reasonable judgment. Licensee shall take all precautions to eliminate any nuisances or hazards in connection with its use of the License Area.

6 POLE LICENSE APPROVALS

6.1 City Approval Required.

6.1.1 City Rights Superior. Licensee's use of any part of the License Area for the Permitted Use is subject to the City's prior approval in connection with a Pole License application. Subject to any limitations expressly provided in this Master License, the City is not obligated to subordinate its municipal functions or proprietary interests in any way to Licensee's interest under any Pole License. In determining whether to approve Licensee's application for any Pole License, including the attached plans and specifications, the City may consider any matter affecting its municipal obligations and proprietary interests. Examples of municipal and proprietary concerns include:

- 6.1.1.1** the resulting total load on the City Pole if the Equipment is installed;
- 6.1.1.2** the impact of the installation on the City's street light operations, including whether the Equipment would compromise the City's street light circuits serving City Poles;
- 6.1.1.3** whether the installation complies with electrical codes;
- 6.1.1.4** whether the Equipment would create a hazardous or unsafe condition;
- 6.1.1.5** any impacts the Equipment would have in the vicinity of the City Pole, including size, materials, and visual clutter;
- 6.1.1.6** aesthetic concerns; and municipal plans for the City Pole.

6.1.2 Changes in Application. If the City determines for any reason that the Permitted Use at any particular Pole Location would impede its municipal functions, disgruntle a proximate property owner, or otherwise affect its proprietary interests negatively, including resulting in the inability of third parties to utilize an area of the City for a Pole License, it will provide notice to Licensee of the City's concerns as soon as reasonably practicable in the application review process. Licensee will have the opportunity to change the Pole License application to address the City's concerns for a period ending 14 days after delivery of the City's notice, or such longer period as to which the City and Licensee may agree in writing, without affecting the priority of Licensee's application in relation to other potential licensees. Any other changes that Licensee makes in the Pole License application will cause the date that the application is deemed submitted to be changed to the date that Licensee delivers the proposed changes to the City. If Licensee fails to address City's concerns, as determined in the City's sole discretion, then the City may deny the Pole License application. If there are objections made to a particular Pole Location by a proximate property owner or occupant, then the City may consider such objections when deciding whether to approve or disapprove Licensee's Pole License application, but in making such decision the City shall, in its sole discretion, balance the concerns of the objecting party with the expense and burden to Licensee of modifying its application.

6.1.3 Consultation with Community Development. In reviewing a Pole License application, the City's Engineering and Transportation Department may consult with the City's Community Development Department to assess whether Licensee's proposed Equipment is appropriate for a given location or, for historic and decorative Nonstandard

City Poles, whether the proposed Equipment poses particular aesthetic concerns. Licensee acknowledges and agrees that any consultation between Engineering and Transportation Department and the Community Development Department in accordance with the preceding sentence and any resulting actions by the City would be in its proprietary capacity as the owner of the City Poles and would not be an exercise of regulatory authority.

6.2 Regulatory Approval Required.

Licensee's installation of Equipment is also subject to the prior approval of, and Licensee's compliance with all conditions of any applicable encroachment permit approval as required by the San Leandro Municipal Code (generally, an "**Encroachment**" as said term is defined in San Leandro Municipal Code Chapter 5-1), other applicable City or outside agency requirements, and implementing regulations and orders, if any.

6.3 Initial and Annual Master Plans Required.

At the time of Licensee's submission of the Master License application, Licensee shall submit to the City a master plan showing the number and approximate location(s) of each City Pole for which Licensee intends to submit a Pole License application ("**Master Plan**") during the current calendar year. No later than each December 31st thereafter during the term of this Master License, Licensee shall submit to the City a revised Master Plan showing the number and approximate location(s) of each City Pole for which Licensee intends to submit a Pole License application during the subsequent calendar year. The initial and annual Master Plans shall be based on Licensee's best information reasonably available at that time with respect to the proposed use of City Poles for the upcoming calendar year. Licensee may submit updated Master Plans at any time. The purpose of the Master Plan is (a) to give the City a sense of the workload required to process Licensee's Pole License applications for the upcoming year; (b) to allow the City to identify geographic locations in which multiple carriers may be filing Pole License applications; and (c) to allow the City to identify opportunities to negotiate terms for potential shared cost of conduit installation. Licensee's Master Plans shall be reasonably designed to meet such purposes.

6.4 Design Guidelines

The parties agree that the installation configurations more particularly described and depicted in Exhibit B (the "Design Guidelines") will be presumptively approvable by the City. The City may update and amend the Design Guidelines from time-to-time, and may substitute such updated or amended Design Guidelines for the current Exhibit B upon written notice to Licensee. The City shall consult in good faith with Licensee before any update or amendment to the Design Guidelines becomes effective. Nothing in this Section is intended to limit or affect the City's rights to disapprove any Pole License Application pursuant to Section 6 (Pole License Approvals) or any other provision in this Master License that expressly reserves the City's right to disapprove any Pole License Application.

6.5 Pole License Application.

Licensee shall submit Pole License applications to the City, which will review, approve, or deny each application in its reasonable discretion. Each application will consist of:

(a) partially executed duplicate counterparts of a Pole License application in the form attached as **Exhibit A**;

(b) **Exhibit A-1** filled in with the location and other identifying information about each City Pole covered by the Application, including whether it is a Standard City Pole or a historic or decorative Nonstandard City Pole;

(c) **Exhibit A-2**, consisting of all plans and specifications required under **Subsection 7.1.1** (Strict Compliance Required);

(d) the initial Administrative Payment as specified in **Section 4.7** (Pole License Administrative Payments); and

(e) if not previously provided, a copy of the Emissions Report submitted for the Encroachment Permit. For Pole License applications relating to a License Area that is not solely owned by the City, including, but not limited to, City easements located on private property, Licensee shall also provide evidence demonstrating, to the satisfaction of the City Attorney, Licensee's entitlement to use the proposed License Area for the Permitted Use.

(f) typical photo-simulations that accurately depict the appearance of each variation of equipment installation proposed with the application. A photo-simulation of individual installations is not required; rather a typical photo-simulation for each variant is required so City staff can understand the general character of the equipment from an aesthetic perspective. Photographs of similar installations from other communities are acceptable provided they accurately depict the appearance of the equipment to be installed.

6.6 Pole License Application Review Process.

The City will review and process Pole License applications within the timeframe allowed by the FCC and 47 U.S.C. § 332(c)(7)(B)(i)(II) and in the chronological order (date and time) in which complete applications are submitted or deemed submitted unless Licensee specifically requests a different prioritization. Except as stated in the preceding sentence or as otherwise specified in this Master License, the City will not give priority to any application or licensee over another application or licensee. The City, at its discretion, may solicit feedback from proximate property owners for installations in a residential district or in close proximity to a sensitive neighborhood. Licensee acknowledges that staff and budget considerations will limit the City's ability to review and process Pole License applications. During its review process, the City will provide to Licensee the applicable License Fee and Default Fee Schedule (**Exhibit A-4** to Pole License) and City Installation Guidelines (**Exhibit A-5** to Pole License), each of which will be deemed to be attached to the Pole License upon execution by the City.

6.7 Administrative Payments.

The City is not obligated to begin its review of any Pole License application if Licensee has failed to pay the applicable initial Administrative Payment under **Section 4.7** (Pole License Administrative Payments) when due. If Licensee does not timely deliver the required initial Administrative Payment, the supplement for any Nonstandard City Pole, or any additional Administrative Payment required for the City to complete its review, the City may suspend its review of any of Licensee's Pole License applications then under review by the City. The date and time of submission of any suspended Pole License application will be deemed to be the date and time that Licensee submits the required payment.

6.8 Pole License Approval.

The City will notify Licensee that the City has approved each Pole License by returning one fully executed counterpart of the Pole License to Licensee. The City requires as a condition to approval of any Pole License that Licensee provide proof that contractors installing Equipment have bonds and insurance coverage as required by **Section 19.5** (Contractors' Bonds and Insurance and City Business License). A City decision to grant or deny a Pole License application is not a regulatory determination subject to appeal, but is an exercise of the City's proprietary authority over its Poles as its personal property. In the event that Licensee fails to commence construction pursuant to the Pole License within one year from the date the City fully executes the Acknowledgment Letter, the Pole License shall automatically expire unless the City grants a written extension. Licensee shall not be entitled to any refund for any Administrative Payments, which include without limitation the License Fee, paid in connection with a Pole License except as provided in **Section 27.1** (Early Termination by Either Party). Nothing in this Section is intended to prohibit or prevent Licensee from submitting a new Pole License Application for the same or substantially the same Poles as those covered under a Pole License that expired pursuant to this Section.

6.9 Right to Disapprove.

Licensee acknowledges that the City reserves the absolute right to disapprove any Pole License Application in whole or in part when the City determines in its sole judgment that the subject Pole Location or proposed Equipment would interfere with the City's municipal functions or proprietary interests or create a hazardous or unsafe condition. In addition, Licensee acknowledges that the City reserves the absolute right to disapprove any license within a Pole License Application when the subject Pole would involve above-ground equipment (other than the antenna and any required electric meter) in a residential district or in close proximity to a sensitive neighborhood, as solely determined by the City, unless, in the City's sole and absolute determination, no reasonable alternative exists.

6.10 Federal and State Regulations Inapplicable

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

7 INSTALLATION OF EQUIPMENT

7.1 Approved Plans and Specifications.

7.1.1 Strict Compliance Required. Licensee must submit its plans and specifications for the City's review as **Exhibit A-2** to its Pole License application. Plans and specifications must cover all Equipment, including signage required or permitted under **Subsection 7.1.2** (Identification and Other Signage). Plans and specifications shall be prepared in strict accordance with codes referenced in Section 13.4 (Compliance

with Electrical Code), as stamped/signed by a California-licensed engineer. Licensee's plans and specifications and any Equipment installed, if authorized, shall comply with the minimum requirements provided in **Exhibit B** to this Master License, attached to and incorporated herein. Licensee expressly agrees that these minimum requirements are an exercise of the City's proprietary interests as the owner of the City Poles and are not an exercise of the City's regulatory authority. Licensee is authorized to install Equipment at the License Area covered by the Pole License only in strict compliance with the plans and specifications approved by the City and, if applicable, in compliance with Regulatory Approvals (hereinafter referred to as "**Approved Plans**").

7.1.2 Identification and Other Signage. Licensee shall place one identification plate in size, material, form, and substance strictly complying with the Approved Plans on its Equipment at each Pole Location, and one identification plate with the same information on the ground near the Pole. The plates shall include Licensee's corporate name and the telephone number at which Licensee's on-call representative listed in the Basic License Information can be reached. If Licensee's on-call representative changes, Licensee must provide notice to the City of the new contact information within 72 hours and replace all identification plates within 10 business days. Licensee may also place signage on Licensee's Equipment that contains information and disclosures required by the Federal Communications Commission (the "**FCC**"). Replacement of Licensee's signage will be considered maintenance subject to **Section 10.5** (Licensee's Equipment).

7.1.3 Required Changes. Licensee may amend previously Approved Plans if required to obtain or comply with other Regulatory Approvals necessary for installation of Equipment, including construction or installation-related temporary street occupancy permits, traffic control permits, and building permits, as may be required by City or State of California codes. Amendment of Approved Plans will require the City's approval. Licensee acknowledges that as of the Effective Date of this Master License, the City has not approved or promised to approve any plans, specifications, or permits necessary for Licensee to install Equipment on any City Poles. The City will provide notice of its decision in accordance with **Section 28.1** (Notices).

7.1.4 Corrections. The City's approval of plans, specifications, and amendments to Approved Plans, and the issuance of related Regulatory Approvals will not release Licensee from the responsibility for and obligation to correct any errors or omissions that may be contained in the Approved Plans and related Regulatory Approvals. Licensee shall notify the Engineering and Transportation Department immediately upon discovery of any omissions or errors, and Licensee shall obtain required approvals of any amendments to previously Approved Plans before proceeding with any current or pending equipment installation.

7.2 Installation.

Licensee shall not commence installation of Equipment on the License Area until the City has given Licensee notice to proceed by delivery of the countersigned copy of the Acknowledgment Letter confirming the Commencement Date under **Section 4.1.2** (Commencement Date) and by issuing the Encroachment Permit under **Section 6.2** (Regulatory Approval Required). When installing Equipment, Licensee must strictly comply with the Encroachment Permit and Approved Plans as originally approved, or, if applicable, as amended or corrected.

7.3 Notice Required Prior to Installation.

Licensee shall not commence installation of Equipment on the License Area until Licensee has provided at least 24 hours' prior notice of the installation, by first requesting an inspection using the City's Inspection Hot-Line telephone system, 510-577-3308, to disclose the Encroachment Permit number and License Area location.

7.4 Cost of Labor and Materials.

Licensee is responsible for all direct and indirect costs (labor, materials, and overhead) for designing, purchasing, and installing Equipment in accordance with the Approved Plans and all applicable Laws. Licensee also shall bear all costs of obtaining all Regulatory Approvals required in connection with the installation, and Licensee shall satisfy any conditions or mitigation measures arising from Licensee's proposed installation. Licensee shall timely pay for all labor, materials, and Equipment and all professional services related to the Permitted Use.

7.5 No Alteration of City's Existing Equipment or Infrastructure.

Neither Licensee nor its Agents or Invitees shall not remove, damage, or alter in any way any City Property, including City Poles and supporting infrastructure, pull boxes, electrical equipment, wiring, and electrical vaults, without the express permission of the Engineering and Transportation Director, except as authorized by the Approved Plans.

7.6 Standard of Work.

Licensee must install and perform all other work on Equipment in strict compliance with Approved Plans and applicable City standards diligently and in a skillful and workmanlike manner. Prior to performing any work that requires excavation, Licensee must notify Underground Service Alert (ph. 800-227-2600 or 811) at least 72-hours in advance so existing buried utilities can be located and marked. After performing any work on the License Area, Licensee shall leave it and other City Property in a condition as good as it was before the work.

7.7 Licensee's Contractors

Licensee shall use only qualified and properly trained persons and appropriately licensed contractors for all work performed on or about the License Area in conformance with **Section 13.2** (Personnel Safety Training). At least five (5) business days before to any work commences on or about the License Area, Licensee shall provide the City with: (1) a schedule with all activities to be performed in connection with the work; and (2) a list with all the names, contractor's license numbers, contact information, and business addresses for all contractors who will perform the work.

7.8 Project Manager.

The City and Licensee each has designated the person listed in the Basic License Information as its project manager to coordinate the design and installation of Licensee's Equipment and to serve as the respective primary point of contact between the City and Licensee for all engineering, construction, and installation issues. Licensee acknowledges that the City project manager is not exclusively assigned to this Master License, and the authority delegated to the project manager is limited to the administration of this Master License, Pole Licenses, and approved Encroachment Permits. Licensee shall be fully responsible for obtaining and satisfying the requirements of all required Regulatory Approvals necessary for installation of Equipment on the License Area, and Licensee shall not rely upon the City or the City's project manager to do so. Either party may change the name and contact information of its project manager by providing written notice thereof in the manner provided in this Master License. Licensee shall be the City's point of contact for all Equipment installation and except in case of emergency, all communications concerning all engineering, construction, and installation issues relating to the Equipment.

7.9 Coordination of Work.

Licensee shall be responsible for coordination of its installation work to avoid any interference with existing utilities, substructures, facilities, street light operations, or routine maintenance. During installation, alteration, repair, and maintenance of Equipment, Licensee must abide by all City construction regulations, including, but not limited to construction hours,

waste management, noise abatement, and traffic management ordinances and regulations. Licensee must pay all parking fees and citation fines incurred by Licensee and its contractors for vehicle parking. The City will not pay or void any citations or reimburse Licensee for traffic citations or fines.

7.10 Fiber-Optic Cables, Conduits, and Pull Boxes

In the event that Licensee's Equipment on the License Area includes any fiber-optic cables, Licensee will reserve a minimum of 6 strands of fiber, if existing, throughout its entire network in the City's rights-of-way, including up to and on City poles and along aerial routes, as well as underground conduits, for the City's exclusive noncommercial use as partial consideration paid to the City for this Master License pursuant to the Dark Fiber License Agreement attached as **Exhibit C**. Licensee's fiber strands shall consist of a contiguous route or routes of dark fiber that create an infrastructure that can be used as a network and system to effectively transport broadband between points of connection throughout the City. Licensee shall grant the City the right to use all related infrastructure to access, manage and maintain the fiber strands, including conduit, pull boxes, vaults, splice cases and other such access points. The City shall have the right to splice the fibers to new or other fibers as it deems necessary. The Dark Fiber License Agreement shall be automatically effective upon Licensee's installation of any fiber-optic cables on the License Area, and Licensee shall designate and mark the six fiber strands in any conduit that serves the License Area for the City's use at the time it installs such fiber-optic cables. Licensee further agrees that, at the time this Master Agreement expires or terminates, Licensee shall transfer to the City title and ownership of any fiber strands marked for use by the City by quitclaim or bill for sale at no cost to the City and in addition, shall continue to grant the City the right to use all related infrastructure, as described above.

8 ALTERATIONS

8.1 Licensee's Alterations.

Other than installation in accordance with Approved Plans, Licensee shall not make or permit any alterations to the License Area or anything that is part of, installed on, or appurtenant to the License Area, except with the City's prior consent in each instance, which the City may grant or withhold in its sole discretion. The City may condition its consent reasonably in each instance based on the scope and nature of the alterations to be made. All alterations must be at Licensee's sole expense in accordance with plans and specifications approved by the City and be performed only by duly licensed and bonded contractors or mechanics.

8.2 Title to Improvements and Removal of Licensee's Equipment.

Except as otherwise provided in this Master License, the City has no claim of ownership of Licensee's Equipment installed on the License Area, but any structural improvements to a City Pole, replacement of a City Pole, installation of an Integrated Pole, or installation of fiber-optic cable owned by Licensee, as approved by the City, made by Licensee will become City Property and remain on the Pole Location should Licensee vacate or abandon use of the City Pole. Licensee may remove all of its Equipment (which excludes structural improvements to or replacement of any City Pole) from the License Area after 30 days' prior notice to the City, subject to **Section 7.10** (Fiber-Optic Cables), **Article 25** (Surrender of License Area), and **Article 27** (Special Provisions), unless the City has previously elected to require Licensee to remove at Licensee's sole expense all or part of any structural improvements to the License Area or City Pole, whether made by the City or Licensee.

9 CITY WORK ON POLES OR LICENSE AREA

9.1 Repairs, Maintenance, and Alterations.

City will: (a) maintain and repair the City Poles as needed, in its sole judgment, for its street light, utility, or municipal operations; and (b) correct any immediately life-threatening or hazardous condition. Except as specified in **Article 27** (Special Provisions), neither City work on the City Poles, nor the condition of the City Poles, will entitle Licensee to any damages, relieve Licensee of the obligation to pay the License Fees and Additional Fees or perform each of its other covenants under this Master License, or constitute or be construed as a constructive termination of this Master License.

9.2 Notice to Licensee.

The City reserves the right at any time to make alterations, additions, repairs, removals, and improvements to all or any part of the License Area for any operational purpose, including maintenance and improvement of street lighting services, City compliance with mandatory regulations or voluntary controls or guidelines, subject to: (i) making good faith efforts to give Licensee 72-hour prior notice of City work that requires manipulation of Licensee's equipment in accordance with **Section 9.3** (Licensee's On-Call Representative); (ii) allowing a representative of Licensee to observe the City's work; and (iii) taking reasonable steps not to disrupt Licensee's normal use of Equipment on the License Area. Licensee's use of the License Area may not impede or delay in any way the City's authority and ability to make necessary changes, as determined by the City Engineer, to any License Area to maintain its street lights, utility services, or other municipal services.

9.3 Licensee's On-Call Representative.

Licensee shall at all times have a representative assigned to be on call and available to the City regarding the operation of Licensee's Equipment. Licensee's representative shall be qualified and experienced in the operation of Licensee's Equipment, and shall be authorized to act on behalf of Licensee in any emergency and in day-to-day operations of the Equipment. The contact information for Licensee's on-call representative is listed in the Basic License Information and will be listed on identification plates as required by **Subsection 7.1.2** (Identification and Other Signage). Before the City performs non-emergency maintenance, repair, or other activities on the License Area in the regular course of its business that may impair the operation of Licensee's Equipment on the License Area, the City will attempt to provide at least 72 hour's telephonic notice to Licensee's on-call representative. The City will not be required to delay non-emergency repair or maintenance activities more than 72 hours after attempting to contact Licensee's on-call representative.

9.4 Emergencies.

The parties agree to notify each other within 72 hours of any emergency situation related to any City Poles at the emergency phone numbers listed in the Basic License Information or at the earliest opportunity. In an emergency, however, the City's work and needs will take precedence over the operations of any of Licensee's Equipment on the License Area, and the City may access any portion of the License Area that it determines necessary in its sole discretion in accordance with **Section 21.2** (Emergency Access), whether or not the City has notified Licensee of the emergency. Licensee acknowledges that City personnel will be entitled to exercise their judgment in an emergency caused by any person, and in the exercise of judgment may determine that the operation of Licensee's Equipment must be interrupted, or that the circumstances require the removal of any part of Licensee's Equipment. Licensee agrees that the City will bear no liability to Licensee for the City's interruption of Licensee's Equipment operations, removal of Equipment, or other actions with respect to Licensee's Equipment in an emergency except to the extent caused by the gross negligence or willful misconduct of the City, and that Licensee shall be solely responsible for the costs required to resume operations or repair or replace Equipment following the emergency.

10 LICENSEE'S MAINTENANCE AND REPAIR OBLIGATIONS

10.1 Damage to City Property.

If the acts, omissions, or negligence of Licensee or its Agents or Invitees when installing or removing Equipment damages any City Pole, License Area, or other City Property, the City will provide notice describing the damage and 30 days' opportunity to cure. If Licensee fails to repair or replace the damaged City Pole in accordance with the requirements of **Section 8.1** (Licensee's Alterations) within the 30-day cure period, or any longer period to which the City agrees in its reasonable discretion, the City may do so at Licensee's expense. Failure to act after 60 days' notice will subject Licensee to the Default provisions in **Article 17** (Default). Licensee shall reimburse the City for its costs of repair or replacement within 20 days after receipt of the City's demand for payment, together with copies of invoices or other evidence of its costs.

10.2 Alterations to City Property

If Licensee or any of its Agents or Invitees alters or removes any City Property without the City's express prior approval, Licensee shall restore the City Property to the condition existing before the damage or alteration, unless the City directs otherwise. The City may condition its approval of any alteration to City Property on restoration in accordance with this Section.

10.3 No Right to Repair City Property.

Absent notice from the City providing an opportunity to repair damage to City Property, Licensee is not authorized to make any repairs to City Property. In all cases, Licensee waives any right it may have to make repairs at the City's expense under any applicable Law.

10.4 Notice of Damage to City Property.

Licensee agrees to give the City notice of the need for any repair to any City Pole, License Area, or other City Property promptly after Licensee's discovery of damage from any cause. Licensee's agreement to provide notice is not an assumption of liability for any life-threatening or hazardous conditions unless caused by the negligent or reckless acts or omissions or willful misconduct of Licensee or its Agents or Invitees.

10.5 Licensee's Equipment.

10.5.1 Maintenance and Repair. Licensee shall at its sole expense install, maintain, and promptly repair any damage to Equipment installed on the License Area whenever repair or maintenance is required, subject to the City's prior approval if required under **Article 8** (Alterations).

10.5.2 City Approval. Licensee is not required to seek the City's approval for any repair, maintenance, replacement, or other installation of Equipment or signage in a License Area if: (i) the Equipment or signage in question was in the Approved Plans; (ii) the repair, replacement, or installation involves only the substitution of internal components, or does not result in any change to the external appearance, dimensions, or weight of the Equipment in the Approved Plans; (iii) the City in its reasonable judgment concurs with Licensee that the repair, maintenance, replacement, or other installation of Equipment is reasonably consistent with the Approved Plans, taking into consideration availability of the specific Equipment and advancements in technology, or (iv) requires no temporary traffic control within the roadway or closure of a public sidewalk. In no event, however, will Licensee be authorized to install larger, different, or additional Equipment on a City Pole without the City's express prior consent, or erect temporary traffic control for either the roadway or sidewalk in a manner that endangers the public. In this regard, Licensee acknowledges that section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455) does not apply to this Master License or any Pole License because the City is granting rights to Licensee in its proprietary capacity as the owner of the City Poles. Any work on Licensee's Equipment installed on

City Poles that is authorized or permitted under this Subsection is subject to Licensee obtaining any required Regulatory Approvals.

10.5.3 Graffiti. Licensee's repair and maintenance obligation includes the removal of any graffiti from the Licensee's equipment.

10.6 Inspections.

At least once in every License Year, Licensee shall perform an inspection of all Equipment and, within 10 business days after the inspection, submit a written report to the City on the condition of such Equipment that includes, without limitation, any identified concerns and corrective action taken or planned to be taken. In the event that Licensee's inspection reveals any maintenance concerns in connection with any Pole or any other City Property, Licensee shall promptly notify the City. Licensee shall provide the City with at least 30 days' prior written notice before it commences any inspection. Licensee shall permit any City employee or third-party consultant to observe any inspection activities and make reasonable accommodations as needed to facilitate such observations; provided that any third-party consultant will be required to agree to a reasonable confidentiality agreement as may be requested by Licensee. In the event that Licensee, its Agents or Invitees notice any maintenance concerns with respect to any Pole or other City Property, Licensee shall promptly notify the City.

11 LIENS

Licensee shall keep the License Area free from any liens arising out of any work performed, material furnished, or obligations incurred by or for Licensee. Licensee shall inform each and every contractor and material supplier that provides any work, service, equipment, or material to Licensee in any way connected with Licensee's use of the License Area that the License Area is public property and is not subject to mechanics' liens or stop notices for Equipment, other materials, or services provided for Licensee's Equipment. If Licensee does not cause the release of lien of a mechanic's lien or stop notice by any contractor, service provider, or equipment or material supplier purporting to attach to the License Area or other City Property as a result of work performed, material furnished, or obligations incurred on behalf of Licensee within 60 days after notice or discovery of the lien, the City will have the right, but not the obligation, to cause the same to be released by any means it deems proper, including payment of the Claim giving rise to such lien. Licensee must reimburse the City for all expenses it incurs in connection with any such lien (including reasonable attorneys' fees) within 20 days following receipt of the City's demand and an invoice of City's expenses. Licensee shall not create, permit, or suffer any other encumbrances affecting any portion of the License Area.

12 UTILITIES; TAXES AND ASSESSMENTS

12.1 Utilities.

Licensee shall be solely responsible for obtaining and maintaining the provision of electricity to Licensee's Equipment, including, but not limited to, making payments to electric utilities and installation of separate electric meters, if necessary. Licensee shall comply with all Laws and rules and regulations of the electric utility relating to installation and connection of Licensee's Equipment to electricity. If granted a choice between a pole-mounted Smart Meter and a pedestal-mounted meter, Licensee must choose a pole-mounted Smart Meter. Pedestal-mounted meters will only be allowed if no alternative is available. The electricity purveyor in San Leandro is Pacific Gas & Electric Company (PG&E).

12.2 Taxes and Assessments.

12.2.1 Possessory Interest Taxes. Licensee recognizes and understands that this Master License may create a possessory interest subject to property taxation and that Licensee may be required to pay possessory interest taxes. (See Rev & Tax Code, Sections 107–107.9) Licensee further recognizes and understands that any sublicense or assignment permitted under this Master License and any exercise of any option to renew or extend this Master License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created under this Master License.

12.2.2 Licensee's Obligation if Assessed. Licensee agrees to pay taxes of any kind, including possessory interest taxes, excises, licenses, permit charges, and assessments based on Licensee's usage of the License Area that may be imposed upon Licensee by Law, when the same become due and payable and before delinquency. Licensee agrees not to allow or suffer a lien for any taxes to be imposed upon the License Area without promptly discharging the same, provided that Licensee, if so desiring, will have a reasonable opportunity to contest the validity of the same. The City will provide Licensee with copies of all tax and assessment notices on or including the License Area promptly, along with sufficient written documentation detailing any assessment increases attributable to Licensee's Equipment, but in no event later than 30 days after receipt by the City.

12.2.3 Taxes on Equipment. Licensee shall be responsible for all taxes and assessments levied upon Licensee's Equipment. Licensee agrees not to allow or suffer a lien for any such taxes to be imposed upon the Equipment without promptly discharging the same, provided that Licensee, if so desiring, will have a reasonable opportunity to contest the validity of the same.

12.2.4 Use of City Electricity. For a location where Licensee's Equipment will be powered from a street light circuit that is currently connected to a City-operated electrical meter, the cost of said electricity is assumed to be included in the License Fee paid to City, and no sub-metering or incremental payment for electricity will be required.

13 COMPLIANCE WITH LAWS

13.1 Current and Future Laws.

Licensee shall install, use, and maintain the Equipment in strict compliance with Laws and conditions to Regulatory Approvals relating to the use or occupancy of the License Area, including all Laws relating to health, safety, and radio signal transmission. Any work or installations made or performed by or on behalf of Licensee or any person or entity claiming through or under Licensee is subject to applicable Laws. The parties agree that Licensee's obligation to comply with all Laws is a material part of the bargained-for consideration under this Master License, irrespective of the degree to which such compliance may interfere with Licensee's use or enjoyment of the License Area, the likelihood that the parties contemplated the particular Law involved and whether the Law involved is related to Licensee's particular use of the License Area. No occurrence or situation arising during the Term under any current or future Law, whether foreseen or unforeseen and however extraordinary, will relieve Licensee from its obligations under this Master License or give Licensee any right to terminate this Master License or any Pole License in whole or in part or to otherwise seek redress against the City. Licensee waives any rights under any current or future Laws to terminate this Master License or any Pole License, to receive any abatement, diminution, reduction or suspension of payment of any amounts due under this Master License, or to compel the City to waive any rights of City under this Master License

13.2 Personnel Safety Training.

13.2.1 CPUC Certification. Licensee shall ensure that all persons installing, operating, or maintaining its Equipment are appropriately trained and licensed by the California State Contractors Licensing Board and as required by applicable regulations and rules of the California Public Utilities Commission (the “CPUC”). Licensee shall ensure that these persons are trained in and observe all safety requirements established by the City, the CPUC, and the California Division of Occupational Safety & Health, Department of Industrial Relations, including site orientation, tag-out lock-out de-energization rules, ladder and lift restrictions, and sidewalk and street right-of-way safety requirements.

13.2.2 Licensee’s Indemnity. During any period when Licensee or any Agent of Licensee is installing, operating, or maintaining its Equipment, Licensee acknowledges and agrees that the City has delegated control of the License Area to Licensee, which will be solely responsible for any resulting injury or damage to property or persons, except for injury or damage resulting from the City’s negligence, recklessness, or willful misconduct. The City is not a co-employer of any employee of Licensee or any employee of Licensee’s Agents, and the City will not be liable for any Claim of any employee of Licensee or any employee of Licensee’s Agents, except for Claims arising from the City’s negligence, recklessness, or willful misconduct. Licensee agrees to Indemnify the City fully (as provided in **Article 18** (Indemnification)) against any Claim brought by any employee of Licensee, any employee of Licensee’s Agents, or any third party arising from or related to Licensee’s access to and use of the License Area and other activities of Licensee or its Agents in or around the License Area, except to the extent the Claims result from the City’s negligence, recklessness, or willful misconduct.

13.2.3 City’s Indemnity. During any period when the City or any Agent of the City is installing, operating, or maintaining its Equipment, the City acknowledges and agrees that the City has control of the License Area and will be solely responsible for any resulting injury or damage to property or persons, except for injury or damage resulting from Licensee’s negligence, recklessness, or willful misconduct. Licensee is not a co-employer of any employee of the City or any employee of the City’s Agents, and Licensee will not be liable for any Claim of any employee of the City or any employee of Licensee’s Agents, except for Claims arising from Licensee’s negligence, recklessness, or willful misconduct. The City agrees to Indemnify Licensee fully against any Claim brought by any employee of the City or any employee of the City’s Agents arising from or related to the City’s access to and use of the License Area and other activities of the City or its Agents in or around the License Area, except for injury or damage resulting from Licensee’s negligence, recklessness, or willful misconduct.

13.3 Compliance with CPUC General Order 95.

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

13.4 Compliance with Electric Codes.

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

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

13.5 City's Exercise of its Proprietary Interests.

Licensee acknowledges and agrees that the City is entering into this Master License in its capacity as a property owner with a proprietary interest in the License Area and not as a Regulatory Agency with police powers. Nothing in this Master License limits in any way Licensee's obligation to obtain required Regulatory Approvals from applicable Regulatory Agencies. By entering into this Master License, the City is in no way modifying or limiting Licensee's obligation to cause the License Area to be used and occupied in accordance with all applicable Laws.

13.6 Regulatory Approvals.

Licensee represents and warrants that prior to, and as a condition of, conducting its activities on the License Area, Licensee will acquire all Regulatory Approvals required for Licensee's use of the License Area. Licensee shall maintain all Regulatory Approvals for Licensee's Permitted Use on the License Area throughout the Term of this Master License and for as long as any Equipment is installed on any portion of the License Area. Following submission of a Pole License application by Licensee, such Regulatory Approvals (or written denials explaining with specificity all reasons for such denials) shall be issued by the City within the timeframe allowed by the FCC and 47 U.S.C. § 332(c)(7)(B)(i)(II).

13.7 Radiofrequency Radiation and Electromagnetic Fields.

Licensee's obligation to comply with all Laws includes all Laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off the License Area, including all applicable FCC standards, whether such RF or EMF presence or exposure results from Licensee's Equipment alone or from the cumulative effect of Licensee's Equipment added to all other sources on or near the License Area. Licensee must provide to the City a copy of the report required for Licensee's Encroachment Permit, of an independent engineering consultant analyzing whether RF and EMF emissions at the proposed Pole Locations would comply with FCC standards, taking into consideration the Equipment installation specifications and distance to residential windows (each, an "**Emissions Report**"). If not provided earlier, Licensee must submit the Emissions Report to the City with the applicable Pole License application. If the Emissions Report does not identify the type(s) of frequencies or bandwidth used by the Equipment, Licensee shall include such information in its Pole License application.

13.8 Compliance with City's Risk Management Requirements

Licensee shall not do anything, or permit anything to be done by anyone under Licensee's control, in, on, or about the License Area that would create any unusual fire risk, and shall take commercially reasonable steps to protect the City from any potential liability by reason of Licensee's use of the License Area. Licensee, at Licensee's expense, shall comply with all reasonable rules, orders, regulations, and requirements of the City Manager and City's Risk Manager.

14 DAMAGE OR DESTRUCTION

14.1 City Election.

The City has no obligation to replace or repair any part of the License Area following damage by any cause. Following damage or destruction of a City Pole or License Area, the City may elect any of the following actions, in the City's sole and absolute discretion.

14.1.1 Election to Repair or Replace Damage. Within 30 days after the date on which the City discovers damage or destruction of a City Pole licensed to Licensee, the City will give Licensee notice of the City's decision whether to repair or replace the damaged City Pole and its good faith estimate of the amount of time the City will need to complete the work. If the City cannot complete the work within 30 days after the date that the City specifies in its notice, or if the City elects not to do the work, then Licensee will have the right to terminate the affected Pole License on 30 days' notice to the City. However, if City elects not to perform such work, Licensee may perform such work at its sole cost and expense, subject to City approval of Licensee's plans and specifications and Licensee's compliance with City permit requirements. In such case, the affected Pole License will remain in full force and effect.

14.1.2 Election to Remove Damaged City Pole. If the City decides to remove, rather than repair or replace, a damaged City Pole licensed to Licensee, the applicable Pole License will terminate automatically as of the last day of the month the City Pole is removed. Licensee also may request that it transfer any of its Equipment to any available substitute City Pole, at Licensee's sole cost and expense, which request may be approved or denied by City in its reasonable discretion.

14.1.3 Election to Remove Equipment from Damaged License Area. If the acts of third parties or an act of nature or other force majeure circumstance outside the control of Licensee or its Agents or Invitees destroys or damages any City Pole to such an extent that, in the City's reasonable determination, the Equipment on the City Pole cannot be operated, the City may decide to terminate the affected Pole License on 30 days' notice to Licensee and require Licensee to remove the Equipment from the damaged City Pole before the termination date specified in the City's notice.

14.1.4 Licensee's Rights after Termination. After termination of any Pole License under this Section, the City will: (i) refund the portion of the previously-paid License Fee attributable to the terminated portion of the License Year, subject to **Section 3.1.2** (Minimum Term); and (ii) give priority to Licensee's Pole License application for a replacement City Pole.

14.2 No Statutory Rights for Damaged City Pole.

The parties understand and agree that this Master License governs fully their rights and obligations in the event of damage or destruction of City Poles, and, to the extent applicable, Licensee and the City each hereby waives and releases the provisions of section 1932, subdivision 2, and section 1933, subdivision 4, of the Civil Code of California (when hirer may terminate the hiring) or under any similar Laws.

15 EMINENT DOMAIN

15.1 Eminent Domain.

If all or any part of the License Area is permanently taken in the exercise of the power of eminent domain or any transfer in lieu thereof, the following will apply:

15.1.1 Termination. As of the date of taking, the affected Pole Licenses will terminate as to the part so taken, and the License Fee under the affected Pole Licenses will be ratably reduced to account for the portion of the License Area taken.

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

15.1.3 No Statutory Right to Terminate. The parties understand and agree that this Section is intended to govern fully the rights and obligations of the parties in the event of a permanent taking. Licensee and the City each hereby waives and releases any right to terminate this Master License in whole or in part under sections 1265.120 and 1265.130 of the California Code of Civil Procedure (partial termination of lease and court order terminating lease, respectively) and under any similar Laws to the extent applicable to this Master License.

15.2 Temporary Takings.

A taking that affects any portion of the License Area for less than 90 days will have no effect on the affected Pole License, except that Licensee will be entitled to an abatement in the License Fee to the extent that its use of the License Area is materially impaired. In the event of any such temporary taking, Licensee will receive that portion of any award, if any, that represents compensation for the use or occupancy of the License Area during the Term up to sum of the License Fees and Additional Fees payable by Licensee for the period of the taking, and the City will receive the balance of the award.

16 ASSIGNMENT

16.1 Restriction on Assignment.

Except as specifically provided in **Section 16.6** (Permitted Assignment), Licensee shall not directly or indirectly Assign any part of its interest in or rights with respect to the License Area without the City's prior consent. The City will not unreasonably withhold, condition, or delay its consent to an Assignment other than an Assignment covered by **Article 11** (Liens).

16.2 Notice of Proposed Assignment.

Except as specifically provided in Section 16.6 (Permitted Assignment), if Licensee desires to enter into an Assignment of this Master License or any Pole License issued under this Master License, Licensee shall give notice (a "**Notice of Proposed Assignment**") to the City, stating in detail the terms and conditions for such proposed Assignment and financial information reasonably sufficient to show that the proposed assignee (the "Assignee") has a demonstrated ability to perform all of the obligations of Licensee under this Master License and any Pole License issued hereunder. If Licensee does not deliver all information that the City reasonably requires simultaneously with the Notice of Proposed Assignment, the date of Licensee's delivery of notice will be deemed to have occurred only when it has delivered any additional information the City requests.

16.3 City Response.

16.3.1 Timing. The City will grant or deny any request for consent to an Assignment within 30 days after the City's receipt or deemed receipt, if delayed under **Section 16.2** (Notice of Proposed Assignment), of the Notice of Proposed Assignment (the "**Assignment Response Period**"). If the City consents to the proposed Assignment, then Licensee will have 180 days following the date the City delivers its consent notice to Licensee to complete the Assignment. As a condition of the City's consent, the City shall be entitled to seventy-five percent (75%) of the amount payable by the assignee to Licensee as additional rent for the assigned License Area created by this Master Agreement and related Pole License ("**Bonus Rent**"). The City shall be entitled to review Licensee's books and records relating to Bonus Rent, provided that the City agrees in writing to keep the information in such books and records confidential, to the extent permitted by law, with the agreement to be in a form of a commercially reasonable confidentiality agreement.

16.3.2 Effect of Default. Licensee acknowledges that it would be reasonable for the City to refuse to consent to an Assignment during any period during which any monetary or other material event of default by Licensee is outstanding (or any event has occurred that with notice or the passage of time or both would constitute a default) under this Master License.

16.4 Effect of Assignment.

No Assignment by Licensee, consent to Assignment by the City, except a Permitted Assignment under **Section 16.6** (Permitted Assignment) will relieve Licensee of any obligation on its part under this Master License. Any Assignment that is not in compliance with this Article will be void and be a material default by Licensee under this Master License without a requirement for notice and a right to cure. The City's acceptance of any License Fee, Additional Fee, or other payments from a proposed Assignee will not be deemed to be the City's consent to such Assignment, recognition of any Assignee, or waiver of any failure of Licensee or other transferor to comply with this Article.

16.5 Assumption by Transferee.

Each Assignee shall assume all obligations of Licensee under this Master License and each assigned Pole License and will be and remain liable jointly and severally with Licensee for all obligations to be performed by Licensee. No Assignment will be binding on the City unless Licensee or the Assignee delivers to the City evidence satisfactory to the City that the Assignee has obtained all Regulatory Approvals required to operate as a wireless telecommunications service provider on the assigned License Area, a copy of the assignment agreement (or other document reasonably satisfactory to the City in the event of a Permitted Assignment under **Section 16.6** (Permitted Assignment)), and an instrument in recordable form that contains a covenant of assumption by such Assignee satisfactory in substance and form to the City, consistent with the requirements of this Article. However, the failure or refusal of an Assignee to execute such instrument of assumption will not release such Assignee from its liability as set forth in this Section. Except for a Permitted Assignment as provided in **Section 16.6** (Permitted Assignment), Licensee shall reimburse the City on demand for any reasonable costs that the City incurs in connection with any proposed Assignment, including the costs of investigating the acceptability of the proposed Assignee and legal costs incurred in connection with considering any requested consent.

16.6 Permitted Assignment.

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

16.6.2 Conditions. A Permitted Assignment is subject to the following conditions:

16.6.2.1 The Assignee uses the License Area only for the Permitted Use and holds all Regulatory Approvals necessary to lawfully install, operate, and maintain Equipment on the License Area.

16.6.2.2 Licensee provides the City with notice 30 days before the effective date of the Permitted Assignment, stating the contact information for the proposed Assignee and providing financial information establishing

that the proposed Assignee meets the capital and fiscal qualifications stated in this Section.

16.6.2.3 Licensee is in good standing under this Master License.

16.7 Licensee's Third Party Carrier Customers

The parties agree and acknowledge that, notwithstanding anything in this Master License or any Pole License to the contrary, certain Equipment deployed by Licensee in the License Areas pursuant to this Master License may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and the Carriers. Such Equipment shall be treated as Licensee's Equipment for all purposes under this Master License and applicable Pole Licenses, provided that (i) Licensee remains responsible and liable for all performance obligations under this Master License and the applicable Pole Licenses with respect to such Equipment; (ii) City's sole point of contact regarding such Facilities shall be Licensee; and (iii) Licensee shall have the right to remove and relocate such Equipment without the need for consent by City.

17 DEFAULT

17.1 Events of Default by Licensee.

Any of the following will constitute an event of default by Licensee under this Master License and any Pole Licenses issued under it:

17.1.1 Nonpayment of Fees. Licensee fails to pay any License Fee or Additional Fees as and when due, if the failure continues for thirty (30) days after written notice from City to Licensee of such failure.

17.1.2 Lapsed Regulatory Approvals. Licensee fails to maintain all Regulatory Approvals required for the Permitted Use, if the failure continues for 10 days after written notice from City to Licensee of such failure.

17.1.3 Prohibited Assignment. Licensee enters into an Assignment in violation of **Article 16** (Assignment).

17.1.4 Interference with City. Licensee interferes with the City's operations in violation of **Section 27.5.1** (Licensee's Obligation Not to Cause Interference) for a period of 10 days after written notice thereof from City to Licensee.

17.1.5 Failure to Maintain Insurance. Licensee fails to maintain insurance as required by **Article 19** (Insurance).

17.1.6 Failure to Cure. Licensee fails to cure noncompliance with the specified requirements of this Master License after initial and follow-up notices or to pay the Default Fees as set forth in **Subsection 17.2.4** (Default Fees).

17.1.7 Other Terms. Licensee fails to perform or comply with any other obligation or representation made under this Master License, if the failure continues for 30 days after the date of notice from the City, or, if such default is not capable of cure within the 30-day period, Licensee fails to promptly undertake action to cure such default within such 30-day period and thereafter fails to use its best efforts to complete such cure within 60 days after the City's notice.

17.1.8 Abandonment. Licensee removes its Equipment or abandons the License Area for a continuous period of more than 60 days, such that the License Area is no longer being used for the Permitted Use.

17.1.9 Insolvency. Any of the following occurs: (i) the appointment of a receiver due to Licensee's insolvency to take possession of all or substantially all of the assets of Licensee; (ii) an assignment by Licensee for the benefit of creditors; or (iii) any action taken by or against Licensee under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief Law, if any such receiver, assignment, or action is not released, discharged, dismissed, or vacated within 60 days.

17.2 City's Remedies.

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

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

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

17.2.3 Termination of Master License. If Licensee's default is of such a serious nature in the City's sole judgment that the default materially affects the purposes of this Master License, the City may terminate this Master License in whole or in part. Termination of this Master License in whole will affect the termination of all Pole Licenses issued under it automatically and without the need for any further action by the City. In either case, the City will deliver notice to Licensee providing 30-days' notice of termination and specifying whether the termination affects the entire Master License or only certain Pole Licenses as specified in the notice. The City will specify the amount of time Licensee will have to remove its Equipment from any affected City Pole, which will be at least 60 days after the date of the City's notice for up to 50 City Poles and an additional 60 days for more than 50 City Poles. If Licensee does not remove its Equipment within the specified period, the City will be entitled but not obligated to remove Licensee's Equipment from the License Areas.

17.2.4 Default Fees. Without limiting the City's other rights and remedies under this Master License, the City may require Licensee to pay Additional Fees for the City's administrative costs in providing notice or performing inspections for the events described below (each, a "**Default Fee**"), by giving notice of the City's demand that Licensee cure the default and specifying the cure period. The Default Fee for the initial notice from the City will be due and payable to the City 10 days after delivery of notice to Licensee. In addition, if Licensee fails to cure the condition within the cure period set forth in the initial notice, and the City then delivers to Licensee a follow-up notice requesting compliance, then the Default Fee for the follow-up notice will be due and payable to the City 10 days after delivery of the follow-up notice to Licensee. Default Fees will apply to any of the following events:

17.2.4.1 Licensee constructs or installs any alteration or improvement without the City's prior approval as required by **Article 6** (Pole License Approvals), **Article 7** (Installation of Equipment), or **Article 8** (Alterations) of this Master License.

17.2.4.2 Licensee fails to make a repair required by **Article 10** (Licensee's Maintenance and Repair Obligations) on a timely basis.

17.2.4.3 Licensee fails to notify the City, through its project manager, before accessing the License Area or following the plan approval procedures as set forth in **Article 7** (Installation of Equipment).

17.2.4.4 Licensee fails to provide evidence of the required bonds and insurance coverage described in **Article 19** (Insurance) on a timely basis.

17.3 Licensee's Remedy for City Defaults.

Licensee's sole remedy for the City's breach or threatened breach of this Master License or any Pole License issued under it will be termination of this Master Agreement or any Pole License issued under it and/or an action for damages, subject to **Article 20** (Limitation of City's Liability).

17.4 Cumulative Rights and Remedies.

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

18 LICENSEE'S INDEMNITY

18.1 Scope of Licensee's Indemnity.

Licensee, on behalf of itself and its successors and assigns, shall Indemnify the City "Indemnified Parties", as defined in **Section 1.3** (Definitions), from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind (each, a "**Claim**"), incurred in connection with or arising in whole or in part from: (a) injury to or death of a person, including employees of Licensee, or loss of or damage to property occurring on or about the License Area or arising in connection with Licensee's or its Agents' or Invitees' authorized or unauthorized use of the License Area; (b) any default by Licensee in the observation or performance of any of the terms, covenants, or conditions of this Master License to be observed or performed on Licensee's part; (c) the use or occupancy or manner of use or occupancy of the License Area by Licensee, its Agents, or Invitees, or any person or entity claiming through or under any of them; (d) the presence of or exposure to RFs or EMFs resulting from Licensee's use of the License Area; (e) the condition of the License Area or any occurrence on the License Area from any cause attributable to the events described in **clauses (a), (b), (c), or (d)** of this Section; or (f) any acts, omissions, or negligence of Licensee, its Agents, or Invitees, in, on, or about the License Area; except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Master License and further except to the extent such Claim is caused by the willful misconduct or gross negligence of the Indemnified Parties.

18.2 Indemnification Obligations.

Licensee's Indemnification obligation includes reasonable fees of attorneys, consultants, and experts and related costs, including the City's costs of investigating any Claim. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and the other Indemnified Parties from any Claim that actually or potentially falls within the scope of **Section 18.1** (Scope of Indemnity) even if allegations supporting the Claim are groundless, fraudulent, or false, which obligation arises at the time such Claim is tendered to Licensee by the Indemnified Parties and continues at all times until finally resolved. Licensee's obligations under this Article will survive the termination of the Master License.

19 INSURANCE

19.1 Licensee's Insurance.

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

19.1.1 Coverage Amounts. Licensee shall procure and keep in effect at all times during the Term, at Licensee's cost, insurance in the following amounts and coverages:

19.1.1.1 Commercial General Liability insurance (including premises operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability; independent contractors; personal injury) with limits of at least \$2 million combined single limit for each occurrence.

19.1.1.2 Worker's Compensation Insurance in compliance with applicable state law with Employer's Liability Limits not less than \$1 million per each accident/disease/policy.

19.1.1.3 Commercial Automobile Liability Insurance with limit not less than \$2 million each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles.

19.1.2 Required Endorsements. Commercial General Liability and Commercial Automobile Liability Insurance policies shall provide, or be endorsed to provide, the following:

19.1.2.1 That the "*City of San Leandro, and its officers, officials, and employees*" are included as additional insureds; and

19.1.2.2 That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any Claims arising out of this Master License, and that insurance applies separately to each insured against whom Claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all Claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

19.1.3 Notice of Cancellation. All insurance policies required to be maintained by Licensee under this Master License shall be endorsed to provide written notice of cancellation for any reason, including intent not to renew or to reduce coverage to both Licensee and the City. Licensee must provide a copy of any notice of intent to cancel or cancellation of its required coverage to the City within one business day of Licensee's receipt and take prompt action to prevent cancellation, reinstate the cancelled coverage, or obtain it from a different insurer meeting the qualifications of **Subsection 19.1.9** (Ratings).

19.1.4 Claims-Made Policies. Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three years after the expiration or termination of this Master License, to the effect that, should occurrences during the Term give rise to Claims made after expiration or termination of this Master License, such Claims shall be covered by such claims-made policies.

19.1.5 General Aggregate Limit. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or

provides that Claims investigation or legal defense costs will be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or Claims limits specified above.

19.1.6 Certificates. Licensee shall deliver to the City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to the City, evidencing the coverages required under this Master License, on or before the Effective Date, together with complete copies of the policies promptly upon the City's request, and Licensee shall provide the City with certificates or policies thereafter promptly upon the City's request.

19.1.7 Insurance Does Not Limit Indemnity. Licensee's compliance with the provisions of this Section in no way relieve or decrease Licensee's liability under **Article 18** (Licensee's Indemnity) or any other provision of this Master License.

19.1.8 Right to Terminate. The City may elect, in the City's sole and absolute discretion, to terminate this Master License if Licensee allows any required insurance coverage to lapse by: (i) providing Licensee notice of the event of default; and (ii) including in the notice of default a notice of termination if Licensee fails to reinstate the lapsed coverage within three business days after the City delivers notice.

19.1.9 Ratings. Licensee's insurance companies must be licensed or authorized to do business in California and must meet or exceed an A.M. Best rating of A-VII or its equivalent.

19.1.10 Effective Dates. All insurance must be in effect before the City will authorize Licensee to install Equipment on any City Pole and remain in force until all Equipment has been removed from the License Area. Licensee is responsible for determining whether the above minimum insurance coverages are adequate to protect its interests. The above minimum coverages are not limitations upon Licensee's liability.

19.1.11 Self-Insurance Alternative. Licensee may propose and the City may accept an alternative insurance program, if that program provides equivalent protections to the City as the insurance requirements in this Section, which the City will determine in its sole discretion, in consultation with the City's Risk Manager. The City's acceptance of an alternative insurance program will not affect an implied waiver or amendment of any other requirement of this Master License. Any amendment of these insurance requirements must be in a written amendment to this Master License, executed in the same manner as this Master License.

19.1.12 Excess/Umbrella Insurance. The coverage amounts set forth for Commercial General Liability and Commercial Auto Liability may be met by a combination of primary and excess/umbrella policies as long as in combination the limits equal or exceed the amounts stated.

19.2 Insurance of Licensee's Property.

City shall have no responsibility for insuring Licensee's property. Licensee shall be responsible, at its expense, and in its sole discretion, for separately insuring Licensee's property.

19.3 City's Insurance.

Licensee acknowledges that the City maintains insurance, self-insurance, or equivalent risk management coverage against casualty, property damage, and public liability risks. The City agrees to maintain adequate coverage for public liability risks during the Term and is not required to carry any additional insurance with respect to the License Area or otherwise.

19.4 Waiver of Subrogation.

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

19.5 Contractors' Insurance, and City Business License.

Licensee shall require its contractors that install, maintain, repair, replace, or otherwise perform work on the License Area: (a) to have and maintain insurance of the same coverage and amounts as required of Licensee, and (b) to have and maintain a valid City Business License.

20 LIMITATION OF CITY'S LIABILITY

20.1 General Limitation on City's Liability.

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

20.2 Consequential and Other Damages.

Notwithstanding any provision to the contrary, in no event shall either party be liable to the other in contract, tort, under any statute, warranty, provision of indemnity or otherwise, for any special, indirect, incidental, or consequential, punitive, or exemplary damages suffered by the other party or any customer or third party or any other person for lost profits or other business interruption damages of that party's customers, advertisers, users, clients, licensees, or any other person, firm, or entity, and the parties agree to indemnify and hold each other harmless in such regard.

20.3 No Relocation Assistance.

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

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

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

20.5 Scope of Waivers.

Licensee acknowledges the City's rights under this Article and waives any Claims arising from the exercise of the City's rights. In connection with the preceding sentence and the releases and waivers contained in this Master License, including **Section 10.3** (No Right to Repair City Property), **Section 14.2** (No Statutory Rights for Damaged City Pole), **Subsection 15.1.3** (No Statutory Right to Terminate), **Section 19.4** (Waiver of Subrogation), **Section 20.1** (General Limitation on City's Liability), **Section 20.2** (Consequential Damages), **Section 20.3** (No Relocation Assistance), **Section 21.3** (No Liability for Emergency Access), **Section 24.1** (Application of Security Deposit), and any other waiver by Licensee under this Master License. Licensee acknowledges that it is familiar with section 1542 of the California Civil Code, which reads:

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

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

21 CITY ACCESS TO LICENSE AREA

21.1 City's Right of Access.

Except as specifically provided otherwise, the City and its designated Agents have the right of access to any part of the License Area at any time without notice for any purpose. The City will, however, make good faith efforts to provide notice to Licensee according to **Section 9.2** (Notice to Licensee).

21.2 Emergency Access.

If safe and practicable, the City will notify Licensee of any emergency that requires the City to remove and replace a City Pole and allow Licensee to remove its Equipment before the City removes or replaces a City Pole in an emergency situation or other exigent circumstances. But if in the City's sole judgment it is not safe or practicable to wait for Licensee to perform the work or where such delay would cause significant delay to or otherwise compromise public safety or services, the City will remove the Equipment from the City Pole, exercising reasonable care to avoid damage. The City will hold the Equipment for retrieval by Licensee, and Licensee will have the right to reinstall the Equipment or equivalent Equipment at Licensee's expense on the repaired or replaced City Pole in accordance with **Article 7** (Installation of Equipment). As provided in **Section 9.4** (Emergencies), the City's removal of Licensee's Equipment in emergency or exigent circumstances may not be deemed to be a forcible or unlawful entry into or interference with Licensee's rights to the License Area.

21.3 No Liability for Emergency Access.

The City will not be liable in any manner, and Licensee hereby waives any Claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the City's entry onto the License Area, including the removal of Licensee's Equipment from a City Pole in an emergency as described in **Subsection 21.2** (Emergency Access), except damage resulting directly and exclusively from the gross negligence or willful misconduct of the City or its Agents and not contributed to by the acts, omissions, or negligence of Licensee, its Agents, or Invitees.

22 REQUIRED RECORDS

22.1 Records of Account.

Licensee shall maintain during the Term and for a period ending 3 years after the Expiration Date or earlier termination of this Master License the following records at a place of business within the State of California or in an electronic format: (a) identification and location of all City Poles under active Pole Licenses; (b) amounts and dates of License Fees paid to the City; (c) Regulatory Approvals issued for the installation, operation, and maintenance of Equipment on City Poles; and (d) correspondence with the City concerning any matter covered by this Master License all covering a period of not more than three years. The City, or a consultant acting on its behalf, will have the right to inspect and audit Licensee's records at Licensee's place of business during regular business hours on 10 business days' notice to Licensee.

22.2 Estoppel Certificates.

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

22.3 Regulatory and Bankruptcy Records.

22.3.1 Copies for City Records. Licensee shall provide to the City upon request copies of: (a) any pending applications, communications, or other documents related to any filing by or against Licensee of an action for bankruptcy, receivership, or trusteeship; and (b) all relevant non-privileged petitions, applications, communications, and reports submitted by Licensee to the FCC or any other Regulatory Agency having jurisdiction directly related to Licensee's installation or operation of Equipment on City Poles or other property.

22.3.2 Production of Documents. The City will attempt to notify Licensee promptly after delivery of any request for copies of these records made under any public records Law or in any court proceeding and of the date on which the records are to be made available. If Licensee believes that any of the requested records are confidential or contain proprietary information, Licensee must identify those records to the City before the date of required production. If the request is made through any court or administrative proceeding, or the requesting party otherwise makes a formal complaint regarding nondisclosure, Licensee will have the burden to obtain any protective order needed to withhold production at its sole cost and expense. Licensee acknowledges that the City's compliance with any court order, including a subpoena duces tecum, will not violate this Subsection. The City's failure to notify Licensee will not affect the City's legal obligation to produce records or give rise to any Claim by Licensee against the City.

23 RULES AND REGULATIONS

Licensee shall faithfully comply during the Term with any and all reasonable rules, regulations, and instructions that the City establishes, as amended from time to time, with respect to use of any part of the License Area, to the extent that the same do not materially conflict with any express, material terms and conditions of this Master License.

24 SECURITY DEPOSIT

24.1 Application of Security Deposit.

Licensee must tender to the City for deposit the sum(s) specified as the security deposit in the Basic License Information or surety bond in the same amount (the “**Security Deposit**”) to secure Licensee’s faithful performance of all terms, covenants, and conditions of this Master License and the requested Pole License. The Security Deposit shall be due at the time(s) specified in the Basic License Information. Any surety bond shall be in a form acceptable to the City Attorney and shall name the City as the obligee to guarantee and assure the faithful performance of Licensee’s obligations under this Master License. Licensee agrees that the City may apply the Security Deposit in whole or in part to remedy any damage to the License Area caused by Licensee, its Agents, or Invitees, or any failure of Licensee, its Agents, or Invitees to perform any other terms, covenants, or conditions contained herein (including the payment of License Fees or other sums due under this Master License or any Pole License either before or after a default, or payments to contractors or material suppliers), without waiving any of the City’s other rights and remedies under this Master License or at law or in equity. Licensee waives any rights it may have under section 1950.7 of the California Civil Code or any similar Law and agrees that the City may retain all or any portion of Security Deposit reasonably necessary to compensate the City for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Licensee, its Agents, or Invitees. Licensee understands and agrees that the City may apply some or all of the Security Deposit to the payment of future License Fees, Additional Fees, and other amounts payable to the City under this Master License and any Pole License following a Licensee event of default. The City’s obligations with respect to the Security Deposit are solely that of a debtor and not of a trustee. The City is not required to keep the Security Deposit separate from its general funds, and Licensee is not entitled to interest on the Security Deposit. The amount of the Security Deposit in no way limits the liabilities of Licensee under any provision of this Master License or any Pole License.

24.2 Further Deposits.

Should the City use any portion of the Security Deposit to cure any default by Licensee under this Master License, Licensee will be required to replenish the Security Deposit in the amount and by the date that the City specifies by notice to Licensee.

25 SURRENDER OF LICENSE AREA

25.1 Surrender.

25.1.1 Obligations Upon Surrender. No later than 60 days after the Expiration Date or other termination of this Master License or any Pole License, Licensee shall at its sole cost and expense peaceably remove its Equipment from applicable portions of the License Area, repair any damage resulting from the removal, and surrender the poles to the City in good order and condition, normal wear and tear excepted, free of debris and hazards, and free and clear of all liens and encumbrances. Licensee shall not remove any fiber-optic cable to which the City will obtain title under **Section 7.9** (Fiber-Optic

Cables). Licensee's obligations under this Article will survive the Expiration Date or other termination of this Master License.

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

25.2 Holding Over.

25.2.1 With Consent. Any holding over after the Expiration Date with the express consent of the City will be construed to automatically extend the Term of this Master License for a period of one License Year at a License Fee equal to one hundred fifty percent (150%) of the License Fee in effect immediately before the Expiration Date, and the Master License otherwise will be on its express terms and conditions.

25.2.2 Without Consent. Any holding over without the City's consent will be a default by Licensee and entitle the City to exercise any or all of its remedies, even if the City elects to accept one or more payments of License Fees, Additional Fees, or other amounts payable to the City from Licensee after the Expiration Date.

26 HAZARDOUS MATERIALS

26.1 Hazardous Materials in License Area.

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

26.2 Licensee's Environmental Indemnity.

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

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

27 SPECIAL PROVISIONS

27.1 Early Termination by Either Party.

If Licensee does not obtain all Regulatory Approvals for any Pole License by the first anniversary of its effective date, either party will have the right to terminate that Pole License on 60 days' notice, which the terminating party must deliver to the other party within 10 business days after the first anniversary of the effective date of the Pole License to be terminated. If a Pole License is terminated under this provision, the Commencement Date will be deemed not to occur, and Licensee will have no obligation to pay the License Fee. If Licensee obtains all Regulatory Approvals within such sixty (60) day period, City's termination notice shall be deemed revoked, and the Pole License shall remain in full force and effect.

27.2 Licensee's Termination Rights.

27.2.1 No-Fault Termination of Master License. This Subsection will apply after the Commencement Date of any Pole Licenses. If Licensee fails to obtain or loses Regulatory Approvals for the Permitted Use with respect to a majority of the City Poles subject to Pole Licenses for reasons other than its failure to comply with the conditions of this Master License or Regulatory Approvals and in spite of reasonable efforts by Licensee to obtain or maintain its Regulatory Approvals, Licensee may terminate this Master License at any time on 90 days' prior notice to the City.

27.2.2 Pole License Termination. Absent the circumstances described in **Subsection 27.2.1** (No-Fault Termination of Master License), Licensee may terminate a Pole License on 90 days' notice at any time following the first anniversary of the Commencement Date of the Pole License. Licensee may remove its Equipment from the applicable License Area at any time after giving the required notice. Licensee shall not be liable for any License Fee or other fees or charges applicable to the terminated Pole License for any License Year after the date of such termination by Licensee.

27.2.3 Master License Termination. Licensee may terminate this Master License at any time on one year's notice.

27.2.4 Interference Caused by City Work. If any City work described in **Section 9.1** (Repairs, Maintenance, and Alterations) prevents Licensee from using a City Pole or

other License Area for more than 30 days, Licensee will be entitled to: (i) a pro rata abatement of the License Fee for the period Licensee is unable to use the City Pole; (ii) terminate the Pole License on 30 days' notice; or (iii) both abatement of the License Fee under clause (i) and termination under clause (ii).

27.3 City's Termination Rights.

27.3.1 Absolute Right to Terminate Pole Licenses.

27.3.1.1 The City has the absolute right in its sole discretion to terminate any or all Pole Licenses if the City Manager (or his or her designee) determines that Licensee's continued use of the License Area adversely affects or poses a threat to public health and safety, constitutes a verified and material public nuisance, interferes with the City's street lights, utilities, or other municipal operations, or requires the City to maintain a City Pole that is no longer required for City purposes.

27.3.1.2 If the condition is susceptible to cure, the City will provide notice to Licensee of the City's determination, the underlying reasons for the determination, and provide a 30-day cure period following which the affected Pole Licenses will terminate if Licensee has not effected a cure.

27.3.1.3 If the condition is not susceptible to cure in the City's sole judgment, the City will have the right to terminate the affected Pole Licenses on 30 days' notice to Licensee of the City's determination.

27.3.1.4 The City will endeavor to accommodate a request by Licensee to relocate the Pole License and related Equipment, at Licensee's sole cost and expense, to another City Pole mutually acceptable to Licensee and City.

27.3.2 Removal of Equipment. The City in its sole discretion may determine that exigent circumstances require, for reasons of public, health, safety, or needs of the City to provide street lighting, utilities, or other municipal services, that Licensee remove the Equipment from a particular City Pole on 72 hours' notice. Licensee shall remove the Equipment from the identified City Pole within the 72-hour period or any longer time to which the City agrees. The applicable Pole License will terminate as to the identified City Pole upon expiration of the 72-hour period.

27.3.3 City Pole Removal. The City has the right to remove any City Pole that it determines in its sole judgment is unnecessary for its street light operations. If the City decides to remove a City Pole, it will make reasonable efforts to provide at least 90 days' notice to Licensee, but the City's rights under this Subparagraph will not be affected by its failure to provide less than 90 days' notice. Upon removal of a City Pole, either party will have the right to terminate the Pole License as to the affected City Pole as of the last day of the month of removal. The City will endeavor to accommodate a request by Licensee to relocate the Pole License and related Equipment, at Licensee's sole cost and expense, to another City Pole mutually acceptable to Licensee and City.

27.3.4 Replacement, Relocation, or Upgrading of City Poles. The City has the right to replace, relocate, or add City equipment to, and remove Licensee's Equipment from, any City Pole or License Area that the City determines in its sole judgment is necessary for its municipal operations, including, but not limited to, LED conversion or installation of solar capabilities. If the City decides to replace or relocate a City Pole or add equipment requiring the removal of Licensee's Equipment, the City will make reasonable efforts to provide at least 90 days' notice to Licensee, but the City's rights under this Subparagraph will not be affected by its failure to provide less than 90 days' notice. Licensee may choose either to terminate the applicable Pole License as to the replacement, relocated, or upgraded City Pole or, only if feasible in the discretion of the City's Engineering and Transportation Department, install

Licensee's Equipment on the replacement, relocated, or upgraded City Pole at Licensee's sole cost. The City will endeavor to accommodate a request by Licensee to relocate the Pole License and related Equipment, at Licensee's sole cost and expense, to another City Pole mutually acceptable to Licensee and City.

27.3.5 Future Use of Existing City Conduit.

27.3.5.1 If City conduit space is part of a License Area, and the City needs to use such City conduit space for future upgrade and expansion of its street light system, the City may require Licensee's wiring to be removed from the City's conduit. The City will use reasonable efforts to give Licensee at least 90 days' notice that the wiring will be removed, but the City's failure to give notice or delivery of less than 90 days' notice will not affect the City's rights under this Subsection. In either case, the City will provide Licensee with a date by which its wiring must be removed.

27.3.5.2 Unless Licensee notifies the City within the time specified in the City's notice under Subsection (a) above that Licensee has identified an alternative to using City conduit to enable its Equipment without using the City conduit, the Pole License as to the affected City Pole will terminate automatically as of the last day of the month specified in the notice.

27.4 Licensee's Rights after Termination.

Promptly after the effective date of any termination of any Pole License under **Subsection 27.2.4** (Interference caused by City Work) or **Section 27.3** (City's Termination Rights), the City will refund the portion of any previously-paid License Fee attributable to the terminated portion of the License Year, subject to **Section 3.1.2** (Minimum Term). In addition, if Licensee wishes to replace the City Pole with a different Pole Location, the City will give priority to Licensee's Pole License applications for an equal portion of replacement City Poles, but the grant of priority will not affect Licensee's obligations under this Master License, including the requirement to obtain all Regulatory Approvals for the replacement City Poles.

27.5 Special Remedies for Interference with Operations.

27.5.1 Licensee's Obligation Not to Cause Interference.

27.5.1.1 Licensee will not operate or maintain its Equipment in a manner that interferes with or impairs other communication (radio, telephone, and other transmission or reception) or computer equipment lawfully and correctly used by any person, including the City or any of its Agents. In the event such interference occurs and is not cured within ten (10) days of notice from City, such interference will be an event of default under this Master License by Licensee, and upon notice from the City, Licensee shall be responsible for eliminating such interference promptly and at no cost to the City. Licensee will be required to use its best efforts to remedy and cure such interference with or impairment of City operations. Prior to installation of any equipment, Licensee shall conduct an in-field test at the License Area to determine what existing communications are transmitted from or received in the License Area. A report of the in-field test shall be submitted with each application for a Pole License.

27.5.1.2 If Licensee does not cure the default promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the City will have the right to bring an action against Licensee to enjoin such interference or to terminate all Pole Licenses where the Equipment is causing interference or impairment, at the City's election.

27.5.2 Impairment Caused by Change in City Use.

27.5.2.1 If any change in the nature of the City's use of the License Area during the Term results in measurable material adverse impairment to Licensee's

normal operation of its Equipment making it necessary to alter the Equipment to mitigate the adverse effect, Licensee shall notify the City and provide evidence of the claimed impairment. Upon receipt of such notice, the City will have the right to make its own reasonable determination and, if it agrees with Licensee, investigate whether it can reasonably and economically mitigate that interference. The City will provide notice to Licensee of the City's determination within thirty (30) days of its receipt of notice from Licensee.

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

27.5.2.3 If the City determines in its sole discretion that mitigation is not feasible or cannot be achieved for a reasonable cost in the City's reasonable judgment, Licensee may elect either to: (i) terminate the Pole License as to the affected City Pole and receive a ratable reduction in the License Fee; (ii) request to relocate the Pole License and related Equipment, at Licensee's sole cost and expense, to another City Pole, subject to City's approval in its sole discretion or (iii) take steps itself at its own cost to mitigate the adverse effect and continue to operate the Equipment on the City Pole, and receive from the City a waiver of the License Fee for the first 6 months of the following License Year under the affected Pole License to offset the cost of mitigation.

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

27.5.3 Impairment Caused by City Access. Licensee agrees that it will not be entitled to any abatement of License Fees if the City exercises its rights of access under Article 21 (City Access to License Area) unless the City's activities cause Licensee to be unable to operate Equipment on the License Area for its permitted use for a period of more than 10 days, in which case, subject to proof, License Fees will be abated ratably for the entire period that Licensee is unable to operate any Equipment on any affected City Pole.

28 GENERAL PROVISIONS

28.1 Formal Notices.

This Section applies to all formal notices, requests, responses to requests, and demands made under this Master License.

28.1.1 Writings Required. All formal notices will be effective only if given in writing and delivered in accordance with this Section. Nothing in this Section will preclude the use of electronic mail ("e-mail") for communication of an informal nature, especially with respect to notices according to **Sections 9.2** (Notice to Licensee) and **Section 9.4** (Emergencies).

28.1.2 Manner of Delivery. Except as provided in **Subsection 28.1.4** (Special Requirements), formal notices may be delivered by: (i) personal delivery; (ii) certified mail, postage prepaid, return receipt requested; or (iii) prepaid overnight delivery, return receipt requested. Notices must be delivered to: (1) Licensee at Licensee's address set forth in the Basic License Information, or at any place where Licensee or any Agent of Licensee may be

personally served if sent after Licensee has vacated, abandoned, or surrendered the address set forth in the Basic License Information; (2) the City at the City's address set forth in the Basic License Information; or (3) any new notice address that either the City or Licensee specifies by no less than 10 days' notice given to the other in accordance with this Section.

28.1.3 Effective Date of Notices. All formal notices under this Master License will be deemed to have been delivered: (i) two (2) days after deposit if delivered by certified mail; (ii) the date delivery is made by personal delivery or overnight delivery; or (iii) the date an attempt to make delivery fails because a party has failed to provide notice of a change of address or refuses to accept delivery. The parties will transmit copies of notices by email to the email addresses listed in the Basic License Information, but failure to do so will not affect the delivery date or validity of any notice properly delivered in accordance with this Section. Further, notice by facsimile or electronic mail alone shall not be acceptable for notices of demand, breach, default, assignment, or change of notice address.

28.2 Living Wage Ordinance

The City of San Leandro adopted Ordinance No. 2007-018, a Living Wage Ordinance (LWO) that became effective September 1, 2007. The term "living wage" represents an hourly wage set at a level higher than the federal or state minimum wage. San Leandro's Living Wage Ordinance provides a minimum pay rate and benefit requirement for workers in organizations that do business with the City of San Leandro. The City of San Leandro's LWO affects licenses that, during the period from July 1 to June 30, generate a cumulative revenue to the City in the amount of \$25,000 or more. In addition, the Licensee must have six (6) or more employees, and said employee engaged in work directly related to the License must spend more than 25% of their working time on work associated with the License. Finally, the LWO affects Licensees who generate \$350,000 or more in annual (calendar) gross receipts. More information about the LWO is available on the City's website at:

<https://www.sanleandro.org/depts/finance/livwage/default.asp>

28.3 No Implied Waiver.

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

28.4 Amendments.

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

28.5 Interpretation of Licenses.

The following rules of interpretation apply to this Master License:

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

28.5.2 Multi-party Licensee. If there is more than one Licensee, the obligations and liabilities under this Master License imposed on Licensee will be joint and several among them.

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

28.5.4 Time for Performance. Provisions in this Master License relating to number of days mean calendar days, unless otherwise specified. “**Business day**” means a day other than a Saturday, Sunday, or a bank or City holiday. If the last day of any period to give notice, reply to a notice, or to undertake any other action occurs on a day that is not a business day, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding business day.

28.5.5 City Actions. All approvals, consents, or other determinations permitted or required by the City under this Master License will be made by or through the City Manager of the City or his or her designee, unless otherwise provided in this Master License or by any City ordinance.

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

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

28.6 Successors and Assigns.

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

28.7 Brokers.

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

Claims brought by the Broker. This Section will survive expiration or earlier termination of this Master License.

28.8 Severability.

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

28.9 Governing Law and Venue.

This Master License must be construed and enforced in accordance with the laws of the State of California without regard to the principles of conflicts of law. This Master License is made, entered, and will be performed in the City of San Leandro. Any action concerning this Master License must be brought and heard in the state or federal courts encompassing the City of San Leandro.

28.10 Entire Agreement.

This Master License, including all exhibits and schedules, contains the entire agreement between the parties, and all prior written or oral agreements regarding the same subject matter are merged into this document. The parties further intend that this Master License, all Pole Licenses, and all exhibits and schedules will constitute one agreement that contains the complete and exclusive statement of its terms and that no extrinsic evidence (including prior drafts and revisions) may be introduced in any judicial, administrative, or other legal proceeding involving this Master License. Licensee hereby acknowledges that neither the City nor the City's Agents have made any representations or warranties with respect to the City Poles or this Master License except as expressly set forth herein, and no rights, easements, or additional licenses are or will be acquired by Licensee by implication or otherwise unless expressly set forth herein.

28.11 Time of Essence.

Time is of the essence with respect to all provisions of this Master License in which a definite time for performance is specified.

28.12 Survival.

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

28.13 Recording.

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

28.14 Counterparts.

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

28.15 Cooperative Drafting.

This Master License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters it addresses and was drafted through a cooperative effort of both parties, each of which has had an opportunity to have this Master License reviewed and

revised by legal counsel. No party will be considered the drafter of this Master License, and no presumption or rule (including that in Cal. Civil Code § 1654) that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this Master License.

28.16 Authority to Approve Agreement.

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

28.17 Conflicts of Interest.

Through its execution of the Master License, Licensee acknowledges that it is familiar with Sections 87100 *et seq.* and Sections 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Licensee becomes aware of any such fact during the term of the Master License, Licensee shall immediately notify the City.

28.18 Included Exhibits and Schedules.

The following exhibits and schedules are attached to and are incorporated by reference into this Master License.

EXHIBIT A – Form of Pole License

Exhibit A-1 – Pole Locations/License Area

Exhibit A-2 – Licensee's Plans and Specifications

Exhibit A-3 – Form of Acknowledgment Letter

Exhibit A-4 – Sample License Fee and Default Fee Schedule Exhibit A-5 –
Sample City Installation Guidelines

EXHIBIT B – Design Guidelines

EXHIBIT C – Dark License Fiber Agreement

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

CITY:

CITY OF San Leandro, a California
municipal corporation

LICENSEE:

ExteNet Systems (California) LLC, a California
Limited Liability Company

By: _____

Jeff Kay
City Manager

By: _____

Name: Daniel L Timm Its: Executive VP and
CFO

Date: _____

Date: _____

Attest:

By: _____

Marian Handa
Interim City Clerk

Approved as to Form:

By: _____

Richard Pio Roda
City Attorney

3058243.1

[Remainder of page intentionally left blank.]

EXHIBIT A
FORM OF POLE LICENSE

Master License between [Wireless Company] and City of San Leandro Pole License No. [Start with Year-1 and number each subsequent application consecutively (e.g. 2018-1).]

In accordance with **Section 6.5** of the Master License, Licensee submits to the City two partially executed counterparts of this form of Pole License and each of the following as its Pole License application:

1. Exhibit A-1, designating all Pole Locations that Licensee seeks to be included in the License Area under this Pole License and noting (if known) whether any requested City Pole is a Nonstandard City Pole;
2. Exhibit A-2, complete and final plans and specifications for Equipment to be installed in the License Area subject to Regulatory Approvals;
3. The sum of \$_____ for the initial Administrative Payment in amounts based on the number of City Poles identified in Exhibit A-1, subject to **Section 6.7** of the Master License; and
4. If not previously provided, the Emissions Report.

Licensee acknowledges that: (a) this Pole License will not be effective until the City returns a fully executed copy to Licensee; (b) the City may require Licensee to supplement the Administrative Payment on conditions specified in **Section 6.6** of the Master License; (c) Licensee will not have the right to access or install Equipment on the License Area until after Licensee has: (i) submitted a complete Acknowledgment Letter to the City with all information and funds required; (ii) submitted insurance information to City as specified in **Article 19**; and (iii) the City has provided notice to proceed by returning to Licensee a countersigned copy of the Acknowledgment Letter.

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

LICENSEE:

[Wireless Company], a _____ [California corporation, Nevada LLC, etc.]

By: _____

Its: _____

Date: _____

APPROVAL:

CITY:

CITY OF SAN LEANDRO, a California municipal corporation

By: _____

Jeff Kay (or designee)
Interim City Manager

Date: _____

CITY OF SAN LEANDRO

EXHIBIT A-1

POLE LOCATIONS/LICENSE AREA

Pole License No.

[Licensee to complete and submit with Pole License application.]

<u>Pole Locations</u> (Longitude/Latitude and nearest mailing address)	<u>Standard or Nonstandard City Pole</u> (Include 4-digit Pole Number if previously assigned by City)	<u>Metered or Un-metered Electrical Service</u> (verification by City Public Works staff is required)

EXHIBIT A-2

LICENSEE'S PLANS AND SPECIFICATIONS

Pole License No. ____

[Licensee to attach plans and specifications for all Equipment, including required and permitted signage, RF details such as frequency, spectrum, licensed/unlicensed, etc. to this cover sheet and submit with Pole License application.]

CITY OF SAN LEANDRO

EXHIBIT A-3

Form of Acknowledgment Letter [Licensee to complete and submit.]

[Alternative to be used if Licensee obtains all Regulatory Approvals within 365 (366 in any leap year) days after Pole License is issued.]

[Date]

City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: Michael Stella, P.E., Principal Engineer

Re: Pole License No. _____ Dear Mr. Stella:

This letter will confirm the following: (1) that Licensee has obtained the Encroachment Permit and all other Regulatory Approvals required for the Permitted Use under this Pole License, copies of which are attached to this letter, as specified below; and (2) the Commencement Date of this Pole License is _____, 20____, which is the first day of the month after Licensee obtained all Regulatory Approvals.

This letter also confirms that Licensee has submitted all required insurance information to the City. A check or surety bond for the Security Deposit (if not already provided) and the License Fee for the first License Year of this Pole License is attached [or funds for the Security Deposit and the License Fee for the first License Year of this Pole License have been paid to the City].

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

Very truly yours,

By: _____
Title: _____

Enc.

- [] Encroachment Permit
- [] [List other Regulatory Approvals.]
- [] [List other Regulatory Approvals.]
- [] [List other Regulatory Approvals.]
- [] Insurance certificates and endorsements
- [] Contractor's bonds, insurance certificates, Business Licenses, and endorsements
- [] Security Deposit by check, wire transfer, or surety bond, (if applicable)
- [] First License Year's License Fee
- [] First License Year's License Fee
- [] Typical Photo-simulations (as applicable)

[Alternative to be used if Licensee does not obtain all Regulatory Approvals within 365 (366 in any leap year) days after Pole License is issued.]

[Date]

City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: Michael Stella, P.E., Principal Engineer

Re: Pole License No. _____

Dear Mr. Stella:

This letter will confirm the following:

(1) that Licensee has not obtained the following Regulatory Approvals required for the Permitted Use under this Pole License: _____

_____ ; and

(2) the Commencement Date of this Pole License is _____, 20____, which is the first anniversary of the effective date of this Pole License.

A check or surety bond for the Security Deposit (if not already provided) and the License Fee for the first License Year of this Pole License is attached [or funds for the Security Deposit and the License Fee for the first License Year of this Pole License have been wired to the City].

When Licensee has obtained all Regulatory Approvals, it will provide copies to the City, submit all required insurance documents and information, and request that the City issue its approval for Licensee to begin installation of Equipment on the License Area.

Very truly yours,

By: _____
Title: _____

Enc.

- [] [List Regulatory Approvals acquired.]
- [] [List other Regulatory Approvals acquired.]
- [] [List other Regulatory Approvals acquired.]
- [] Security Deposit by check, wire transfer or surety bond (if applicable)
- [] First License Year's License Fee

[Alternative to be used if Licensee obtains all Regulatory Approvals within 365 (366 in any leap year) days after Pole License is issued.]

Dear [Licensee]:

This countersigned copy of your Acknowledgment Letter serves as the City's notice to Licensee that the City has: (1) received the Security Deposit and First Year's License Fee for this Pole License; (2) approved the requested Pole Locations and the plans and specifications for installation of Equipment on the License Area; (3) received satisfactory evidence of insurance, including contractors' insurance, bonds and Business License; and (4) received copies of the Regulatory Approvals listed above, as well as a copy of the Emissions Report Licensee submitted to the Community Development Department.

The City concurs with the Commencement Date for this Pole License as specified above. [After reviewing the Regulatory Approvals, the City has determined that the correct Commencement Date for this Pole License is: _____, 20__.] The Licensee Fee and Default Fee Schedule and City Installation Guidelines for the Pole License are attached. Upon receipt, they will be deemed to be attached to the Pole License as Exhibits A-4 and A-5, respectively.

Licensee is authorized proceed with the installation of Equipment on the License Area identified in Exhibit A-1 to the Pole License in accordance with the Approved Plans and other requirements of the Master License.

CITY OF SAN LEANDRO, a California charter city

By: _____

Jeff Kay (or designee)
City Manager

Date: _____

Enc.

- [] Licensee Fee and Default Fee Schedule
- [] City Installation Guidelines

[Alternative to be used if Licensee does not obtain all Regulatory Approvals within 365 (366 in any leap year) days after Pole License is issued.]

Dear [Licensee]:

This countersigned copy of your Acknowledgment Letter serves as the City's notice to Licensee that the City has: (1) received the Security Deposit and First Year's License Fee for this Pole License; (2) reserved the requested Pole Locations and approved the plans and specifications for installation of Equipment on the License Area, subject to Regulatory Approvals.

The City concurs with the Commencement Date for this Pole License as specified above. The Licensee Fee and Default Fee Schedule and City Installation Guidelines for the Pole License are attached. Upon receipt, they will be deemed to be attached to the Pole License as Exhibits A-4 and A-5, respectively.

The City will provide notice to proceed with installation of Equipment on the License Area in accordance with Approved Plans and other requirements of the Master License after Licensee has submitted to the City copies of the Regulatory Approvals listed above, along with a copy of the Emissions Report Licensee submitted to the Engineering and Transportation Department, and provided satisfactory evidence of insurance, including contractors' insurance, bonds, and Business License.

By: _____

Jeff Kay (or designee)
City Manager

Date: _____

Enc.

[] Licensee Fee and Default Fee Schedule

[] City Installation Guidelines

Exhibit A-3 - Form of Acknowledgement Letter Page 4

SCHEDULE A-4

LICENSEE FEE AND DEFAULT FEE SCHEDULE

Pole License _____

[EXAMPLE ONLY - To be updated for each new Pole License]

LICENSE FEE SCHEDULE	
Annual License Fee per City Pole for 2018 (Year 1)	\$2,000.00
2019 (Year 2)	\$2,060.00
2020 (Year 3)	\$2,121.80
2021 (Year 4)	\$2,185.45
2022 (Year 5)	\$2,251.02
2023 (Year 6)	\$2,318.55
2024 (Year 7)	\$2,388.10
2025 (Year 8)	\$2,459.75
2026 (Year 9)	\$2,533.54
2027 (Year 10)	\$2,609.55

DEFAULT FEE SCHEDULE			
Violation	Master License location	Initial notice	Follow up notice
Installation of equipment or alterations that are not approved by the City.	Arts. 6, 7, 8	\$350	\$400
Failure to make required repairs.	Art. 10	\$300	\$350
Violation of requirements regarding access to License Area.	Art. 7	\$300	\$350
Failure to provide evidence of insurance and bonds or maintain insurance	Art. 19	\$300	\$350

EXHIBIT A-5

CITY INSTALLATION GUIDELINES

[To be updated with each Pole License.]

Licensee shall install a dedicated conduit for its use; however, Licensee may use the City's existing non-traffic signal conduits, subject to the allowable conduit fill percentage under the NESC and the review and approval of the City's Public Works Department. Licensee is not permitted to install or arrange for installment of external conduits on any City Poles.

Licensee shall apply for and install a pole-mounted Smart electrical meter, if required by the City and the applicable electric utility, and obtain any necessary building permits from the City for the installation and connection. Pedestal-mounted electrical meters are discouraged.

Licensee shall be responsible for repairing any City conduits that Licensee or its Agents damage during installation of electrical facilities, including pulling of wires into street light conduits. If following Licensee's failure to make such repairs within thirty (30) days of notice from City, the City's Public Works Department makes repairs to remedy damage caused by Licensee or its Agents, the City will charge Licensee the full cost of those repairs by notice with evidence of the City's costs.

The City will inspect Licensee's service installations to ensure compliance with Approved Plans, Specifications, and the NESC. Licensee agrees to make any repairs or modifications to its service installations that are necessary to ensure compliance with the Approved Plans and Specifications.

Licensee shall provide the City's Engineering and Transportation Department with as-built drawings showing all circuits installed by Licensee in existing street lights or conduits promptly after installation is complete. Licensee shall provide a laminated copy of the as-built drawings to the City's Public Works Department.

Licensee shall provide the City's Engineering and Transportation Department with the final coordinates and/or digital GIS shape file for inclusion in the City's GIS inventory.

Licensee shall not open any City pull boxes unless a member of the City's Public Works Department is present or City's Engineering and Transportation Department representative approves opening the pull boxes unattended by such maintenance staff. Licensee shall contact the City's Engineering and Transportation Department to complete the service connection.

EXHIBIT B
DESIGN GUIDELINES

Licensee's plans and specifications submitted with each Pole License application, and any Pole License application approved by the City shall comply with the following minimum requirements, a copy of which is on file with the Engineering and Transportation Department:

1. Licensee's Equipment shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings.

2. Equipment shelters, cabinets, or electrical distribution panels shall not be installed at ground level, except after all reasonable alternative pole locations have been explored and found unavailable or lacking in some substantial way and only with prior City approval upon a good faith showing of necessity, in City's sole discretion. Ground-mounted equipment, if any, shall incorporate appropriate techniques to camouflage, disguise and/or blend the equipment into the surrounding environment. Any ground-mounted equipment shall not inhibit or block pedestrian path of travel and shall comply with the Americans with Disabilities Act (ADA) standards. Any ground-mounted equipment shall not obstruct or interfere with storm drainage facilities, drainage channels, or change the existing drainage pattern. City shall have sole discretion to approve or disapprove the installation of a battery backup unit, whether pole-mounted or ground-mounted.

3. Licensee shall verify each Pole's condition, size and foundation, and provide structural calculations and drawings for any pole-mounted equipment.

4. Any pole-mounted equipment shall be placed at least eight (8) feet above sidewalks or sixteen (16) feet above streets on the street side of the pole, and shall not obstruct line of sight to any intersection, signage, traffic control devices or other directional markings.

5. The City may reasonably require pole-mounted equipment shall be incorporated into the design of the pole with the use of a shroud or other stealthing techniques. Stack equipment close together and on the same side of the pole. If a long rectangular disconnect switch is used, rotate the enclosure so the elements can be stacked closer together on the pole. Avoid wide offsets (more than 4 inches) of equipment enclosure brackets that protrude from the pole.

6. Licensee shall use commercially reasonable efforts to utilize pole-mounted equipment that minimizes the visual aesthetic impact of the equipment, as is technologically feasible, subject to the City's reasonable approval. All conduits, conduit attachments, cables, wires and other connectors shall be placed within the pole when feasible, or otherwise concealed from public view. Consider the use of equipment enclosures that are nearly the same width as the pole, even if they need to be slightly longer as a result. Narrow enclosures are less likely to impair views of buildings and scenic resources or to detract from streetscapes. Utilize equipment mounting base plates that are no wider than the pole. Typically, the wide variation in enclosure surface materials and sizes on a single pole can draw more attention (clutter compared to mass) to the facility than a system of enclosures that is comparatively larger, but more uniform in profile and longer instead of wider or deeper. There are a large number of equipment vendors that offer an array of options. Take the time to design a system that works well together in terms of network needs, overall cumulative effect, cable port locations, and ease of installation and maintenance. Equipment Orientation: While equipment orientation may be limited due to operating requirements, utility or State rules; depending on pole type, orienting equipment, facing away from nearby residential windows, and/or the primary travel direction, is preferred.

7. All antennas and associated cables, connectors, and hardware shall be placed within a shroud or equivalent. A maximum of one (1) antenna shroud per pole is allowed (excluding any radio relay unit shroud). Consider using antenna designs that provide robust coverage without appearing more distracting than necessary. Avoid placements that may impair

light, air, or views from adjacent windows. Consider using antenna models that include a GPS antenna (if needed) integrated into the same cylindrical shape on top of the main antenna. Consider using antennas with electronic tilt mechanisms that could reduce the need for bulky mechanical tilt brackets. Utilize single element side-arms instead of dual parallel side-arms. Evaluate opportunities to utilize cylindrical antennas in-lieu of panel antennas. If panel antennas are utilized, consider the use of mini shrouds below each panel antenna to reduce the visibility of the cable loops. While this will make the antenna look slightly longer, it reduces the noticeability of various elements, such as multiple cable loops, that can draw more attention than the antenna itself. Avoid the use of large bracket systems for panel antennas, which create a significant offset from the pole.

Both top-mounted and side mounted antennas offer various advantages and challenges from both an RF and visibility perspective; requiring a case by case review. For example, a top-mount antenna with a very tall extension arm may look out of character in a low lying residential neighborhood, but a top mount antenna that is relatively narrow and nearly flush with the top of the pole may offer a very minimal profile, which is preferred. An antenna may not obstruct the view from, or light into, any adjacent residential window. For side-mounted antennas, consider using an arm that features flanges/channels so that cabling and passive RF gear can be better hidden from view. For top-mounted antennas, consider using a shroud around the base of the antenna, especially for antenna models with four or more cabling ports, as cable systems without a shroud at the base of the antenna, can appear cluttered. If a shroud cannot be used, utilize Velcro ties (or similar) to neatly arrange cabling (and note such on the site completion checklist on the cover sheet of plans). Pole top extension arms should not appear offset from the pole, making the antenna more noticeable. Utilize an arm that is as wide as the top of the pole and tapers toward the antenna.

8. The antennas and related equipment shall be constructed out of non-reflective materials, painted and/or textured to match the existing support structure and painted to blend with their surroundings. Paint shall be reviewed and shown on the Approved Plans and Specifications. Antennas, Brackets (mounting), and Cabling, should match the color of the equipment (including the fiber termination enclosure). Many installations feature wide variations in paint colors, which appears distracting. The Planning Department will generally recommend that equipment cabinets, cables, brackets, and antennas be painted light gray; primarily for locations where there are no nearby mature tree canopies and the existing poles appear washed out. In the downtown area, the likely color choice will be black to match the City's decorative poles. Choose a durable paint, especially in areas near the San Francisco Bay.

9. Any fiber optic cable or wiring connecting the antenna to the equipment cabinet or pedestal shall be located inside the City Pole and shall be located underground to any needed pedestal-mount equipment cabinet. Consider the use of shrouds, risers or conduit, to reduce the appearance of cluttered or tangled cabling. In some instances, installation practices such as using equipment enclosures with specific port locations, or crossing wires below a down-facing port on an equipment enclosure, can reduce the likelihood that cabling will appear cluttered or bend outward from the pole and further away from the enclosure.

10. All other conduit, cable and wiring shall be located underground.

11. Avoid the replacement of streetlight-only wooden poles with poles that are significantly taller by evaluating a different pole or attachment method. This could include evaluating opportunities to:

(a) choose a nearby Joint Pole Association (JPA) pole, where a modest height increase would be less noticeable, than a streetlight-only pole;

(b) work with the utility to re-route power lines serving the cobra head street light in a manner that meets height clearance requirements;

(c) or run the power line, for the street light, from a JPA pole across the street in a different manner, while complying with State rules (e.g. General Order 95).

12. Licensee's Equipment must be high quality, safe, fire-resistant, modern in design, and attractive in appearance, all as approved by the City. Use equipment that does not feature flashing lights that may be visible to the public. Remove or paint-over unnecessary equipment manufacturer decals. Utilize the smallest and lowest visibility radio-frequency (RF) warning sticker required by government or electric utility requirements. In areas close to residences or window, use a passive cooling system in lieu of a fan. If a fan is needed, utilize a longer enclosure with sufficient space to allow for additional airflow and/or a cooling fan with a lower noise profile due to fewer revolutions per minute.

13. Utilize the smallest and lowest visibility (e.g. yellow instead of blue) radio-frequency (RF) warning sticker required by government or electric utility regulations. Place the RF sticker as close to the antenna as possible, facing directly out toward the street, or directly away from street if there is no window within 25 feet of the pole (preferred). For the Node ID sticker; avoid the use of large and highly visible site (node) identification tags (with carrier's phone number). Consider combining with disconnect information. Use sticker colors that are more muted (e.g. tan), such as the same color as the equipment but with white color lettering. Consider placing the Node ID sticker on the underside of the equipment enclosure so it is only visible when standing next to the pole and looking up. If the node ID sticker cannot be placed on the underside of the main equipment area then place the sticker on the side of the enclosure facing in the direction of travel (e.g. north facing for a pole on the right hand side of the street on a north-south street).

EXHIBIT C
DARK FIBER LICENSE AGREEMENT

This Dark Fiber License Agreement ("Agreement") is entered into this ____ day of _____, 2018 by and between ExteNet Systems (California) LLC, ("ExteNet"), and the City of _San Leandro, California_ ("Licensee"). ExteNet and Licensee are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

Background

WHEREAS, this Agreement is made in light of the following premises and circumstances, all of which are a part of this Agreement:

- A.** ExteNet, a California limited liability company authorized to provide full facilities-based local exchange and interexchange telecommunications services under a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission, will be the owner of certain fiber optic cables comprising a component of a small cell, distributed antenna system or other similar telecommunications facilities ("DAS") network that ExteNet plans to install in, over and/or under the public rights of way ("ROW") within the geographic boundaries of Licensee for the provision of telecommunications service (the "Network");
- B.** Licensee is a California charter city with jurisdiction over the ROW for certain purposes and is the owner of certain conduits located within the ROW("City Conduit");
- C.** The planned route of ExteNet's fiber optic cable for the Network is depicted on the Fiber Route Map attached hereto as Exhibit 1;
- D.** The Network may consist of City Conduit, new conduit installed by ExteNet, or a combination of both;
- E.** Licensee is entitled to manage the public ROW and to require fair and reasonable terms of compensation for allowing ExteNet access to the ROW, including an annual fee for the use of any City Conduit, based on a fair market value agreed to by the Parties;
- F.** ExteNet and Licensee have entered into a Master License Agreement dated [DATE] ("MLA");
- G.** For any Fiber Segment that ExteNet installs in either existing or new conduit for the Network, ExteNet will reserve **a minimum of six (6)** Dark Fiber strands in the ExteNet Cable for the exclusive use of Licensee as required by Licensee in connection with the execution of the MLA.

Agreement Terms and Conditions

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, ExteNet and Licensee, for valuable consideration, the sufficiency of which is hereby acknowledged, hereby agree as follows:

1. Definitions

For the purpose of this Agreement, the following terms when used herein shall have the following meanings:

(i) “Access Point” means a Manhole, Vault, Handhole, Junction Box or Pedestal through which the ExteNet Cable may be accessed for the purposes of splicing fibers to interconnect to other networks or facilities.

(ii) “Authorized Contractors” means third party contractors (whether independent or affiliated with ExteNet) that have been approved and authorized by ExteNet to utilize Access Points and to make splices or perform other work on the ExteNet Cable as provided for in this Agreement.

(iii) “City Conduit” means any conduit owned by Licensee and made available to ExteNet to construct the Network. City Conduit is shown in **Exhibit 2**.

(iv) “Dark Fiber” means an unlit optical fiber strand in a Fiber Segment that is separate from and has not yet been connected to any of the equipment, electronics, lasers or additional Fiber Segments necessary to transmit optical signals via the fiber strand or to corresponding fiber strands in other adjacent Fiber Segments.

(v) “ExteNet Cable” means the several Fiber Segments, whether aerial or undergrounded, comprising the optical fiber components of the Network as deployed and depicted in the Fiber Route Map as the Fiber Route Map may be changed by Licensee from time to time.

(vi) “Fiber Route Map” means the map of the composite routes of the various Fiber Segments comprising the fiber cabling to be installed as part of the Network, as depicted on the map attached as **Exhibit 1** as the same may be modified during or after construction of the Network. **Exhibit 1** shall be replaced with the “As-Built” Fiber Route Map following completion of the Network and thereafter shall be updated from time to time as necessary to reflect modifications to the Fiber Segments or additional Fiber Segments comprising the ExteNet Cable made in accordance with the provisions of this Agreement.

(vii) “Fiber Segment” means a continuous run of multi-strand fiber optic cable covering a portion of the fiber cable route shown on the Fiber Route Map.

(viii) “Handhole” means a buried box, with a lid that is even with the surface of the ground, used to store, terminate, splice or transfer fiber optic cable.

(ix) “Junction Box” means a box where fiber optic cable splices and connections are made and accessed.

(x) “Licensed Fiber” means the **six (6)** individual strands of Dark Fiber within each Fiber Segment of the ExteNet Cable, as the same may be modified in accordance with this Agreement that shall be reserved and/or designated for exclusive use by, and at no cost to, Licensee in accordance with and subject to the terms of this Agreement. For clarity, ExteNet shall not be obligated to provide Licensed Fiber to Licensee for portions of the ExteNet Cable that ExteNet acquires from a third-party under commercial or wholesale terms (e.g. leased fiber, licensed fiber, IRU fiber, etc.) and/or otherwise does not construct and own. For avoidance of doubt, additional Fiber Segments that are connected to the Network following its initial construction and deployment in accordance with the Fiber Route Map set forth in Exhibit 1 on the effective date of this Agreement shall be deemed a part of the ExteNet Cable and shall be subject to the foregoing obligations on the part of ExteNet to reserve and/or designate **six (6)** strands of Dark Fiber for exclusive use by, and at no cost to, Licensee only if and to the extent that such Fiber Segments and any associated equipment are located within the geographic boundaries of Licensee.

(xi) “Manhole” means a subsurface enclosure which qualified personnel may enter and use for the purpose of installing, operating and maintaining facilities.

(xii) “Pedestal” means an above ground structure used to store, terminate, splice or transfer fiber optic cable.

(xiii) “Vault” means an underground structure used to store, terminate, splice or transfer fiber optic cable.

2. License

2.1 License Grant

Subject to the terms, conditions and limitations set forth herein, ExteNet hereby grants to Licensee an irrevocable license and right for the exclusive use of the Licensed Fiber, including any rights necessary for the installation and maintenance of the Licensed Fiber to include use of any conduit utilized by the Licensed Fiber, at no cost to Licensee for the transmission of optical signals generated by optical or other equipment owned or employed by Licensee. The duration of the foregoing license shall continue in perpetuity so long as the MLA between ExteNet and Licensee is in effect. However, nothing herein shall obligate ExteNet and its successors in interest and assigns to continue to maintain and operate the ExteNet Cable or any portion thereof or to maintain any attachment rights related thereto, except for the Licensed Fiber, during any periods in which ExteNet is not otherwise using or planning to use the ExteNet Cable for the provision of services to ExteNet’s customers.

2.2 Scope of Grant

(i) ExteNet shall provide Licensee with access to the Licensed Fiber. To the extent that ExteNet has authority to use and authorize third party use of Access Points, it will grant permission to Authorized Contractors to use such Access Points for splicing the Licensed Fiber for the purpose of interconnection to other compatible equipment or facilities as directed by Licensee and at Licensee's sole cost. ExteNet shall have no obligation whatsoever to install any additional fiber optic cable or to allocate any additional strands of the ExteNet Cable to meet the needs of Licensee.

(ii) Licensee shall undertake to obtain and provide all approvals, authorizations, coordination and supervision that is necessary in connection with its use of the Licensed Fiber. Without limiting the foregoing, Licensee shall have the sole responsibility for performing all activities and paying all costs necessary to make the Licensed Fiber operational, including but not limited to: (i) splicing the Licensed Fiber to achieve interconnection between or within the applicable Fiber Segments and between the Licensed Fiber and fiber optic cable belonging to others, and (ii) providing, attaching and interconnecting equipment, electronics and lasers as required to transmit or receive optical signals via the Licensed Fiber. Licensee shall further have the sole responsibility for paying all costs and for constructing or otherwise providing facilities needed to connect the Licensed Fiber to any other network or facilities via appropriate Access Points, and for performing all necessary fiber splices for interconnection of the Licensed Fiber to other network facilities. Except as otherwise approved by ExteNet (such approval not to be unreasonably withheld) all such splices and other uses of Access Points shall be carried out only by Authorized Contractors and, to the extent practicable, only during regularly scheduled maintenance windows or at other times that are reasonably convenient for ExteNet.

(iii) ExteNet and Licensee agree and acknowledge that Licensee's use and operation of the Licensed Fiber does not and will not create or convey to Licensee any ownership or property rights of any nature in the Licensed Fiber or any portion of the ExteNet Cable or of any Access Points or of the Network, unless this agreement or the MLA is terminated or expired pursuant to the terms of the MLA. Licensee may not encumber, offer as collateral, or allow any third party claims of any type on or against the Licensed Fiber.

2.3 Designation of Licensed Fiber Strand

(i) At the time that ExteNet applies for an Encroachment Permit from Licensee to construct any portion or the entire Network, as depicted in the Fiber Route Map, ExteNet shall also submit this Agreement for execution by the Parties.

(ii) At any time following completion of the Network construction and installation, Licensee may notify ExteNet of its desire to access the Licensed Fiber reserved for its use by ExteNet. Such notice shall be provided in writing no fewer than sixty (60) days prior to the date on which Licensee desires to access the Licensed Fiber for purposes of interconnection. Licensee's notice shall identify all of the following: (1) Licensee's planned use for the Licensed Fiber, (2) the specific portions of the Licensed Fiber route (i.e., the Fiber Segments)

in which Licensee intends to light and use Licensed Fiber, (3) the Access Points Licensee desires to use (if any) to access and splice the Licensed Fiber and (4) all personnel or contractors that Licensee proposes to use to perform any work activity involving the Licensed Fiber, including but not limited to construction and installation of fiber drops or laterals for interconnection of the Licensed Fiber to ancillary Access Points or to lasers, electronics or other equipment, facilities or networks for purposes of lighting and using the Licensed Fiber, and (5) Licensee's plans for interconnecting with and using the Licensed Fiber, including relevant technical and functional network specifications and design criteria for Licensee's systems that may facilitate consultation and cooperation of Licensee and ExteNet in the interest of efficient and effective implementation of Licensee's plans in accordance herewith.

(iii) Within ten (10) days following receipt of such initial notice, ExteNet shall provide Licensee with a color-coded diagram designating the specific optical fiber strands within the designated Fiber Segments that have been designated as the Licensed Fiber for all purposes hereunder.

(iv) ExteNet shall have the right to determine in advance whether Licensee's personnel and/or proposed contractors are qualified to perform such work activities and may disapprove any proposed personnel or contractor in its sole reasonable discretion. ExteNet shall identify the reasons for such disapproval in writing and Licensee may propose alternate personnel or contractors. ExteNet shall provide Licensee with a list of acceptable contractors to perform such work activities upon request by Licensee.

(v) Licensee is solely responsible for obtaining all public, private or government approvals, authorizations, permits, certifications, easements, rights of way and attachment rights beyond those required for installation and maintenance of the ExteNet Cable, if any, that are necessary in order for Licensee to light and transmit or receive signals using the Licensed Fiber, and shall provide documentary evidence thereof as and when reasonably requested by ExteNet.

(vi) At Licensee's request or in the event that ExteNet refuses to approve Licensee's selected contractor as an Authorized Contractor, ExteNet will either propose or exert commercially reasonable efforts to cause one of its Authorized Contractors to propose to perform the work necessary for Licensee's proposed interconnection of equipment and other network facilities with the Licensed Fiber on a time and materials basis at then prevailing commercially reasonable rates for work of substantially similar complexity and difficulty in the relevant market.

2.4 Limitations and Requirements for Use of Licensed Fiber Strand

(i) ExteNet and Licensee agree and acknowledge that Licensee may use the Licensed Fiber in the ExteNet Cable for any lawful purpose for which the fiber strand is technically suited, provided that Licensee shall use the Licensed Fiber solely for public purposes, shall not use it for the provision of any telecommunications services in competition with the business of ExteNet or for the benefit of any competitor of ExteNet, and shall not permit any third party to use or operate the Licensed Fiber except at the direction of Licensee in furtherance of public purposes.

(ii) If ExteNet determines for any reason that it is necessary to relocate, modify, underground or otherwise alter ("Relocation or Modification") all or any portion of the ExteNet Cable, including the Licensed Fiber (whether such Licensed Fiber is then lit and/or in use by Licensee), ExteNet shall provide Licensee written notification prior to making the proposed relocation, modification or alteration. Such notice shall be given at least sixty (60) days in advance except in circumstances in which ExteNet is legally obligated to take action more promptly and the prior notification requirement of this section shall not apply to emergency situations, in which case ExteNet will give notice as quickly as is reasonably practicable. Licensee shall have no responsibility for costs and expenses relating to any such Relocation or Modification of the ExteNet Cable. If and to the extent that such Relocation or Modification is required by reason of events or circumstances beyond ExteNet's reasonable control, Licensee shall have sole responsibility for costs and expenses relating to any necessary rearrangement, relocation, modification or alteration of any of Licensee's fiber drops or laterals or other equipment, electronics or lasers installed to light the Licensed Fiber, or other facilities Licensee has interconnected to the Licensed Fiber ("Licensee Facilities Relocation or Modification") that may result therefrom. However, if and to the extent that such Relocation or Modification is made at ExteNet's discretion or for ExteNet's benefit, ExteNet shall bear the reasonable cost of the Licensee Facilities Relocation or Modification resulting therefrom. To the extent reasonably possible, the Relocation or Modification shall not interfere with Licensee's ability to utilize Licensee's facilities that depend on the Licensed Fiber.

(iii) Any equipment, electronics, lasers, or interconnecting fiber or other network facilities provided by Licensee shall be installed and maintained in accordance with the requirements and specifications of the then current editions of the National Electrical Code (NEC), and the National Electrical Safety Code (NESC), each of which are incorporated by reference in this Agreement. Further, Licensee and its consultants and contractors shall at all times comply with the applicable rules and regulations of the Occupational Safety and Health Act of 1970 (OSHA), with all applicable state and federal statutes and laws, and with all applicable regulations, rules and orders issued by any state or federal agency having jurisdiction thereof, including without limitation the Federal Communications Commission and the California Public Utilities Commission

(iv) ExteNet reserves the right to make periodic inspections at any time of any part of Licensee's equipment, electronics, lasers, or facilities (including interconnected fiber or copper cable) utilized by Licensee in conjunction with the Licensed Fiber for purposes of assuring compliance with the terms and conditions hereof and with applicable laws, rules and regulations as reasonably necessary to prevent or detect interference with or damage to the Network or breaches of Licensee's obligations hereunder. Except in the case of an emergency, ExteNet shall give Licensee 48 hours' notice before carrying out such inspections and Licensee shall be permitted, but not required, to have a representative present for such inspections. Such inspections shall be conducted at ExteNet's expense. Licensee agrees that such periodic inspections by ExteNet, or the failure to do so, shall not relieve Licensee of any responsibility, obligation or liability whether assumed under this Agreement or otherwise existing.

3. Maintenance

(i) ExteNet shall maintain all facilities interconnected with or comprising a part of the ExteNet Cable that are owned by ExteNet, including the Licensed Fiber, provided that ExteNet's obligation to maintain such facilities shall not in any way extend beyond the term of the MLA and provided further that such obligation shall cease earlier as to any Fiber Segment with respect to which ExteNet and its successors in interests either: (1) loses the necessary attachment and access rights to enable such maintenance; or (2) permanently ceases to use such Fiber Segment (other than the Licensed Fiber) for the provision of services to their customers, provided that before removing any such Fiber Segment ExteNet gives Licensee prior written notice and an opportunity to assume responsibility for maintaining and operating such Fiber Segment.

(ii) Licensee shall have sole responsibility for maintaining all of its equipment, electronics, lasers, fiber and other facilities interconnected to the Licensed Fiber. Licensee shall maintain its equipment, electronics, lasers and interconnecting fibers and facilities in good repair and in a manner that will not interfere with, or degrade the quality or reach of any signal, transmission or telecommunications carried on the ExteNet Cable. If Licensee's equipment or facilities should cause any type of interference with, or degradation of, any signal, transmission or telecommunications on the ExteNet Cable, ExteNet shall contact the appropriate person(s) at Licensee and Licensee agrees to correct the condition. Such correction shall be made within twenty four (24) hours, as Licensee's schedules and resource availability permits, for any problem causing interference or disruption of any signal, transmission or telecommunications on the ExteNet Cable. Such correction shall be made within forty eight (48) hours, as Licensee's schedules and resource availability permits, for any problem causing a degradation, but not disruption, of any signal, transmission or telecommunications on the ExteNet Cable. If Licensee fails to take such corrective action, ExteNet may in its sole discretion correct said condition at Licensee's expense. ExteNet shall notify Licensee in writing prior to performing such work whenever practicable. When ExteNet reasonably believes, however, that such conditions pose an immediate threat to public safety or interfere with the performance of ExteNet's service obligations to its customers, or pose an immediate threat to the physical integrity of the ExteNet Cable or other facilities, ExteNet may perform such work and/or take such action, including temporary disconnection of Licensee's equipment and facilities from the ExteNet Cable, that it reasonably deems necessary without first giving written notice to Licensee. Licensee shall be responsible for paying ExteNet for all reasonable costs incurred by ExteNet in taking such corrective actions if ExteNet shows that the problem was in fact caused by Licensee's equipment or facilities. In the latter case, ExteNet shall bear the cost of any reconnection or restoration of Licensee's equipment or facilities that is made necessary as a result of ExteNet's mistaken actions.

4. Liability and Damages

(i) Only as arising under this Agreement and not in its capacity as a municipality or otherwise, Licensee, its personnel, agents and contractors shall exercise reasonable caution to avoid damaging the facilities of ExteNet and shall make an immediate report to ExteNet of the occurrence of any such damage caused by its personnel, agents or contractors. Licensee agrees to reimburse ExteNet for all reasonable costs incurred by ExteNet for repair of such facilities damaged by Licensee, its personnel, agents and contractors.

(ii) Only as arising under this Agreement and not in its capacity as a municipality or otherwise, Licensee shall be liable to ExteNet for all of its actions or omissions that cause damage to the ExteNet Cable, the Access Points and all other facilities and equipment associated with the Network, or that interfere with, disrupt or degrade the quality or reach of any signal, transmission or telecommunications carried on the ExteNet Cable or the Network, but shall not be liable for any special, indirect, or consequential damages arising from Licensee's actions or omissions.

(iii) ExteNet shall not be liable to Licensee for any special, indirect, or consequential damages arising from any interruption or degradation of Licensee's communications carried on Licensed Fiber.

5. Mutual Indemnification

(i) Each of ExteNet and Licensee (as "Indemnifying Party") hereby agrees to indemnify, defend and hold harmless the other (as "Indemnitee") from and against any third party demand, claim, action, suit or proceeding ("Claim") and any resulting loss, liability, cost, expense or fine, including court and appeal costs and reasonable attorneys' fees and expenses ("Losses"), that are caused by or arise out of the actual or alleged acts or omissions, whether negligent or willful, of the Indemnifying Party, its personnel, agents or contractors, in connection with the performance under this Agreement or otherwise in connection with the construction (including any excavation), installation, operation, maintenance or use of the ExteNet Cable or the Licensed Fiber or any equipment or facilities interconnected or associated therewith.

(ii) Notwithstanding the foregoing, each party's respective obligations as an Indemnifying Party under paragraph (i) above shall not include any liability or obligation to defend:

- (a) to the extent that Losses arise out of or are caused by the Indemnitee's intentional misconduct and/or gross negligence;
- (b) to the extent that the defense of any Claim is prejudiced, or the resulting Losses are caused by the Indemnitee's failure or refusal to provide the Indemnifying Party with timely notice of the Claim, or to cooperate in the defense thereof, or are caused by the Indemnitee entering into a settlement or compromise of the Claim without the prior written approval of the Indemnifying Party; or
- (c) to the extent that Losses result from the Indemnitee's failure or refusal to take commercially reasonable actions as the Indemnifying Party may request, and at the Indemnifying Party's sole cost and expense, in order to mitigate or lessen such Losses.

(iii) The Indemnitee shall give the Indemnifying Party timely written notice of any Claim covered by this Section 5. The Indemnitee shall tender the defense of the Claim to the Indemnifying Party and such defense shall be carried out under the control and at the expense of, the Indemnifying Party. The Indemnitee may participate in the defense of a Claim at any time, provided that, during all periods in which such defense has been assumed and is being carried out by the Indemnifying Party with qualified counsel, the incremental costs of the Indemnitee's participation shall be at its own expense. The Indemnifying Party may not

agree to any settlement of Claims affecting the Indemnitee's operations or finances without the Indemnitee's prior written approval, provided that if such approval is unreasonably withheld or delayed, then the Indemnifying Party's obligations under this Section 5 shall be limited to the Losses that would have been incurred if such settlement had been approved.

6. Insurance

(i) Without limiting any obligations or liabilities of Licensee under this Agreement, prior to interconnecting with the Licensed Fiber, Licensee shall maintain for the duration of such interconnection, at its own expense, Commercial General Liability Insurance including Contractual Liability Coverage, covering liability assumed under this Agreement, Products/Completed Operations Coverage, Broad Form Property Liability Coverage, and Personal Injury Coverage in the amount of \$1,000,000 combined single limit for Bodily Injury and Property Damage and a \$1,000,000 occurrence aggregate.

(ii) Licensee's insurance policies required by this Agreement shall name ExteNet as an additional insured.

(iii) Licensee shall provide ExteNet with Certificates of Insurance evidencing coverage currently in effect prior to commencing to place equipment, electronics or lasers to light the Licensed Fiber. All policies are to provide ExteNet with thirty (30) days prior written notice of cancellation or any material adverse change in conditions.

(iv) Without limiting any obligations or liabilities of ExteNet under this Agreement, prior to Licensee interconnecting with the Licensed Fiber, ExteNet shall maintain for the duration of such interconnection, at its own expense, Commercial General Liability Insurance including Contractual Liability Coverage, covering liability assumed under this Agreement, Products/Completed Operations Coverage, Broad Form Property Liability Coverage, and Personal Injury Coverage in the amount of \$1,000,000 combined single limit for Bodily Injury and Property Damage and a \$1,000,000 occurrence aggregate.

(v) ExteNet's insurance policies required by this Agreement shall name the City of San Leandro, its City Council, and all City officers, agents, employees, volunteers and representatives.
as an additional insured.

(vi) ExteNet shall provide Licensee with Certificates of Insurance evidencing coverage currently in effect prior to commencing to Licensee placing equipment, electronics or lasers to light the Licensed Fiber. All policies are to provide Licensee with thirty (30) days prior written notice of cancellation or any material adverse change in conditions.

7. Assignment

(i) Licensee may not assign, sub-license, or transfer in any manner, in whole or in part, its rights, duties or obligations under this Agreement without the prior written consent of ExteNet.

(ii) ExteNet may assign, sub-license, or transfer in any manner, in whole or in part, its rights, duties or obligations under this Agreement at any time and for any reason.

(iii) Licensee's rights under this Agreement shall transfer with any sale, assignment, sub-license, or transfer of the Network, or any portion thereof, by ExteNet.

(iv) Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

8. Termination

The Parties shall have the right to terminate this Agreement and the license granted herein under the following circumstances:

(i) ExteNet. ExteNet may terminate this Agreement (a) upon thirty (30) days written notice with an opportunity to cure within ten (10) days therefrom in the event that Licensee commits a material breach of this Agreement, becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute or becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority, or uses the Licensed Fiber for any unlawful purpose, or (b) upon sixty (60) days written notice in the event that ExteNet for any reason ceases to have rights to operate and maintain the ExteNet Cable or any significant portion thereof.

(ii) Licensee. Upon sixty (60) days written notice, Licensee may terminate this Agreement, for any reason or for no reason (i.e., for convenience).

(iii) In the event of termination in accordance herewith for any reason and/or upon expiration or termination of the MLA, ExteNet shall quitclaim the Licensed Fiber and all associated Access Points necessary to access and maintain the system to the Licensee under the requirements and terms of the MLA.

9. General Provisions

9.1 Notices

(i) All notices required or permitted to be given to either party by the other party under any provisions of this Agreement shall be in writing. Notice shall be deemed served when delivered by hand or sent by a nationally recognized overnight courier service to the other party's address set forth below during normal business hours. If a Notice is mailed, service is deemed complete upon the earlier of actual delivery or the close of business on the third business day following the date when the Notice is placed in a receptacle regularly maintained by the U.S. Postal Service addressed to the party at the address set forth below with postage pre-paid.

(ii) Notices shall be given to the following:

If to Licensee:

If to **ExteNet:**

ExteNet Systems, Inc.
ATTN: CFO
3030 Warrenville Rd, Suite 340
Lisle, Illinois 60532

With a copy to General Counsel at the same address.

Or to such other addresses and persons as Licensee or ExteNet may hereafter designate in a notice given in accordance with this Section 9.1.

9.2 Non-Waiver

Failure of ExteNet to take action to enforce compliance with any of the terms or conditions of this Agreement, or to give notice or declare this Agreement or any authorization granted hereunder terminated, or to exercise any right or privilege hereunder, shall not be construed as a continuing or future waiver of such term, condition, right or privilege, but the same shall be and remain at all times in full force and effect.

9.3 Headings

All headings contained in this agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.

9.4 Governing Law

This Agreement and the rights and obligations contained in it shall be construed in accordance with, and governed by, the laws of the State of California without regard to its choice of law provisions.

9.5 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.6 Confidentiality

The Parties acknowledge that ExteNet will disclose proprietary and confidential network and business information to Licensee in order to perform this Agreement. Licensee agrees to take all reasonable steps to protect such proprietary and confidential information from public disclosure, and to make available such information internally only to Licensee personnel with

a need to know or to its legal counsel. Licensee shall not disclose the contents of this Agreement except as required by state law in response to a formal request pursuant to the California Public Records Act (Government Code Section 6250, *et seq.*). Licensee shall notify ExteNet within three (3) business days of receiving a request under the California Public Records Act for information about this Agreement.

9.7. Venue

In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**City of San Leandro
(Licensee)**

**ExteNet Systems (California) LLC
(ExteNet)**

By: _____

By: _____

Daniel L. Timm, Vice President

Name: _____

Title: _____

Date: _____

Date: _____

CITY OF SAN LEANDRO

EXHIBIT 1

Fiber Route Map dated _____

3018794.1

CITY OF SAN LEANDRO