

POLE LICENSE AGREEMENT

between

CITY OF PLEASANTON, A CALIFORNIA MUNICIPAL CORPORATION

and

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

DRAFT

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POLE LICENSE AGREEMENT

This POLE LICENSE AGREEMENT (“License”) dated [insert] (the “Effective Date”) is between the CITY OF PLEASANTON, a California municipal corporation (the “City”) and [LICENSEE], a [insert licensee’s corporate form] (“Licensee”).

BACKGROUND

- A. WHEREAS**, Section 253 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as 47 U.S.C. § 253, preserves the City’s authority to control access to and use the rights-of-way within the City’s territorial and/or jurisdictional boundaries, and to require reasonable compensation for such use on a competitively-neutral and nondiscriminatory basis so long as such compensation is disclosed; and
- B. WHEREAS**, California Public Utilities Code §§ 7901 and 7901.1 authorizes telephone corporations to construct “telephone lines along and upon any public road or highway” within the City and “erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway” subject to the City’s reasonable time, place and manner control; and
- C. WHEREAS**, on September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Third Report and Order (FCC 18-133) in the rulemaking proceeding entitled *Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79 (the “Order”), which interpreted various provisions in the Telecommunications Act in a manner that, *inter alia*: (1) limited the compensation that state and local governments may receive from wireless communication and infrastructure providers for access to their public rights-of-way and government-owned infrastructure; (2) significantly curtailed state and local discretionary authority over wireless facility placement and design; and (3) imposed procedural regulations that require state and local governments to negotiate agreements such as this License and approve or deny associated permit applications within 60 or 90 days; and
- D. WHEREAS**, the City generally desires to license its Vertical Infrastructure to wireless communication providers on negotiated terms and conditions but finds that the Order’s provisions leave the City with no incentive or time to conduct such negotiations and, as a result, the City has adopted this License as a mandatory form agreement from which no substantive changes can be made by any licensee; and
- E. WHEREAS**, Licensee installs and maintains wireless communications facilities on existing Vertical Infrastructure in the public right-of-way; and
- F. WHEREAS**, Licensee warrants and represents to the City that Licensee has the authority under applicable Laws to install and maintain telephone lines within the

State of California, which include wireless communications facilities, in the public right-of-way to provide wireless communications services; and

- G. WHEREAS**, the City owns as its personal property a substantial number of existing poles within the public right-of-way that are potentially suitable for installing wireless communications facilities within the City's jurisdiction and has a duty to derive appropriate value from the City's property assets for the public good; and
- H. WHEREAS**, Licensee desires to install, maintain and operate wireless communications facilities on the City's poles in the public right-of-way in a manner consistent with the City's regulatory authority and Licensee is willing to compensate the City for the right to use the City's poles for wireless communications purposes; and
- I. WHEREAS**, consistent with California state law, the City intends this License to be applicable only to a City-owned pole, and does not intend this License to require any consideration as a precondition for any telephone corporation's access to the public rights-of-way permitted under California Public Utilities Code § 7901; and
- J. WHEREAS**, the City desires to authorize Licensee's access to an individual City-owned pole based on the terms and conditions set forth in this License, and pursuant to all the applicable permits issued by the City to protect public health and safety; and
- K. WHEREAS**, consistent with federal and California state law, the City does not intend this License to grant Licensee any exclusive right to use or occupy the public rights-of-way within the City's territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the City may in its sole discretion enter into similar or identical agreements with other entities, which include without limitation Licensee's competitors; and
- L. WHEREAS**, at a March 11, 2019 meeting of the City Council of the City of Pleasanton, the Council approved the form and material terms for this License to be used in connection with the licensing of Vertical Infrastructure for wireless facilities, and further delegated authority to the City Manager to enter into such agreements.

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

AGREEMENT

1. DEFINITIONS

"Agent" means a party's agent, employee, director, officer, contractor, subcontractor or representative in relation to this License.

“Approved Plans” means the detailed plans and equipment specifications, which include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed by Licensee and approved for construction by the City, as more particularly described in **Exhibit A-2** (Approved Plans) attached hereto and incorporated herein.

“Broker” means 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(s) or other real estate rights contemplated or conveyed in this License.

“City Attorney” means the City Attorney of the City of Pleasanton, California.

“City Property” means any interest in real or personal property owned or controlled by the City, which includes without limitation any and all (1) land, air and water areas; (2) license interests, leasehold interests, possessory interests, easements, franchises and other appurtenant rights or interests; (3) public rights-of-way or public utility easements; and (4) physical improvements such as buildings, structures, infrastructure, utility and other facilities, and alterations, installations, fixtures, furnishings and additions to existing real property, personal property and improvements.

“Claim” means any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, whether direct or indirect.

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

“Environmental Laws” means any Law in relation or connection to industrial hygiene, environmental conditions or Hazardous Materials (as defined in this License).

“Equipment” means antennas, radios and any associated utility or equipment box, and battery backup, transmitters, receivers, amplifiers, ancillary fiber-optic cables and/or wiring, and ancillary equipment used for radio communication (voice, data or otherwise) transmission and/or reception, which includes without limitation the means, devices and apparatus used to attach any Equipment to any licensed Vertical Infrastructure, and any ancillary equipment such as wiring, cabling, power feeds or an similar things, and any signage attached to such Equipment that may be approved by the City or required by Law.

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

“Hazardous Material” means any material that, due to its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any local, regional, state or federal body with jurisdiction and responsibility for issuing Regulatory Approvals in accordance with applicable Laws to pose a present or potential hazard to human health, welfare or safety, or to the environment. The term “Hazardous Material” as

used in this Master License or any Site License will be broadly construed, and includes, without limitation, the following: (1) any material or substance defined as a “hazardous substance”, or “pollutant” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified as 42 U.S.C. §§ 9601 *et seq.*) or California Health & Safety Code § 25316; (2) any “hazardous waste” listed California Health & Safety Code § 25140; or (3) any petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

“**Indemnified City Party**” or “**Indemnified City Parties**” means the City and its Agents, Invitees, elected and appointed officials and volunteers.

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

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

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

“**License Area**” means the same as that term is defined in Section 2.1 (License Area Defined).

“**License Fee**” means the annual fee for each licensed Vertical Infrastructure authorized under this License, as specified in **Schedule 1** (Annual License Fee).

“**Licensee’s Office**” means Licensee’s place(s) of business located at **[insert address(es)]** that contains all the records, in physical and/or electronic form, that Licensee is required to maintain under Section 27.

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

“**NESC**” means the National Electrical Safety Code, as may be amended or superseded, published by the Institute of Electrical and Electronics Engineers.

“**OSHA**” means the Occupational Safety and Health Administration of the United States Department of Labor, or OSHA’s duly appointed successor agency.

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

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

“RF” means radio frequency or electromagnetic waves.

“Streets” mean any public right-of-way, street, alley, highway, sidewalk, curb, gutter, driveway, parkway or other public place primarily used or dedicated for vehicular transportation within the City’s territorial and/or jurisdictional boundaries and subject to the City’s management regulations. The term “Streets” does not encompass any private property, private utility easements, any public easements for pedestrian ingress and egress across private property or any other public easement not dedicated for use as a public road or highway.

“Vertical Infrastructure” means that certain pole or similar structure, subject to this License, owned or controlled by the City and located in the public rights-of-way or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control or similar functions.

[reserved]

2. LICENSE AREA

2.1. License Area Defined

The parties to this License define **“License Area”** to mean that certain space on the that certain Vertical Infrastructure and other City Property, which includes without limitation any conduits, chases, risers, trays, pipes, vaults, pull boxes, and hand holes, identified on the Approved Plans as occupied by the Equipment and licensed to Licensee, all as more particularly described and depicted in **Exhibit A-1** (License Area).

2.2. Limited Rights Created

This License grants Licensee only a non-possessory, non-exclusive and revocable license to enter on to and use the License Area for the Permitted Use in accordance with the terms and conditions in this License. Licensee expressly acknowledges and agrees that: (a) this License is not and shall not be deemed to be coupled with an interest; (2) the City retains legal possession and control over the Vertical Infrastructure for the City’s municipal functions, which will be superior to Licensee’s rights and interest in the Vertical Infrastructure, if any, at all times; (3) subject to the terms and conditions in this License, the City may terminate this License in whole or in part at any time; (4) except as

specifically provided otherwise in this License, the City may enter into any agreement with third parties to use and/or occupy the Vertical Infrastructure and/or other City Property; and (5) this License does not create and will not be deemed to create any partnership or joint venture between the City and Licensee.

2.3. No Impediment to Municipal Functions

Except as expressly provided otherwise in this License, this License shall not limit, alter or waive the City's absolute right to use the License Area, in whole or in part, as infrastructure established and maintained for the City's and the public's benefit.

2.4. License Area Condition

Licensee expressly acknowledges and agrees to enter on to and use the License Area in its "**as-is and with all faults**" condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the License Area's condition or suitability for Licensee's use. Licensee expressly acknowledges and agrees that neither the City nor its Agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the License Area's physical, structural or environmental condition, the License Area's present or future suitability for the Permitted Use or any other matter related to the License Area. This License shall not be deemed a warranty of title by the City.

2.5. Licensee's Due Diligence

Licensee expressly represents and warrants to the City that Licensee has conducted a reasonably diligent and independent investigation, either for itself or through an Agent selected by Licensee, into the License Area's condition and suitability for Licensee's intended use, and that Licensee relies solely on its due diligence for such determination. Licensee further expressly represents and warrants to the City that Licensee's intended use is the Permitted Use as defined in this License. Any testing performed by Licensee or its Agents shall be subject to the provisions in Section 6.6 (Damage or Alterations to Other Property). In addition to any other conditions that the City may impose on such testing, Licensee shall have the obligation to repair any damage caused by such testing and to restore all affected areas to the condition that existed immediately prior to such testing.

2.6. Diminutions in Light, Air or Signal Transmission or Reception

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

2.7. Certified Access Specialist Disclosure

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

3. USE OF LICENSE AREA

3.1. Permitted Use

Licensee may use the License Area solely to construct, install, operate and maintain Equipment for transmission and reception of wireless communications signals (the “**Permitted Use**”) in compliance with all applicable Laws, which includes without limitation the Pleasanton Municipal Code 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.

3.2. Prohibition on Non-Small Wireless Facilities

The City intends this License to cover only wireless facilities that (a) qualify as a “small wireless facility” as that term is defined by the FCC under 47 C.F.R. § 1.6002(*l*); and (b) have been approved by the City in accordance with all applicable provisions in the Pleasanton Municipal Code. Licensee expressly acknowledges and agrees that the Permitted Use under this License does not include the right to use any Vertical Infrastructure as a support structure for a “macro cell” or a traditional wireless tower or base station.

3.3. Prohibition on Nuisances

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

3.4. Signs and Advertisements

Licensee acknowledges and agrees that this License does not authorize Licensee to erect, post or maintain, or permit others to erect, post or maintain, any signs, notices, graphics or advertisements whatsoever on the License Area, except as may be specifically authorized under this License or as may be required for compliance with any Regulatory Approvals and applicable Laws.

4. TERM

Unless earlier terminated in accordance with this License or as may be permitted under applicable Laws, the term under this License shall commence on the Effective Date and automatically expire ten (10) years from the Effective Date. Licensee may apply for a new license within not more than 30 days before this License expires or at any time after this License's expiration or earlier termination.

5. FEES

5.1. Annual License Fee

Licensee shall pay the first annual License Fee within 30 days from the Effective Date without any prior demand, deduction, setoff or counterclaim for any reason. Thereafter, Licensee shall pay the City the License Fee on the anniversary of the Effective Date throughout the Term without any prior demand, deduction, setoff or counterclaim for any reason. The License Fee shall be (a) reasonably approximate to the City's objectively reasonable costs consistent with applicable Laws; (b) in addition to any fees charged by the City in connection with any permit applications, permit issuance fees, inspection fees, fines, penalties or other fees charged by the City in connection with the Equipment and/or any related Regulatory Approvals (collectively, "**Regulatory Fees**"); and (c) in addition to any other cost-based reimbursements owed to the City by Licensee ("**Reimbursement Fees**"). **Schedule 1** attached to this License and incorporated by this reference specifies the License Fee payable by Licensee to the City in each year throughout the Term. Unless otherwise adjusted in accordance with this License, the License Fee shall automatically increase by 103% each year on the anniversary of the Effective Date.

5.2. Fee Adjustments by City

At any time throughout the Term, the City shall have the option (but not the obligation) to adjust any License Fee, Regulatory Fees and Reimbursement Fees to reflect the City's reasonable costs incurred in connection with this License, any Regulatory Approvals issued or administered by the City in connection with this License or the Equipment or Licensee's acts or omissions on or about the License Area and/or the Streets. The City may exercise such option either by an ordinance approved and adopted by the City Council (a "**Fee Ordinance**") or by written notice to Licensee (the "**Adjustment Notice**"). If the adjustment concerns the annual License Fee, the City shall have the right to substitute a new **Schedule 1** to reflect such adjustment in either a Fee Ordinance or Adjustment Notice. Any adjustment by Fee Ordinance shall be effective at the same time such Fee Ordinance becomes effective. Any adjustment by Adjustment Notice shall be immediately effective. Licensee shall have the right to appeal any Adjustment Notice to the City Council in the manner prescribed by the Pleasanton Municipal Code.

5.3. Late Fees

In the event that Licensee fails to pay any License Fee or any other amount payable to the City on the date that such amounts are due and unpaid, such amounts will be subject to a late charge equal to five percent (5%) of unpaid amounts.

5.4. Default Interest

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

5.5. City's Right to Cost Reimbursement

Notwithstanding anything in this License to the contrary, the City shall be entitled to recover from Licensee the reasonable cost to furnish, provide and/or perform any services in connection with this License and any Regulatory Approvals issued or administered by the City, which includes without limitation any costs incurred by City staff or the City's contractors, consultants and experts to review permit applications, issue permits or supervise or inspect any construction, installation or other work in connection with this License. Payments by Licensee for any License Fee, Regulatory Fees, and Reimbursement Fees in connection with this License or any related Regulatory Approvals issued or administered by the City shall not relieve Permittee's obligation to reimburse the City for any and all actual costs incurred by the City in the future. Licensee shall reimburse the City for all such costs within 10 business days after a written demand for reimbursement and reasonable documentation to support such costs. The provisions in this Section 5.5 shall survive this License's expiration, revocation or termination.

5.6. City's Right to Fair Market License Fees Reserved

Licensee acknowledges that: (a) the City is compelled by applicable Laws, which includes without limitation the Order, to accept certain cost-based rates and compensation; (b) but for such Laws, the City would be entitled to condition its assent to any lease, license or other agreement for attachments to its Vertical Infrastructure (such as this License) on consideration that exceed the City's costs; and (c) but for such Laws, the City would not assent to all the terms and conditions in this License. Licensee further acknowledges that, in the event that the Order or other such laws described in this Section 5.6 are repealed, invalidated, no longer effective or otherwise not applicable to the City, the then-current License Fee shown in **Schedule 1** and the License Fee in all remaining years on the Term shall be automatically replaced by the amount(s) shown in **Schedule 2** (City's Estimated Fair Market License Fees), attached hereto and incorporated herein. As an illustration, and not as a limitation, if the License Fee commenced in 2019 and the Order

was invalidated in 2021, then the License Fee in 2021 would increase from \$286.44 to \$1,060.90, the License Fee in 2022 would be \$1,092.73 and so on until the License expired in 2029 or was earlier terminated in accordance with its terms.

6. CONSTRUCTION, INSTALLATION AND MODIFICATIONS

6.1. Request for Authorization

Prior to submitting any application for City-issued Regulatory Approvals, Licensee shall submit a request for authorization (“**RFA**”) to license Vertical Infrastructure in the form more particularly described and depicted in Exhibit A-2 (Request for Authorization). The RFA shall (a) identify the Vertical Infrastructure subject to the request; (b) contain preliminary plans and equipment specifications, which include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed by Licensee (collectively, the “**Preliminary Plans**”); and (c) provide Licensee’s express assent to all the terms and conditions of this License. Licensee’s RFA shall be subject to the City’s approval and will be deemed rejected if the City does not approve or reject such request within 10 days after receipt. The City shall provide its approval by countersigning the RFA, which may be submitted to applicable City departments or other public agencies in connection with applications for Regulatory Approvals.

6.2. Regulatory Approvals

Licensee shall not commence any installation, construction and other work on or about the License Area until and unless Licensee first obtains all necessary prior Regulatory Approvals, which includes without limitation any approvals required to provide the services offered by Licensee either to the public or Licensee’s customers within the geographic area that encompasses the City’s territorial and/or jurisdictional boundaries, and any required use permits, design review permits, encroachment permits, building permits, grading permits and electrical permits. Any installation, construction or other work performed by Licensee or its Agents or Invitees without such Regulatory Approvals will be a default under this License in addition to any other liabilities or penalties the City, in its regulatory capacity, may impose on Licensee for the same acts or omissions.

6.3. Compliance with Approved Plans

Licensee shall perform all installation, construction and other work in connection with the License Area (a) in accordance with the terms and conditions in this License; (b) at Licensee’s sole cost and expense, and at no cost to the City; (3) in strict compliance with the Approved Plans; (4) in compliance with all applicable Laws, which includes without limitation all applicable provisions in the Pleasanton Municipal Code and any conditions in any applicable Regulatory Approvals; (5) in a safe, diligent, skillful and workmanlike manner; and (6) to the satisfaction of the Community Development Director or his/her designee. After any work at the License Area concludes, Licensee shall restore the

License Area and any other City Property to the condition that existed immediately prior to the work commenced.

6.4. Changes or Corrections to Approved Plans

Licensee may amend the Preliminary Plans when such changes are required to obtain Regulatory Approvals necessary to install and operate the Equipment, so long as Licensee obtains the City's prior written consent, which the City shall not unreasonably withhold. At all times relevant to this License, Licensee shall have the obligation to correct any errors or omissions in the Preliminary Plans, or once approved, the Approved Plans and related Regulatory Approval(s). Licensee shall immediately send written notice to the City in the event that Licensee discovers any such defects. The Approved Plans and/or amendments to Approved Plans by the City will not release or excuse Licensee's obligations under this Section 6.3.

6.5. Licensee's Contractors and Subcontractors

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

6.6. Labor and Materials

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

6.7. Damage or Alterations to Other Property

Nothing in this License authorizes Licensee to use, occupy, remove, damage or in any manner alter any private personal or real property, wherever located, owned by the City or any third parties. Licensee shall not remove, damage or in any manner alter any private

personal or real property, wherever located, owned by the City or any third parties without prior written consent from property owner. The City may withhold and/or condition its consent to any request to alter any City Property in its sole and absolute discretion.

6.8. Underground Service Alert

Licensee warrants and represents to City that Licensee is presently a member in good standing with the Underground Service Alert of Northern California and Nevada (“**USA North 811**”). Licensee shall maintain and keep current its membership in USA North 811 throughout the Term. Prior to any excavation performed in the Streets, Licensee shall observe and perform all notice and other obligations required under applicable Laws, which includes, without limitation, California Government Code §§ 4216 *et seq.*, as may be amended or superseded.

6.9. Damage and Repair to Subsurface Structures

Any excavation performed in the Streets must be monitored by Licensee for any lateral movement, trench failures and other similar hazards. Licensee shall, at Licensee’s sole cost and expense, repair any damage (which includes without limitation any subsidence, cracking, erosion, collapse, weakening and/or any loss or reduction in lateral or subjacent support) to the Streets, any adjacent private property, any utility lines or systems (whether overhead or underground) and any sewer and/or water lines or systems resulting from or in connection with any excavation by Licensee or its Agents. All repair or restoration work performed pursuant to this Section 6.8 shall be performed under the supervision and to the satisfaction of the Community Development Director or his/her designee.

6.10. Equipment Modifications

If, after the initial construction, installation or other work is completed, Licensee proposes to modify existing Equipment or install new equipment on the existing License Area, and such proposal is different in any material way from the specifications or design configurations shown in the Approved Plans, then Licensee shall first obtain the City’s consent to modify this License to reflect the material difference. No modification to this License shall be required for any modification to an existing Equipment that (a) involves only substituted internal components; (b) will be in compliance with applicable Laws (such as radio-frequency emission standards); (c) does not result in any change to the Equipment’s external appearance, dimensions or weight; (d) and does not cause any interference with any municipal functions or equipment. In any case, Licensee’s modification shall be performed in compliance with all applicable provisions in this License, which includes, without limitation Licensee’s obligation to obtain and pay for all Regulatory Approvals required for the proposed modification.

6.11. Post-Completion Inspections

Within five days after Licensee completes any Equipment construction, installation or other work, Licensee shall provide the City with a written notice that confirms the precise

locations and dates on which Licensee completed the work. The City shall have the right to inspect Licensee's Equipment at any time after Licensee completes any construction, installation or other work in connection with this License. If the City discovers any defects or non-compliant conditions in connection with the Equipment, Licensee shall, at Licensee's sole cost and expense, correct any such defects and conditions within 15 days after written notice from the City. Licensee shall promptly reimburse the City for all costs incurred in connection with any inspections or re-inspections by the City.

6.12. As-Built Plans and Maps

Within 30 days after the City issues a certificate of completion, Licensee shall file as-built plans and maps in a format specified by the Community Development Director or his/her designee. Further, all as-built plans and maps shall include digital copies in a native format compatible with the City's document management, GIS and/or other digital information management systems. Licensee's as-built plans and maps must show the accurate location and dimensions for all Equipment. The City shall have the right to reject any as-built plans or maps for cause, in which case Licensee shall file revised as-built plans and/or maps within 30 days after notice from the City.

6.13. Title to Licensee's Equipment and Other Improvements

Except as specifically provided otherwise in this License, all Equipment and other improvements installed, constructed or placed on or about the License Area by Licensee or its Agents or Invitees will be and remain at all times Licensee's personal property. All structural improvements to any Vertical Infrastructure and any replacement Vertical Infrastructure, as approved by the City and shown in the Approved Plans, will become City Property and remain City Property should Licensee vacate or abandon such License Area, unless the City elects in a written notice to Licensee that it does not wish to take title to such structural improvements. Subject to Section 26 (Surrender of License Area), Licensee may remove its Equipment from the License Area at any time after 30 days' written notice to the City.

7. LICENSEE'S MAINTENANCE OBLIGATIONS

7.1. General Maintenance and Repair Requirements

Licensee shall maintain all Equipment installed on, under, over, in or about the License Area in good, safe and orderly condition at all times, and shall promptly repair any damage to any Equipment whenever repair or maintenance may be required, subject to any Regulatory Approvals if required for such maintenance work. All work performed by or for Licensee under this Section 7 shall be performed: (a) in accordance with the terms and conditions in this License; (b) at Licensee's sole cost and expense, and at no cost to the City; (c) by only qualified, trained, experienced and appropriately licensed contractors or Licensee's Agents or other personnel; (d) in a manner and with equipment and materials that will not interfere with or impair the City's municipal operations on or about the License Area; (e) in a safe, diligent, skillful and workmanlike manner; and (f) in compliance with

all applicable Laws, which includes without limitation all applicable provisions in the Pleasanton Municipal Code and any conditions in any applicable Regulatory Approval(s).

7.2. Damage Reports to the City

Licensee shall promptly notify the City if Licensee discovers damage or other alteration to the Streets, any City Property or any personal or real property owned by third parties for any reason and through any cause. Notices shall contain the following information to the extent available at the time Licensee sends the notice: (a) the location where the event occurred; (b) a statement to describe the damage or other alteration and the surrounding circumstances; (c) the names and contact information for any persons or entities involved in the matter, as well as the names and contact information for any potential witnesses to the damage or other alteration; and (d) any other pertinent information. Licensee will not be deemed to have assumed liability for any such damage or other alteration by giving such notice, unless such damage or other alteration was caused by or arose in connection with Licensee's or its Agent's or Invitee's act, omission, negligence or willful misconduct.

7.3. Licensee's Obligation to Make Repairs

In the event that Licensee or its Agents or Invitees directly or indirectly caused such damage or other alterations, Licensee shall, at its sole cost and expense, repair such damage or other alteration and restore the affected property to the condition that existed immediately before the damage or other alteration occurred, reasonable wear and tear excepted. If Licensee fails or refuses to perform its obligations under this Section 7 within 15 calendar days after written notice from the City, the City may (but will not be obligated to) cause the repair and restoration to be performed at Licensee's sole cost and expense. The City may exercise its rights to perform Licensee's obligations under this Section 7 without prior notice to Licensee when the City Engineer determines that the repair and/or restoration is immediately necessary to protect public health or safety. Licensee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs. In addition, Licensee shall indemnify, defend and hold any and all Indemnified City Parties harmless from and against any Claims in connection with such performance by the City.

7.4. Graffiti Abatement

In addition to Licensee's other maintenance obligations under this License, Licensee shall remove any graffiti or other similar markings from the License Area promptly upon actual notice (but in no event later than 48 hours after notice from the City).

8. REARRANGEMENT AND RELOCATION

8.1. Rearrangement and Relocation for City Work

Licensee acknowledges that the City, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) add, remove or otherwise change any improvements owned by the City or any other public agency located in, on, under or along any Street, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (3) perform any other work deemed necessary, useful or desirable by the City (collectively, "**City Work**"). The City reserves the rights to do any and all City Work without any admission on its part that the City would not have such rights without the express reservation in this Permit. In the event that the City Engineer determines that any City Work will require the Equipment to be rearranged and/or relocated Licensee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If Licensee fails or refuses to either permanently or temporarily rearrange and/or relocate the Equipment within a reasonable time after the City Engineer's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at Licensee's sole cost and expense. The City may exercise its rights to rearrange or relocate the Equipment without prior notice to Licensee when the City Engineer determines that the City Work is immediately necessary to protect public health or safety. Licensee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs. In addition, Licensee shall indemnify, defend and hold any and all Indemnified City Parties harmless from and against any Claims in connection with rearranging or relocating the Equipment, or turning on or off any water, oil, gas, electricity or other utility service in connection with the Equipment. Within 90 days after any Equipment have been rearranged or relocated, Licensee shall file as-built plans and maps with the City Engineer in the same manner and subject to the same requirements as provided in Section 6.11 (As-Built Plans and Maps).

8.2. Rearrangement and Relocation to Accommodate Third Parties

Licensee shall reasonably cooperate with and promptly respond to requests to rearrange or relocate the Equipment to accommodate third parties authorized to use the Streets ("**Third-Party Accommodations**"). All costs to perform any Third-Party Accommodations shall be borne by the person or entity to be accommodated; provided, however, that Licensee shall be solely responsible to collect any costs incurred by Licensee from such third party and the City shall have no liability to Licensee for any such costs. Prior to any Third-Party Accommodations performed by Licensee, Licensee shall be permitted to require (1) either a cash deposit, bond or other surety from the person or entity to be accommodated in a commercially reasonable form and in an amount reasonably estimated by Licensee to cover the costs associated with the proposed Third-Party Accommodations; and (2) a written agreement signed by the person or entity to be

accommodated to indemnify, defend and hold Licensee and its Agents harmless from and against any and all Claims that arise in connection with the proposed Third-Party Accommodations, except to the extent any Claims are directly caused by Licensee's or its Agent's negligence or willful misconduct. Nothing in this License shall be construed to require Licensee to perform any Third-Party Accommodations that would materially reduce, impair or otherwise diminish Licensee's Equipment or Licensee's operations on the License Area. Within 90 days after any Third-Party Accommodations, Licensee shall file as-built plans and maps with the City Engineer in the same manner and subject to the same requirements as provided in Section 6.11 (As-Built Plans and Maps).

8.3. No Right to Rearrange or Relocate City Property

Nothing in this License will be construed to require the City or authorize Licensee to change any street grade, width or location, or add, remove or otherwise change any improvements owned by the City or any other public agency located in, on, under or along the License Area or any Street, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications, for Licensee's or any third party's convenience or necessity.

9. COMPLIANCE WITH LAWS

9.1. Compliance with CPUC General Orders

In addition to Licensee's obligation to maintain compliance with all other Laws, Licensee shall conduct all activities on the License Area in accordance with all applicable CPUC general orders, which includes without limitation CPUC General Order 95 and CPUC General Order 128 as those orders may be amended or superseded in the future, and all other rules, regulations and other requirements adopted or enacted by the CPUC.

9.2. Compliance with Building and Electrical Codes

In addition to Licensee's obligation to maintain compliance with all other Laws, Licensee shall conduct all activities on the License Area in accordance with the requirements in the California Building Code and the California Electric Code as adopted by the City with any legally permitted amendments.

9.3. Compliance with FCC RF Exposure Standards

Licensee's obligation to comply with all Laws includes all Laws related to maximum permissible exposure to RF emissions on or about the License Area, which includes all applicable FCC standards, whether such RF emissions or exposure results from the Equipment alone or from the cumulative effect of the Equipment added to all other sources on or near the License Area.

9.4. Compliance with Prevailing Wage Regulations

The services to be provided under the License are or may be subject to prevailing wage rate payment as set forth in California Labor Code § 1771. Accordingly, to the extent that any such services are subject to the prevailing wage rate payment requirements, Licensee shall and shall cause its Agents to comply with all applicable California Labor Code requirements pertaining to “public works,” including the payment of prevailing wages in connection with the services to be provided to the City hereunder (collectively, “**Prevailing Wage Policies**”). Licensee shall submit and allow the City to inspect, upon request by the City, Licensee’s payroll records and other proof of compliance with the Prevailing Wage Policies consistent with the requirements in California Labor Code § 1776, as may be amended or superseded.

Licensee shall defend, indemnify and hold the City and Indemnified City Parties harmless from and against any and all present and future Claims, that arise from or in connection with Licensee’s obligation to comply with Prevailing Wage Policies and all Laws with respect to the installation, construction or other work in connection with this License, which includes without limitation any and all Claims that may be made by Licensee’s Agents or any other contractors, subcontractors or other third parties pursuant to California Labor Code §§ 1726 and 1781, as amended and added by California Senate Bill 966 (Alarcon), and as may be amended or superseded in the future.

Licensee hereby waives, releases and discharges forever the City and Indemnified City Parties from any and all present and future Claims that arise from or in connection with Licensee’s obligation to comply with Prevailing Wage Policies and all Laws with respect to the installation, construction or other work in connection with this License. Licensee hereby acknowledges that Licensee is aware of and familiar with the provisions in California Civil Code § 1542 which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him must have materially affected his or her settlement with the debtor.

Licensee hereby waives and relinquishes all rights and benefits which it may have under California Civil Code § 1542, as such relates to this License. Licensee’s obligations under this Section 9.4 will survive this License’s expiration or earlier termination.

To the extent applicable, as provided in SB 854 (Stats. 2014, ch. 28): (a) no contractor or subcontractor may be qualified to bid on, be listed in a bid proposal, subject to the requirements California Public Contracts Code § 4104, or engage in the performance of any contract for public work, unless currently registered with DIR and qualified to perform public work pursuant to California Labor Code § 1725.5 (Cal. Lab. Code § 1771.1(a)); (b) no contractor or subcontractor may be awarded a public works contract unless registered with the DIR to perform public work pursuant to California Labor Code § 1725.5 (Cal. Lab.

Code § 1771.1(b)); and (c) work performed on the project is subject to compliance monitoring and enforcement by DIR (Cal. Lab. Code § 1771.4).

10. PUBLIC WORKS' OPERATIONS

10.1. City Access to License Area

Except as specifically provided otherwise in this License, the City and its Agents have the absolute right to access any License Area, in whole or in part, at any time and with or without notice for any purpose related to its municipal functions. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's or its Agents' access to the License Area, which includes, without limitation, any Equipment removed in an emergency or other exigent circumstances pursuant to Section 10.4, except to the extent that the damage is caused directly and exclusively from the City's or its Agent's sole active negligence or willful misconduct and not contributed to by Licensee's or its Agents' or Invitees' acts, omissions or negligence.

10.2. City's Maintenance, Repairs or Alterations to License Area

The City may maintain, alter, add to, repair, remove from and/or improve the License Area as the City may, in its sole discretion, deem necessary or appropriate for its streetlighting operations and other municipal functions. The City shall not be obligated to maintain or repair the License Area, in whole or in part, solely for Licensee's benefit. Except as may be expressly provided otherwise in this License, neither any City work on the License Area nor any condition on any License Area will: (a) entitle Licensee to any damages; (b) excuse or reduce any obligation by Licensee to pay any Fees or perform any covenant under this License; or (c) constitute or be construed as a constructive eviction or termination from the License Area.

10.3. Notice to Licensee for Non-Emergency Maintenance or Repairs

From time-to-time, the City may find it necessary or appropriate to perform work on the License Area that temporarily affects the Equipment or requires the Equipment to be temporarily powered down. In non-emergency circumstances, the City will use reasonable efforts to: (a) make a good-faith effort to provide prior notice to Licensee's On-Call Representative; (b) allow Licensee's On-Call Representative to observe the City's work; and (c) avoid or minimize disrupt Licensee's ordinary operations on the License Area, taking into account any unforeseen exigencies that may threaten persons or property. The provisions in this Section 10.3 will not be construed to impede or delay the City's authority and ability to make changes to the License Areas necessary to maintain street light services, traffic control services, any municipal utility services (to the extent permissible under applicable Laws) or any other municipal functions carried out for the public's health, safety, welfare or benefit.

10.4. Emergencies

In emergencies, and unless expressly provided in applicable Laws, the City's work and operations will take precedence over Licensee's operations, which includes without limitation any Equipment operated on the License Area, and the City may access the License Area in whole or in part as the City deems necessary in its sole and absolute determination and in accordance with this Section 10.4, with or without notice to Licensee. When safe and practicable, as solely determined by the City, the City will notify Licensee of any emergency or other exigent circumstances that requires the City to remove or replace any City Property within the License Area and will allow Licensee to remove its Equipment before the City removes or replaces such City Property; provided, however, that the City will remove the Equipment from the License Area when in the City's sole determination it would: (a) be unsafe or not practicable to wait for Licensee to perform (or cause to be performed) the work; (b) result in significant delay; or (c) otherwise threaten or compromise public health, safety, welfare or public services. The City will remove any Equipment with reasonable care and store such Equipment for retrieval by Licensee. The City shall provide notice to Licensee as soon as reasonably practicable after such emergency and removal of any of Licensee's Equipment. Licensee shall have the right to reinstall such removed Equipment (or equivalent replacement Equipment) at Licensee's sole expense on the License Area and in accordance with the provisions in this License and all applicable Laws. Licensee expressly acknowledges that any act(s) taken by the City pursuant to this Section 10.4, which includes without limitation any Equipment removal or storage, will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee's contractual privilege to use the License Area.

11. INTERFERENCE

Licensee may not install, maintain or operate any Equipment in a manner that interferes with or impairs other communication (radio, telephone, data and/or other transmission or reception) or computer equipment lawfully used by the City and its Agents, which includes without limitation any first responders or other public safety personnel. Such interference will be a default by Licensee, and upon notice from the City, Licensee shall promptly eliminate such interference at no cost to the City. Licensee will be required to use its best efforts to remedy and cure such interference without any impairment to any City operations. If Licensee does not promptly cure such default, the parties acknowledge that continued interference may cause irreparable injury to the City and, therefore, the City will have the right to bring an action against Licensee to, at the City's election, immediately enjoin such interference and/or to terminate this License. The parties acknowledge that the Licensee possesses technical expertise that puts Licensee in the best position to identify and mitigate interference sources, and Licensee shall be primarily responsible for identification and mitigation work.

12. LIENS

Licensee shall keep the License Area free and clear from any and all liens or other impositions in connection with any work performed, material furnished or obligations

incurred by or for Licensee. Licensee will inform all contractors and material suppliers that provide any work, service, equipment or material to Licensee in connection with the License Area that the License Area is public property not subject to any mechanics' liens or stop notices. In the event that any Licensee contractor or material supplier files any lien or imposition that attaches to the License Area, Licensee shall promptly (but in no case later than 30 days after discovery) cause such lien or imposition to be released. In the event that Licensee does not cause such lien or imposition to be released within the 30-day period, the City will have the right, but not the obligation, to cause such lien or imposition to be released in any manner the City deems proper, which includes without limitation payment to the lienholder, with or without notice to Licensee. Licensee shall reimburse the City for all costs and expenses incurred to cause such lien or imposition to be released (which includes without limitation reasonable attorneys' fees) within 10 days after Licensee receives a written demand from the City together with reasonable documentation to support such costs and expenses.

13. UTILITIES

Licensee shall be responsible to secure its own utility services for its Permitted Use and shall not be permitted to "submeter" from any electrical service provided to the City on any License Area without the City's prior written consent, which the City may withhold in its sole and absolute discretion. Licensee shall timely pay when due all charges for all utilities furnished to its Equipment on the License Area. Any interconnection between the City's and Licensee's electrical facilities permitted by City shall be accomplished in compliance with all applicable Laws and all utility service providers' policies for such interconnection.

14. TAXES AND OTHER ASSESSMENTS

Licensee agrees to pay when due (and prior to delinquency) any and all taxes, assessments, charges, excises and exactions whatsoever, including without limitation any possessory interest taxes, that arise from or in connection with Licensee's use within the License Area or Licensee's Equipment that may be imposed on Licensee under applicable Laws. Licensee shall not allow or suffer any lien for any taxes assessments, charges, excises or exactions whatsoever to be imposed on the License Area or Licensee's Equipment. In the event that the City receives any tax or assessment notices on or in connection with the License Area or Licensee's Equipment, the City shall promptly (but in no event later than 30 calendar days after receipt) forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount attributable to Licensee's Equipment. Licensee understands and acknowledges that this License may create a possessory interest subject to taxation and that Licensee will be required to pay any such possessory interest taxes. Licensee further understands and acknowledges that any sublicense or assignment under this License and any options, extensions or renewals in connection with this License may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this License.

15. INDEMNIFICATION

15.1. Licensee's Indemnification Obligations

Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the Indemnified City Parties harmless from and against any and all Claims, incurred in connection with or arising in whole or in part from any act or omission by Licensee or its Agents, licensees, customers or invitees in connection with this License or any Equipment Permit, whether any negligence may be attributed to any Indemnified City Parties or not, whether any liability without fault is imposed or sought to be imposed on any Indemnified City Parties or not, but except to the extent that that such Claim is directly and exclusively caused by the City's sole gross negligence or willful misconduct. Licensee's obligations under this Section 15 includes, without limitation, all reasonable fees, costs and expenses for attorneys, consultants and experts, and the City's actual costs to investigate and defend against any Claim. Licensee expressly acknowledges and agrees that: (a) Licensee has an immediate and independent obligation to defend any Indemnified City Parties from any Claim that actually or potentially falls within this Section 15, even when the allegations in the Claim are or appear to be groundless, fraudulent or false; and (b) Licensee's obligations arise at the time any Indemnified City Parties tender a Claim to Licensee and continue until such Claim's final, non-appealable resolution. Licensee's obligations under this Section 15.1 shall survive this License's revocation, termination or expiration.

15.2. Licensee's Defense of the City

In the event that any Claim is brought against any Indemnified City Parties in connection with any subject matter for which any Indemnified City Parties are indemnified by Licensee under this License, Licensee shall, upon written notice and at Licensee's sole cost and expense, resist and defend against such Claim with competent and experienced legal counsel reasonably acceptable to the City. The City shall not unreasonably withhold or delay its consent to legal counsel selected by Licensee; provided, however, that the City has the absolute right to reject any proposed legal counsel that: (a) has less than 10 years' direct experience representing public agencies in similar actions or proceedings as those brought against the Indemnified City Parties; (b) is not duly licensed to practice law in the State of California by the State Bar of California; (c) has any past or pending disciplinary actions by any United States tribunal or state bar association; or (d) has any actual or potential conflicts of interest with any Indemnified City Parties who would be represented by such proposed legal counsel. Licensee shall not, without the City's written consent, enter into any compromise or settlement agreement on any Indemnified City Parties' behalf that: (x) admits any liability, culpability or fault whatsoever on any Indemnified City Parties' part; or (y) requires any Indemnified City Party to take or refrain from any action, which includes without limitation any change in the City's policies or any monetary payments. Nothing in this License shall be construed to limit or preclude any Indemnified City Parties or their respective legal counsel from cooperating with Licensee and/or participating in any judicial, administrative, alternative dispute resolution or other

litigation or proceeding. Licensee's obligations under this Section 15.2 shall survive this License's revocation, termination or expiration.

16. INSURANCE

Prior to any construction, installation or other work by Licensee or its contractors or subcontractors in, on, under or above the Streets, Licensee shall comply with all insurance requirements and other obligations contained in **Exhibit B** (Licensee's Insurance Obligations), attached hereto and incorporated herein, and shall provide the City with all required certificates, endorsements and other documentation. The City shall have the right to amend or replace the insurance requirements and other obligations contained in **Exhibit B** on 60 days' prior written notice to Licensee. Any noncompliance with any insurance requirements in this License by Licensee or its contractors or subcontractors shall be a material default by Licensee.

17. LIMITATIONS ON THE CITY'S LIABILITY

17.1. General Limitations

Licensee expressly acknowledges that the City is not responsible or liable to Licensee for any Claims that arise in connection with: (a) acts or omissions by persons or entities using the Streets or other areas adjoining, adjacent to or connected with any License Area; (b) any utility service interruption; (c) theft; (d) burst, stopped or leaking water, gas, sewer, steam or other pressurized pipes; (e) fires, floods, earthquakes or other force majeure; (f) any vehicular collision on or about the License Area or other City Property; (g) any costs or expenses incurred in connection with any relocation or rearrangement as provided in Section 8 (Rearrangement and Relocation); or (h) any costs or expenses incurred in connection with any removal or restoration as provided in this License; all except to the extent such events are caused directly and exclusively by the City's gross negligence or willful misconduct. Licensee, in perpetuity, expressly waives and releases all Claims it may now or in the future have against any Indemnified City Parties, whether known or unknown, whether foreseeable or unforeseeable, that arise in connection with the events described in this Section 17 as may be related to this License or locations on or about the License Area. In no event will Licensee or its Agents be personally liable to the City for any default, breach or any other nonperformance or unpaid sum by Licensee. The provisions in this Section 17.1 shall survive this License's revocation, termination or expiration.

17.2. Consequential, Indirect or Punitive Damages

Without limiting any indemnification obligation placed on Licensee or other waivers contained in this License, Licensee fully releases, waives and discharges forever any and all Claims against the City for consequential and incidental damages that may arise from or in connection with this License or Licensee's use on or about the License Area, which includes without limitation any lost profits related to any disruption to Equipment, any interference with uses or operations conducted by Licensee, from any cause whatsoever,

and whether or not due to the active or passive negligence or willful misconduct by the City or any Indemnified City Parties, and covenants not to sue for such damages the City, the City's departments and all City agencies, officers, directors and employees, and all persons acting by, through or under them.

17.3. No Relocation Assistance

This License shall not create any right in Licensee to receive any relocation assistance or payment for any reason under the California Relocation Assistance Law (California Government Code §§ 7260 *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601 *et seq.*), as either may be amended or superseded, or any similar Laws upon or after any termination. To the extent that any such Laws 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 provided in Section 19 (Condemnation).

17.4. No Personal Liability for City Personnel

In no event will any City board, agency, member, officer, employee or other Agent be personally liable to Licensee, its successors or assigns, for any default, breach, other nonperformance or sum unpaid sum by the City. The provisions in this Section 17.4 shall survive this License's revocation, termination or expiration.

18. CASUALTY

18.1. City's Rights Upon a Casualty Event

In the event the License Area in whole or in part becomes damaged due to any cause, the City will have no obligation whatsoever to repair or replace the damaged License Area. Within approximately 30 days after the date on which the City discovers damage or destruction to the License Area, the City will give Licensee notice of the City's decision whether to repair or replace the damaged License Area and its good-faith estimate of the amount of time the 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 this License on 30 days' notice to the City. If the City elects to remove, rather than repair or replace, the damaged or destroyed License Area, then this License will automatically terminate on the last day of the month in which the removal occurs. 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 damages or destroys the License Area to such an extent that, in the City's reasonable determination, the Equipment on the License Area cannot be operated in a safe manner, the City may elect to terminate this License on 30 days' notice to Licensee and require Licensee to remove the Equipment from the damaged License Area before the termination date specified in the City's notice.

18.2. Licensee's Termination Rights Upon a Casualty Event

In the event that the City terminates this License pursuant to Section 18.1 (City's Rights Upon a Casualty Event), the City will prioritize its review any request by Licensee for a substantially similar license on a different pole as a replacement for this License.

18.3. Statutory Waiver

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

19. CONDEMNATION

This License will automatically terminate as to the part taken or transferred on the date the permanent taking or transfer occurs. The City will be entitled to any award paid or made in connection with the taking or any sums paid in lieu of such taking. Licensee will have no Claim against the City for the value of any unexpired Term of this License or otherwise except that Licensee may claim any portion of the award that is specifically allocable to Licensee's loss or damage to Licensee's Equipment. The parties understand, acknowledge and agree that this Section 19 is intended to fully govern the parties' rights and obligations in the event of a permanent taking. Licensee and the City each hereby waives and releases any right to terminate this License in whole or in part under California Code of Civil Procedure §§ 1265.120 and 1265.130 and under any similar Laws to the extent applicable to this License.

20. ASSIGNMENTS AND OTHER TRANSFERS

20.1. General Restriction

Licensee shall have no right to assign or transfer any right, title or interest, in whole or in part, in, under or through this License without the City's prior written consent. The City shall not unreasonably withhold its consent to any proposed assignment; provided, however, that the parties acknowledge that the City may reasonably withhold its consent to any proposed assignment under the following circumstances: (1) the proposed assignee lacks the necessary Regulatory Approvals to conduct the Permitted Use or perform all Licensee's obligations; (2) the City reasonably determines that the proposed assignee lacks the financial qualifications perform all Licensee's obligations; (3) Licensee refuses to reimburse the City for the reasonable and documented costs to consider the proposed assignment and/or the proposed assignee; and/or (4) at any time in which any Default by Licensee remains uncured.

20.2. Permitted Assignments

Notwithstanding the preceding sentence, Licensee will be permitted to assign or otherwise transfer this License without the City's prior consent but with notice to the City, to: (a) an entity that acquires all or substantially all Licensee's assets in the market in which the City is located (as the "market area" is or may be defined by the FCC); (b) Licensee's parent; (c) an entity that acquires a controlling interest in Licensee by a change in stock ownership or partnership interest; or (4) an entity controlled by Licensee (each a "**Permitted Assignment**"). Notwithstanding anything in this License to the contrary, a Permitted Assignment will be subject to all the following conditions: (i) the Assignee may use the License Area only for the Permitted Use and for no other purpose whatsoever; (ii) the Assignee possesses all Regulatory Approvals necessary to lawfully install, operate, and maintain Equipment on the License Area; (iii) Licensee provides the City with notice 60 days before the effective date of such Permitted Assignment, stating the contact information for the proposed Assignee and providing financial information establishing that the proposed Assignee has the capital and fiscal qualifications greater than or equal to Licensee's as it existed on the Effective Date; (iv) Licensee is in good standing under this License; (v) the assignee shall covenant to perform all Licensee's obligations under this License and Licensee will be and remain liable jointly and severally with the assignee for all obligations to be performed by assignee; and (vi) within 30 calendar days after Licensee receives a written demand from the City, Licensee shall reimburse the City for all reasonable and documented costs incurred by the City in connection with the Permitted Assignment.

20.3. Effect of Assignment

No assignment by Licensee, consent to assignment by the City, or Permitted Assignment will relieve or release Licensee from any obligation on its part under this License, unless expressly provided in a writing signed by the City. Any assignment that is not in compliance with this Section 20 will be void and be a material default by Licensee under this License without a requirement for notice and a right to cure. The City's receipt or acceptance of any License Fee, Regulatory Fees, Reimbursement Fees, or other payments from a proposed assignee or transferee will not be deemed to be the City's consent to such assignment.

21. DEFAULT

21.1. Defaults and Cure Periods

The parties agree that any failure to perform or observe any term, condition, obligation or other provision in this License shall be a default. For any monetary default, the defaulting party shall have 15 days after written notice from the non-defaulting party to perfect a cure. The defaulting party shall not be entitled to any additional time to cure a monetary default. For any non-monetary default, the defaulting party shall have 30 days after written notice from the non-defaulting party to perfect a cure; provided, however, that for any

non-monetary default that cannot reasonably be cured within 30 days, the defaulting party shall have additional time as is reasonably necessary to perfect the cure if the defaulting party commences to cure the default within the first 30 days after notice and diligently pursues the cure to completion.

21.2. Licensee's Remedies

Except as may be otherwise provided elsewhere in this License, Licensee's sole remedies for the City's uncured default will be (1) to terminate the License on 30 days' prior written notice; and (2) an action for damages subject to the provisions in Section 17 (Limitations on the City's Liability).

21.3. City's Remedies

In addition to all other legal and equitable rights and remedies available to the City, the City will have the following remedies after an uncured default by Licensee:

21.3.1. License Continuation

Without prejudice to its right to other remedies, the City may continue this License with the right to enforce all its rights and remedies, which includes without limitation the right to receive the License Fee and other sums as they may become due.

21.3.2. License Termination

If the City determines, in its sole judgment, that Licensee's default materially impairs the City's ability to perform its municipal functions or threatens public health, safety or welfare, then the City may terminate this License on written notice to Licensee.

21.3.3. Default Fees

In addition to all other rights and remedies available to the City, the City may require Licensee to pay an additional fee for any and all actual costs incurred by the City in connection with a default event to reimburse the City's administrative cost to enforce compliance with this License (each a "**Default Fee**"). Licensee shall pay the Default Fee within 10 days after the City's written demand for reimbursement and reasonable documentation to support such costs. If Licensee fails to timely pay the Default Fee or cure the underlying default within the applicable cure period, the City shall have the right (but not the obligation) to send Licensee a follow-up notice and demand for an additional Default Fee that will be due and payable within 10 days. Licensee's obligation to pay Default Fees is separate and distinct from the underlying default. Default Fee payments shall not be deemed to cure the underlying default.

21.4. Cumulative Remedies

Except as otherwise provided in this License, all rights and remedies available to the City or Licensee are cumulative, and not a substitute for, any rights or remedies otherwise available to the City or Licensee.

22. TERMINATION

This License may be terminated as follows: (1) by a non-defaulting party upon written notice if the defaulting party remains in default beyond any applicable cure period; (2) by the City upon written notice if Licensee attempts to assign or otherwise transfer this License in a manner that violates this License; or (3) by Licensee upon 60 days' prior written notice to the City for any or no reason. In addition, the City has the right to terminate this License on written notice to Licensee when the City determines, in the City's sole discretion, that Licensee's operations on or about the License Area adversely affect or threaten public health and safety, materially interfere with the City's municipal functions or require the City to maintain Vertical Infrastructure that the City no longer needs for its own purposes.

23. HAZARDOUS MATERIALS

23.1. Limitations on Hazardous Materials Use

Licensee covenants and agrees that neither Licensee nor its Agents, clients, customers, invitees, guests, tenants, subtenants, licensees, assignees and/or sublicensees will cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, disposed or Released in, on, under or about the License Area or any other City Property, in whole or part, or transported to or from any City Property in any manner that violates any Environmental Laws; provided, however, that Licensee may use Hazardous Materials in small quantities that are customarily used for routine operation, cleaning and maintenance and so long as all such Hazardous Materials are contained, handled and used in compliance with all Environmental Laws.

23.2. Notice to the City After a Release

Licensee shall immediately notify the City if and when Licensee learns or has reason to believe any Hazardous Material Release has occurred in, on, under or about the License Area or other City Property. Licensee will not be deemed to have assumed liability for any such Release by giving such notice, unless such Release was caused by or arose in connection with Licensee's or its Agent's, client's, customer's, invitee's, guest's, tenant's, subtenant's, licensee's, assignee's and/or sublicensee's acts, omissions or negligence.

23.3. Licensee's Hazardous Material Indemnification Obligations

If Licensee breaches any obligations contained in this Section 23, or if any act, omission or negligence by Licensee or its Agents, clients, customers, invitees, guests, tenants, subtenants, licensees, assignees and/or sublicensees results in any contamination on or about the License Area or other City Property, or in a Hazardous Material Release from, on, about, in or beneath the License Areas or any other City Property, in whole or in part, or any Environmental Law violation, then Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the City and any Indemnified City Parties harmless, 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) that arises during or after the Term related to or in connection with such Release or violation; provided, however, Licensee shall not be liable for any Claims to the extent such Release or violation was caused directly and exclusively by the City's gross negligence or willful misconduct. Licensee's indemnification obligation includes all costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought or Released onto the License Area or other City Property by Licensee or its Agents, clients, customers, invitees, guests, tenants, subtenants, licensees, assignees and/or sublicensees, and to restore the License Area or other City Property to its condition prior to such introduction or Release, or to correct any Environmental Law violation. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and the other Indemnified City 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, and that said obligation arises at the time such Claim is tendered to Licensee by the Indemnified City Party and continues until the Claim is finally resolved. Without limiting the foregoing, if Licensee or any of its Agents, clients, customers, invitees, guests, tenants, subtenants, licensees, assignees and/or sublicensees causes any Hazardous Material Release 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 City Party, take any and all necessary actions to return the License Area and/or other City Property, as applicable, to the condition existing prior to such Hazardous Materials Release 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 directly or exclusively by the City's gross negligence or willful misconduct. 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 that involves Hazardous Material Release covered under this Section 23.

24. RULES AND REGULATIONS

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

25. [Reserved]

26. SURRENDER OF LICENSE AREA

26.1. Removal and Restoration Obligations

Within 30 days after a written demand from the City, Licensee shall, at Licensee's sole cost and expense, remove all Equipment and restore all affected areas to a condition compliant with all applicable Laws, in at least as good as the condition existed immediately before such Equipment were installed, reasonable wear and tear excepted, and to the satisfaction of the Community Development Director or his/her designee. The City may, in its discretion, extend the 30-day period by written notice to Licensee. If Licensee fails to timely perform its removal and restoration obligations under this License, then: (a) Licensee shall remain responsible for all its obligations under this License and liable for all Claims that may arise in connection with the Equipment through and until such Equipment are completely removed and the affected areas are completely restored; (b) the City shall have the right (but not the obligation) to perform such obligations; (c) the City shall have the right to store, sell or destroy any Equipment, improvements, personal property or other things installed by Licensee in connection with this License; and (d) Licensee shall reimburse the City for all costs incurred by the City in connection with such removal and restoration work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs. Within 90 days after any Equipment have been removed, Licensee shall file as-built plans and maps with the Community Development Director or his/her designee in the same manner and subject to the same requirements as provided in Section 6.11 (As-Built Plans and Maps).

27. INSPECTIONS AND REPORTS

27.1. License Area Inspections

At all reasonable times throughout the Term, the Community Development Director or his/her designee, shall have the right (but not the obligation) to: (a) inspect all the Equipment, all appurtenant structures and any other equipment or improvements in the Streets constructed, installed, laid, maintained or operated by Licensee; and (b) evaluate Licensee's compliance with this License and any permit or other authorization in connection with the Equipment. In the event that any such inspection or evaluation concludes that any Equipment were installed, operated or maintained without all Regulatory Approvals or more than five percent (5%) of the Equipment were not installed,

operated or maintained in compliance with this License, any as-built plans or maps associated with the Equipment or any applicable Laws, then Licensee shall reimburse the City for the City's reasonable, actual and documented costs and expenses to conduct the inspection and/or evaluation, which includes without limitation any costs or expenses by any third-party inspectors or consultants.

27.2. Records Maintenance and Audits

Licensee shall maintain throughout the Term (and for at least four years after this License expires or terminates) the following records in physical format at Licensee's Office and in an electronic format: (a) identification information and physical location (e.g., a physical address and/or GPS coordinates) for all Equipment within the City's territorial and/or jurisdictional boundaries; (b) a ledger or other similar document that contains the amount, payment date and reason for all sums paid to the City pursuant to this License; (c) true and correct copies of all as-built plans, maps and Regulatory Approvals in connection with the Equipment; (d) copies of all insurance policies, endorsements and other related documents required to be obtained and maintained under Section 16 (Insurance); and (e) all correspondence with the City in connection with any matter related to this License. To determine whether Licensee has fully and accurately paid all sums payable to the City under this License, if any, and to determine whether Licensee has complied with its other obligations, the City, or its designee, will have the right (but not the obligation) to inspect, audit and make copies of Licensee's records at Licensee's Office during regular business hours on 10 days' notice to Licensee.

27.3. Annual Capital Improvement Forecasts

On or before January 1st in each year after the Effective Date, Licensee shall submit a written report to the Community Development Director or his/her designee that contains: (a) a list of all permits issued by the City in connection with this License in the last calendar year; (b) a description of all construction authorized under such permits, which includes without limitation the total length of all communication lines, wires and cables; (c) the total length of all communication lines, wires and cables actually installed under such permits; and (d) a map that depicts the accurate location for all Equipment. In addition, on or before January 1st in each year after the Effective Date, Licensee shall submit a projected capital improvement forecast for its operations within the City's territorial and jurisdictional boundaries. The capital improvement forecast must include anticipated schedules for all new Equipment and repairs, replacements and modifications to existing Equipment to the extent feasible and with sufficient detail to allow the City to coordinate its own public improvements and other capital improvement projects by third parties.

28. MISCELLANEOUS PROVISIONS

28.1. Notices

Except as may be specifically provided otherwise in this License, all notices, demands or other correspondence required to be given in connection with or pursuant to this License

must be written and delivered through (i) an established national courier service that maintains delivery records and confirmations; (ii) hand delivery; or (iii) certified or registered U.S. Mail with prepaid postage and return receipt requested, and addressed as follows:

TO CITY: City Manager
P.O. Box 520
Pleasanton, CA 94566

with copies to: City Attorney
P.O. Box 520
Pleasanton, CA 94566

TO LICENSEE: _____

with copies to: _____

All notices, demands or other correspondence in connection with this License will be deemed to have been delivered: (a) two days after deposit if delivered by U.S. certified mail; (b) the date delivery is made by personal delivery or overnight delivery; or (c) the date an attempt to make delivery fails if a party changes its address without proper notice or refuses to accept delivery after an attempt. Any copies required to be given constitute an administrative step for the parties' convenience and not actual notice. The parties may change the notice addresses above from time-to-time through written notice to the addresses above or the then-current notice address.

28.2. Waivers

No failure by either the City or Licensee to insist that the other strictly perform any obligation, term, covenant or condition under this License or to exercise any rights, powers or remedies in connection with the other party's failure to strictly perform such obligation, term, covenant or condition no matter how long the failure to insist on such performance or exercise such rights, powers or remedies, will be deemed to waive any default for non-performance. No behaviors, patterns or customs that may arise between the parties with respect to their performance required under this License will be deemed to waive any rights, powers or remedies the parties' may have to insist on strict performance. Neither Licensee's payment nor the City's or its Agents' acceptance of any License Fee or any other sums due to the City or its Agents under this License during any such default will be deemed to cure any such default, waive the City's right to demand

material compliance with such obligation, term, covenant or condition or be deemed to be an accord and satisfaction for any Claim the City may have for further or additional sums. Any express waiver by either the City or Licensee in connection with any default or obligation to perform any provision, term, covenant or condition under this License will: (i) be limited to the specific default or performance for which the express waiver is granted; (ii) not be deemed to be a continuing waiver; and (iii) not affect any other default or performance no matter how similar or contemporaneous such other default or performance may be. The City's or Licensee's consent given in any specific instance in connection with or pursuant to this License will not relieve the City or Licensee from the obligation to secure the other's consent in any other or future specific instances, no matter how similar or contemporaneous the request for consent may be.

28.3. Integration; Amendments

This License constitutes the entire agreement and understanding between the parties, and supersedes any and all prior agreements and understandings, whether written or oral, with respect to the subject matter covered in this License. This License and any default in connection with this License may not be orally changed, waived, discharged, altered, modified, amended or terminated. This License and any default in connection with this License may not be changed, waived, discharged, altered, modified, amended or terminated, except by a written instrument signed by both parties.

28.4. Interpretation

The parties acknowledge and agree that the following interpretive rules will be applicable to this License:

28.4.1. General

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

28.4.2. Joint and Several Liability

In the event that the City consents to enter into this License with more than one Licensee, which consent the City may withhold or condition in the City's sole and absolute discretion, the obligations and liabilities imposed on Licensee under this License will be joint and several among the multiple Licensees to this License.

28.4.3. Captions and Other Reference Material

The section captions in this License and the table of contents have been included for the parties' convenience and reference and neither the captions nor the table of contents in no way define or limit the scope or intent of any provision in this License.

28.4.4. Time

References in this License to “days” mean calendar days, unless specifically provided otherwise. A “business day” means a day other than a Saturday, Sunday or a bank or City holiday. If the last day in 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 giving notice, replying to the notice or undertaking any other action will be the next business day. Except as modified in this Section 28.4.4, time is of the essence with respect to all provisions in this License for which a definite time for performance is specified.

28.4.5. Inclusive Words and/or Phrases

Inclusive terms and/or phrases, which includes without limitation the terms and/or phrases “including,” “such as” or similar words or phrases that follow any general or specific term, phrase, statement or matter may not be construed to limit the term, phrase, statement or matter to the stated terms, statements or matters, or the listed items that follow the inclusive term or phrase, whether any non-limitation language or disclaimers, such as “including, but not limited to” and/or “including without limitation” are used or not. Rather, the stated term, phrase, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within such term, phrase, statement or matter given its broadest interpretation.

28.5. Successors and Assigns

Except as may be expressly provided in this License, the conditions, covenants, promises and terms contained in this License will bind and inure to the benefit of the City and Licensee and their respective successors and assigns.

28.6. Brokers

The parties represent to each other that neither has had any contact, dealings or communications with any Broker in connection with this License, whose commission, if any, would be paid pursuant to a separate written agreement between such Broker and such party with which such Broker contracted. In the event that any Broker perfects any claim or finder’s fee based upon any such contact, dealings or communications, the party to such written contract with such Broker shall indemnify the other party from all Claims brought by such Broker. This Section 28.6 will survive this License’s expiration or earlier termination.

28.7. Governing Law; Venue

This 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 License is made, entered and will be performed in the City of Pleasanton, County of Alameda, State of

California. Any action concerning this License must be brought and heard in the California Superior Court for the County of Alameda.

28.8. Litigation Fees and Costs

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

28.9. Recording

Licensee acknowledges and agrees that: (1) this License affects the City's personal property and therefore cannot be recorded in any official records; (2) Licensee shall not have the right to record this License, any memorandum or any short-form agreement in relation to this License; and (3) Licensee shall, at Licensee's sole cost and expense, remove any document or other instrument recorded against the City's title to any City Property promptly upon the City's request or demand. In the event that this License affects or is deemed to affect any real property owned by the City, Licensee may not record any document or instrument in connection with this License without the City's prior written consent, which the City may withhold in the City's sole and absolute discretion.

28.10. No Third-Party Beneficiaries

This License is not intended to (and shall not be construed to) give any third party, which includes without limitation Licensee's customers or any other third-party beneficiaries, any right, title or interest in this License or the real or personal property(ies) that may be affected by the same.

28.11. Survival

All terms, provisions, covenants, conditions and obligations in this License will survive this License's expiration or termination when, by their sense or context, such provisions, covenants, conditions or obligations: (1) cannot be observed or performed until this License's expiration or earlier termination; (2) expressly so survive; or (3) reasonably should survive this License's expiration or earlier termination. Notwithstanding any other provision in this License, the parties' rights to enforce any and all indemnities, representations and warranties given or made to the other party under this License or any provision in this License will not be affected by this License's expiration or termination.

28.12. Severability

If any provision in this License or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (1) such provision or its application to such person, entity or circumstance will be deemed severed from this License; (2) all other provisions in this License or their application to any person, entity or circumstance will not be affected; and (3) all other

provisions in this License or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by Law, except to the extent that such enforcement would (a) be manifestly unreasonable or manifestly inequitable under all the circumstances or (b) undermine one or both parties' fundamental purpose in entering this License.

[END OF AGREEMENT – SIGNATURES APPEAR ON NEXT PAGE]

DRAFT

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

THE CITY:

City of Pleasanton,
a California municipal corporation

By: _____
Nelson Fialho
City Manager

Date: _____

LICENSEE:

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

By: _____
Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Daniel Sodergren
City Attorney

Date: _____

ATTEST:

By: _____
Karen Diaz
City Clerk

Date: _____

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

SCHEDULE 1

ANNUAL LICENSE FEE

YEAR OF TERM	YEAR	ANNUAL LICENSE FEE
1	2019	\$270.00
2	2020	\$278.10
3	2021	\$286.44
4	2022	\$295.04
5	2023	\$303.89
6	2024	\$313.00
7	2025	\$322.39
8	2026	\$332.07
9	2027	\$342.03
10	2028	\$352.29

SCHEDULE 2

CITY'S ESTIMATED FAIR MARKET LICENSE FEES

YEAR	ANNUAL LICENSE FEE
2019	\$1,000.00
2020	\$1,030.00
2021	\$1,060.90
2022	\$1,092.73
2023	\$1,125.51
2024	\$1,159.27
2025	\$1,194.05
2026	\$1,229.87
2027	\$1,266.77
2028	\$1,304.77
2029	\$1,343.92
2030	\$1,384.23
2031	\$1,425.76
2032	\$1,468.53
2033	\$1,512.59
2034	\$1,557.97
2035	\$1,604.71
2036	\$1,652.85
2037	\$1,702.43
2038	\$1,753.51

EXHIBIT A-1
LICENSE AREA

[reserved]

DRAFT

EXHIBIT A-2
APPROVED PLANS

[reserved]

DRAFT

EXHIBIT B

LICENSEE'S INSURANCE OBLIGATIONS

[reserved for preface]

(a) Required Insurance Policies and Limits

Licensee shall procure and keep in effect at all times during the Term, at Licensee's sole cost and expense, insurance policies with coverage and limits as stated below. The required limits may be met by a combination of primary and excess or umbrella insurance.

(1) Commercial General Liability Insurance

Licensee shall obtain and maintain commercial general liability insurance (including premises operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability meeting the indemnification provisions herein; independent contractors; and personal injury) with a combined single limit for each occurrence of not less than Five Million Dollars (\$5,000,000).

(2) Workers' Compensation Insurance

Licensee shall obtain and maintain workers' compensation insurance per California statutory limits with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) per each accident or disease.

(3) Commercial Automobile Liability Insurance

Licensee shall obtain and maintain commercial automobile liability insurance, for owned, non-owned and hired autos, with a combined single limit for bodily injury and property damage of not less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage.

(4) "All Risk" Property Insurance

Licensee shall obtain and maintain a property insurance policy for perils usual to a standard "all risk" insurance policy that covers all Licensee's Equipment within the Streets, and with limits equal to the cumulative replacement value for all such Equipment.

(b) Required Endorsements

Commercial General Liability Insurance and Commercial Automotive Liability Insurance policies must contain the following endorsements: (1) name the City, its officers, agents, employees and volunteers as additional insureds; (2) that such policies are primary insurance to any other insurance available to the additional insureds with respect to any Claims that arise in connection with this License; (3) that such insurance applied

separately to each insured against whom a Claim is made or brought, except with respect to limits; (4) that such policies provide for the severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not void or otherwise reduce coverage as to any other named insured; and (5) that such policies shall afford coverage for all Claims based on acts, omissions, for bodily injury or property damage that occurred or arose (or the onset occurred or arose) in whole or in part during the policy period.

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

All insurance policies required to be maintained by Licensee under this License shall contain a standard separation of insureds provision. No insurance policies required to be maintained by Licensee under this License may contain any special limitations on the scope of protections to the City or any Indemnified City Party.

(c) Claims-Made Policies

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

(d) General Aggregate Limit

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

(e) Certificates

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

(f) Insurer Qualifications

Licensee's insurance providers must be licensed to do business in California and must meet or exceed an A.M. Best's Key Rating A-IX or its equivalent. Any other insurance providers shall require the prior approval by the City's Risk Manager, which approval may be refused in the City's Risk Manager's sole discretion.

(g) Waiver of Subrogation

Licensee and Licensee's insurers each hereby waives any right of recovery against the City for any loss or damage sustained by Licensee with respect to the License Area, in whole or in part, the contents on, under, above or within the License Area or any operation therein, whether such loss is caused by the City's fault or negligence or not, and to the extent such loss or damage is covered by insurance obtained by Licensee under this License or is actually covered by insurance obtained by Licensee. Licensee 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.

(h) Prohibition Against Self-Insurance Alternatives

Licensee shall not be permitted to meet its insurance obligations under this License through self-insurance without prior written consent from the City, which the City may withhold in its sole discretion for any or no reason. In the event that the City consents to allow Licensee to self-insure as an alternative insurance program, such consent will not be deemed: (1) an amendment or implied waiver to any other requirement in this License; (2) to extend to any assignee or successor to Licensee; or (3) to waive or lessen Licensee's obligation to comply with Section (i) to this **Exhibit B**.

(i) Contractor's Bonds and Insurance

Licensee shall ensure that any person or entity performing work or service on Licensee's behalf or for Licensee's benefit pursuant to this License within the Streets or on any City Property shall secure or provide all bonds and insurance required to be secured or provided by Licensee under this **Exhibit B**, and shall provide the City with evidence to show such bonds or insurance exist before the City issues any permits for such work. In the event that any applicable Law imposes any bonding or insurance requirements on Licensee's contactors or subcontractors that are more protective to the City's interests, such requirements shall control over the requirements in this **Exhibit B**.

(j) City's Right to Terminate

The City may elect, in its sole and absolute discretion, to terminate this License on written notice to Licensee if Licensee allows any required insurance coverage to lapse and does

not reinstate the lapsed insurance coverage within three days after Licensee receives such written notice.

(k) No Limitation on Licensee’s Indemnification Obligations

Licensee’s insurance obligations under this **Exhibit B** in no way relieves, decreases or modifies Licensee’s liability or Licensee’s obligations to indemnify, protect and hold the City and any Indemnified City Parties harmless under any other provision in this License.

(l) [reserved]

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