

POLE LICENSE AGREEMENT

between

**CITY OF RICHMOND, A CALIFORNIA MUNICIPAL CORPORATION AND CHARTER
CITY**

and

**NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY
COMPANY**

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POLE LICENSE AGREEMENT

This POLE LICENSE AGREEMENT (“**License**”) dated _____ (the “**Effective Date**”) is between the CITY OF RICHMOND, a chartered California municipal corporation (the “**City**”) and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (“**Licensee**”).

BACKGROUND

- A. 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 of the rights-of-way within the City’s 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. 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. On September 27, 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 sixty (60) or ninety (90) days; and
- D. Licensee installs and maintains wireless communications facilities on existing vertical infrastructure in the public right-of-way; and
- E. 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

- F. 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
- G. 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
- H. 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
- I. The City desires to authorize Licensee's access to an individual City-owned pole, or a batch of up to five individual pole(s) 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
- J. 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
- K. On [date], the City Council of the City of Richmond adopted Resolution No. [number], which 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 by the City for Licensee's construction and/or installation work in connection with the License

Area, 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 Richmond, 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 any 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 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, invited 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) which shall be reasonably approximate to the City’s objectively reasonable costs consistent with applicable Laws.

“Licensee’s Office” means Licensee’s place(s) of business located at 5001 Executive Parkway, San Ramon, CA 94583 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.

“Preliminary Plans” mean 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 but not yet approved by the City in connection with the License Area.

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

“Regulatory Fees” means fees associated with 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. All Regulatory Fees shall be reasonably approximate to the City’s objectively reasonable costs consistent with applicable Laws.

“Reimbursement Fees” means other fees for which the City has the right to receive reimbursement from Licensee under Applicable Laws. All Reimbursement Fees shall be reasonably approximate to the City’s objectively reasonable costs consistent with applicable Laws.

“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.

2. LICENSE AREA

2.1. License Area Defined

The parties to this License define **“License Area”** to mean that certain space on 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). The parties may batch up to five (5) Vertical Infrastructure in this License and each License Area shall be more particularly described and depicted in additional exhibits that comply with all the requirements of **Exhibit A-1** and **Exhibit A-2**, provided, however that when batching of Vertical Infrastructure may occur under this License, Licensee's use of each Vertical Infrastructure shall be deemed to be a separate and distinct stand-alone license notwithstanding that the Vertical Structure may have been batched in one application and confirmed in additional exhibits to this License. As an illustration, and not as a limitation, a default declared by the City under this License pursuant to Section 21.1 below with respect to a Vertical Infrastructure shall be a default of that Vertical Infrastructure only, and such default shall not apply to any other Vertical Infrastructure identified in this License. The License Area shall be for Licensee's exclusive use subject to the terms and conditions of this License including the City's paramount rights which will be superior to Licensee's rights at all times as set forth in Section 2.2. below.

2.2. Limited Rights Created

This License grants Licensee only a non-possessory license to enter on to and use the License Area for the Permitted Use. The license shall be revocable in accordance with the terms and conditions of this License. Licensee expressly acknowledges and agrees that: (1) 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 Richmond 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 Richmond 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 initial term under this License shall commence on the Effective Date and expire ten (10) years from the Effective Date (the “**Initial Term**”). Following the expiration of the Initial Term, this License shall automatically renew for two (2) subsequent terms of five (5) years each (each a “**Renewal Term**”) unless either party provides the other party with at least one hundred eighty (180) days’ written notice prior to the expiration of the then-current term of their intent not to renew. Licensee may apply for a new license within no later than thirty (30) days before this License term expires, or at any time after this License’s expiration or termination.

5. FEES

5.1. Annual License Fee/Regulatory Fees/Reimbursement Fees

Licensee shall pay the first annual License Fee within thirty (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, other than as provided in Section 5.3 below for late 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 three percent (3%) each year on the anniversary of the Effective Date. In addition to the License Fee, Licensee shall pay application and permit fees which comprise a part of Regulatory Fees at the time of Licensee's filing of the application or permit, as the case may be. Other Regulatory Fees not due at the time of Licensee's filing of the application or permit, as the case may be, shall be paid as otherwise specified under applicable Laws or the City's usual course of business that does not conflict with applicable Laws.

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 reasonable approximation of the City's objectively reasonable costs consistent with applicable Laws that are 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 a resolution approved and adopted by the City Council (a "**Fee Resolution**") 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 Resolution or an Adjustment Notice. Any adjustment by Fee Resolution shall be effective at the same time such Fee Resolution 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 Richmond 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 within 10 days after the City notifies that such amounts are due and unpaid, such amounts will be subject to a late charge equal to six percent (6%) 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 simple interest at ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, from the due date when not paid within ten (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 a reasonable approximation of the City's costs consistent with applicable Laws where the costs themselves are reasonable and are non-discriminatory 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 such 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, reasonable and documented costs incurred by the City in the future consistent with applicable Laws. Licensee shall reimburse the City for all such costs within thirty (30) days after Licensee's receipt of a written demand from the City for reimbursement and reasonable documentation to support such costs. The provisions in this Section 5.5 shall survive the expiration, revocation or termination of this License.

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 reasonable and actual 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 reasonable and actual 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 a repeal or invalidation of the Order or other such laws described in this Section 5.6 is final and unappealable, the then-current License Fee shown in **Schedule 1** and the License Fee in all remaining years on the Term shall be replaced by the amount(s) shown in **Schedule 2** (City's Estimated Fair Market License Fees), attached hereto and incorporated herein upon thirty (30) days' written notice to Licensee, provided; however, that the replacement fee shall be prorated for the remainder of the first year in which the then current License Fee is replaced. "Final and unappealable" as used in this Section 5.6 means: (1) all appeal rights by the FCC or its supporting intervenors have elapsed or been exhausted after a judicial order finding the limitations on the License Fee invalid for any reason, regardless of whether such order includes a remand to the agency for further proceedings; or (2) Congress has legislatively repealed or otherwise invalidated the limitations on the License Fee. As an illustration, and not as a limitation, if the License Fee commenced in 2021 and there was a final and unappealable invalidation of the Order or Congress has legislatively repealed or otherwise invalidated the limitations on the License Fee in 2023, then the License Fee in 2023 would increase from \$286.44 to \$1,591.35 with proration of the replacement fee for the remainder of 2023, the License Fee in 2024 would be \$1,639.09 and so on until the License expires in 2041 or was earlier terminated in accordance with its terms.

5.7. In Lieu Fee for Landscape Restoration and Maintenance

If the installation, construction or other work on or about the License Area damages or destroys any landscape features that would require the Licensee to repair, replace and/or maintain any existing or new landscape features pursuant to the Richmond Municipal Code or other applicable City policies, the City may (but shall not be obligated to) enter into a written agreement with the Licensee to accept an in-lieu fee for the actual cost to repair, replace and/or maintain the existing and/or new landscape features on the Licensee's behalf. Such in-lieu fee(s) shall be established by the City in consultation with the Licensee and shall be reasonably related to the actual cost of any such repair, replacement and/or maintenance necessitated by the damage or destruction caused by Licensee's installation, construction or other work.

6. CONSTRUCTION, INSTALLATION AND MODIFICATIONS

6.1. 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.

6.2. Compliance with Approved Plans

Upon the City's approval of all permits required to commence construction for Licensee's construction and/or installation work on the License Area, the Approved Plans shall be substituted for the Preliminary Plans. Licensee shall perform all installation, construction and other work in connection with the License Area (1) in accordance with the terms and conditions in this License; (2) 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 Richmond Municipal Code and any conditions in any applicable Regulatory Approvals; (5) in a safe, diligent, skillful and workmanlike manner; and (6) to the City's satisfaction limited to the enumerated factors within this Section 6.2. 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, normal wear and tear excepted.

6.3. Changes or Corrections to Approved Plans

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.

6.4. 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 (5) 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.

6.5. 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.

6.6. 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.

6.7. 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.

6.8. 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, normal wear and tear excepted, performed pursuant to this Section 6.8 shall be performed under the City’s supervision and to the City’s satisfaction.

6.9. 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, then the following process and standards shall apply.

(a) Routine Maintenance/Repair & “Like for Like” Replacement. Without the requirement of obtaining the City’s prior consent, Licensee shall have the right to (a) perform routine maintenance and repair of any Equipment installed on a Vertical Infrastructure approved for use by the City pursuant to this License, and (b) perform “like-for-like” replacements of Equipment so long as (i) any such “like-for-like” replacement does not alter the visible aesthetic appearance of the installed Equipment, and (ii) the resulting installation does not (A) result in an increase in the size of the License Area, (B) materially increase the weight, size or structural loading of Licensee’s Equipment or on the applicable Vertical Infrastructure beyond the loading or utilization, if any, that was established as of the Effective Date of this License or any subsequent City approval of Licensee’s Equipment for which City’s prior written consent was required, as the case may be; (c) does not change the status of Licensee’s compliance with radio frequency emission standards under applicable Laws and (d) and does not cause any interference with any municipal functions or equipment.

(b) All Other Modifications, Additions or Upgrades. Any other modification, addition or upgrade to Licensee's Equipment installed on a Vertical Infrastructure pursuant to this License shall require the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Compliance. Notwithstanding any modification, addition and/or upgrade rights granted to Licensee under this License, all work performed by or on behalf of Licensee pursuant to this License 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.

6.10. Post-Completion Inspections

Within ten (10) days after Licensee completes any Equipment construction, installation or other work for which the prior written consent is required under this License, Licensee shall provide the City with a written notice that confirms the precise locations and dates on which the 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 a reasonable time as determined by the City but not to exceed thirty (30) days, but in no event less than fifteen (15) business days following Licensee's receipt of the City's written notice of the alleged defects or non-compliance conditions, provided that the defects and conditions do not present a threat to public health and safety. Inspections and any re-inspections reasonably considered necessary by the City are deemed by the Parties to be "Regulatory Fees" and Licensee shall promptly reimburse the City for the same within thirty (30) days of Licensee's receipt of City's invoice accompanied by reasonable evidence of the Regulatory Fees so incurred by the City.

6.11. As-Built Plans and Maps

Within thirty (30) days after the City issues a certificate of completion, Licensee shall submit to the City as-built plans and maps in a format reasonably specified by the City. In addition to any format required by the City, 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 thirty (30) days after notice from the City. The City shall have the right to incorporate the as-built plans for the then-current description of the License Area in Exhibit A-1 and/or the then-current Approved Plans in Exhibit A-2.

6.12. 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. All replacement Vertical Infrastructure shall become City Property upon the City's approval and acceptance. After Licensee installs any replacement Vertical Infrastructure, the City will have the right to inspect the improvements and installation work and accept, reject and require corrections to such improvements or installation work to conform such improvements or installation work to the Approved Plans and/or applicable Laws. Licensee shall make any and all such conforming corrections to any replacement Vertical Infrastructure within 60 days after a rejection by the City. Paying for the cost of the replacement Vertical Infrastructure does not provide Licensee with any ownership interest in the replacement Vertical Infrastructure, which the City shall be deemed to own. Licensee acknowledges and agrees that the City's approval of this License will be the only consideration due to Licensee in exchange for transferring title to any replacement Vertical Infrastructure to the City, and Licensee will not be entitled to any additional pecuniary or non-pecuniary consideration. Such License Area shall be deemed abandoned if Licensee's Equipment in the License Area is not in operation for any continuous six-month period except if such non-operation is due to acts of nature or other force-majeure circumstances or beyond the reasonable control of Licensee. Subject to Sections 22 (Termination) and 26 (Surrender of License Area), Licensee may remove its Equipment from the License Area at any time after thirty (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 Richmond 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. Licensee's failure to provide notice to the City shall not be a material default entitling the City to terminate this License unless Licensee or its Agents or Invitees caused such damage or other alteration and Licensee fails to repair the damage or other alteration within the time period prescribed for notice and cure under this License following Licensee's receipt of City's written notice of the damage or other alteration alleged to be caused by Licensee, its Agents or Invitees. The Parties acknowledged and agree that Licensee's failure to notify the City of damage or other alteration caused by any party other than Licensee, its Agents or Invitees may result only in an action for damages against Licensee.

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 fifteen (15) business days after Licensee's receipt of 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 if Licensee has not completed its repair within fifteen (15) business days' following Licensee's receipt of written notice from the City or without prior notice to Licensee when the City determines that the repair and/or restoration is immediately necessary to protect public health or safety. Licensee acknowledges that repair or restoration undertaken by the City shall be deemed to be Reimbursement Fees, and Licensee shall promptly reimburse the City for the same within thirty (30) days of Licensee's receipt of City's invoice accompanied by reasonable evidence of the Reimbursement Fees so incurred by the City.

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 except to the extent of the sole active negligence or willful misconduct of the City or any Indemnified City Parties, or any of them.

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 and/or the Equipment deployed under this License within three (3) days of Licensee's receipt of written notice from the City or as may be required under the Richmond Municipal Code, whichever is greater.

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 License. In the event that the City 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 which in no event shall be less than thirty (30) days following Licensee's receipt of written notice of the City's intention to undertake City Work which requires the rearrangement and/or relocation of Licensee's Equipment, then thereafter, 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 determines that the City Work is immediately necessary to protect public health or safety. The City shall not be responsible for damage to, repairs to or maintenance of the Equipment or for any associated costs except to the extent caused by the City, its employees, Agents, contractors or subcontractors. The City's work to rearrange or relocate Licensee's Equipment shall be deemed to be Reimbursable Fees, and Licensee shall promptly reimburse the City for the same within thirty (30) days of Licensee's receipt of City's invoice accompanied by reasonable evidence of the Reimbursement Fees so incurred by the City. 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 except to the extent of the sole active negligence or willful misconduct of the City, the Indemnified City Parties, of any of them. Within ninety (90) days after any Equipment have been rearranged or relocated, Licensee

shall file as-built plans and maps with the City 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 ninety (90) days after any Third-Party Accommodations, Licensee shall file as-built plans and maps with the City 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 may be subject to prevailing wage rate payment as set forth in California Labor Code § 1771. The Licensee shall be solely responsible in determining whether prevailing wages apply under 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**"). Within ten (10) business days following Licensee's receipt of the City's written request, Licensee shall make available during Licensee's regular business hours for the City to inspect at Licensee's corporate offices in Contra Costa County which Licensee shall designate, copies of, Licensee's payroll records that pertain to this License and are subject to the Prevailing Wage Policies and other relevant proof of compliance with the Prevailing Wage Policies consistent with the requirements in California Labor Code § 1776, as may be amended or superseded. The City shall also have the right to copy such records, subject to the City's written agreement that the City shall only disclose such records to the extent that the City is required under applicable Laws to make such records available for review by or disclosure to third parties.

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.

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).

Without limiting Licensee's obligation to defend, indemnify and hold the City and Indemnified City Parties harmless as provided in this Section 9.4, the City acknowledges that Licensee maintains that services to be provided under this License are not subject to Prevailing Wage Policies, and nothing in this Section 9.4 or elsewhere in this License is intended to waive or release any Claims or rights of Licensee to assert that such services are not subject to Prevailing Wage Policies.

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 disruption to 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. Notwithstanding the foregoing, the City and Licensee hereby agree to comply with FCC guidelines and protocols with regard to third party interference.

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 thirty (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 thirty (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 ten (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; however, the City shall make good faiths effort to make its utility infrastructure available to Licensee as part of this License when the City determines that it is feasible to do so, or the City will make good faith efforts to identify an alternative and comparable Vertical Infrastructure where the City would permit Licensee to use the City's utility infrastructure for its Permitted Use. Licensee 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 and shall directly pay the electric service provider in the event of any "submetering." 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 and shall not compromise or affect the City's then-existing tariff rates.

14. TAXES AND OTHER ASSESSMENTS

Pursuant to Revenue and Taxation Code Section 107.6, 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 thirty (30) days after receipt) forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount attributable to Licensee's Equipment. 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, 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 caused by the sole active negligence or willful misconduct of the City, the Indemnified City Parties, or any of them. 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 Indemnified City Parties, or any of them. Such legal counsel retained by Licensee shall possess not less than ten (10) years' experience in defending clients in similar actions or proceedings as those brought against the Indemnified City Parties; (b) is duly licensed to practice law in the State of California by the State Bar of California; (c) has no past or pending disciplinary actions by any United States tribunal or state bar association; and (d) has no actual or potential conflicts of interest with any Indemnified City Parties. 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 and endorsements. Once in any consecutive three (3) year period, the City shall have the right to amend or replace the insurance requirements contained in **Exhibit B** on 60 days' prior written notice to Licensee if the City's risk manager determines that the then-current insurance requirements are inadequate to protect the City against risks associated with the Permitted Use or as may be required to comply with applicable Laws; provided, however, that Licensee may request to meet and confer with the City during the 60-day period to ensure that Licensee can reasonably comply with the amended or replaced requirements in **Exhibit B**. Any noncompliance with any insurance requirements in this License by Licensee or its contractors or subcontractors shall entitle the City to declare Licensee in default of this License subject to Licensee's right to cure such non-compliance within the time period prescribed in Section 21.1 of this License following Licensee's receipt of the City's written notice alleging Licensee's non-compliance with any required insurance in **Exhibit B**.

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 by the sole active negligence or willful misconduct of the City, the Indemnified City Parties, or any of them. 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 the revocation, termination or expiration of this License.

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. The City shall only be responsible to Licensee for damage to Licensee's Equipment to the extent caused by City, its employees, Agents, contractors or subcontractors. Within approximately thirty (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 they will need to complete the work. If the City cannot complete the work within forty-five (45) 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 fifteen (15) days' notice to the City. If Licensee elects not to terminate this License, payment of the License Fee shall abate until Licensee is able to resume full on-air operation of its Equipment in the ordinary course of Licensee's business, except that Licensee shall not be exempted from its obligations to reimburse the City for the City's actual costs caused by Licensee during this period. 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 thirty (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 of any request by Licensee for a substantially similar license on a different pole as a replacement for this License and shall prioritize its review of any request by Licensee for Regulatory Approvals for a temporary facility.

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.

18.4 Insurance Proceeds

In the event the License Area in whole or in part becomes damaged due to any cause, Licensee shall be entitled to collect all insurance proceeds payable to Licensee; however, the Vertical Infrastructure itself and any related improvements in the License Area, other than Licensee's Equipment, shall be the City's fixtures and Licensee's recovery of any insurance proceeds shall not reduce the proceeds that the City is entitled to collect.

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 to 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, such costs not to exceed Two Thousand Dollars (\$2,000.00); and/or (4) at any time in which any Default by Licensee remains uncured.

20.2. Permitted Assignments

Notwithstanding Section 20.1, 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 (d) 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 no later than thirty (30) days following the effective date of such Permitted Assignment, stating the name and contact information for the assignee; (iv) Licensee was not in default of this License beyond the applicable notice and cure period on the effective date of the Permitted Assignment; (v) the assignee has assumed, in writing, all of Licensee's obligations under this License from and after the effective date of the Permitted Assignment. Additionally, within fifteen (15) business days following Licensee's receipt of the City's written request, Licensee shall furnish the City with reasonable written evidence that the assignee or transferee has assumed in writing all of Licensee's obligations under this License from and after the effect date of the Permitted Assignment. If the City chooses to review the Permitted Assignment, Licensee shall be responsible to reimburse the City up to Two Thousand Dollars (\$2,000.00) for legal fees and City staff time actually incurred by the City to review the Permitted Assignment. Such reimbursement shall be paid within thirty (30) days after Licensee's receipt of the City's invoice accompanied by reasonable evidence of the costs incurred by the City.

20.3. Effect of Assignment

No assignment or transfer 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. Instead Licensee shall remain jointly and severally liable along with the assignee for all obligations to be performed by the assignee.

Any assignment or transfer that is not in compliance with this Section 20 will be voidable by the City upon forty-five (45) days' prior written notice and opportunity cure. The City may issue such notice that an assignment or transfer is voidable at any time and the City's failure to issue such notice is not a waiver of such right. The City's receipt or acceptance of any License Fee, Regulatory Fees, Reimbursement Fees, or other payments from a proposed assignee or transferee, or assignee or transferee pursuant to a Permitted Assignment will not be deemed to be the City's consent to such assignment or Permitted Assignment, as the case may be.

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 fifteen (15) days after the party's receipt of 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 thirty (30) days after the party's receipt of 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 such thirty (30) day period, 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 thirty (30) days after the party's receipt of the written notice and diligently pursues the cure to completion. Delay in curing a non-monetary default will be excused on a day for day basis due to any Act of God, event of force majeure, or other circumstance beyond the reasonable control of the defaulting party. To the extent that this License batches multiple Vertical Infrastructures under one license as described in Section 2.1, the City must identify in its written notice to Licensee the specific Vertical Infrastructure(s) that is/are subject to the notice of default.

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 thirty (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, provided, however, if the License contains more than one Vertical Infrastructure in the License due to batching of multiple Vertical Infrastructures as permitted under this License, then the License shall

only terminate as to the Vertical Infrastructure contained in the City's written notice of default delivered to Licensee under Section 21.1 above, and the License shall remain in full force and effect as to the remaining Vertical Infrastructure(s) that are not identified in the City's written notice of default delivered 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 reasonable and actual costs incurred by the City in connection with a default event to reimburse the City's reasonable and actual administrative cost to enforce compliance with this License (each a "**Default Fee**") as described on **Exhibit C**. Licensee shall pay the Default Fee within thirty (30) days after Licensee's receipt of the City's written demand for reimbursement and reasonable documentation to support such reasonable and actual costs. If Licensee fails to timely pay the Default Fee or cure the underlying default within the applicable cure period in Section 21.1 above, the City shall have the right to assess to Licensee an additional Default Fee pursuant to a further written notice to Licensee provided that such additional Default Fee may not be assessed more often than one (1) time in any consecutive thirty (30) day period, or until the expiration of the applicable cure period under the License, whichever date is later to occur. Such additional Default Fee shall be due and payable within thirty (30) days of Licensee's receipt of the additional Default Fee. 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; or (2) by Licensee upon sixty (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 or on thirty (30) days' prior written notice to Licensee when the City determines, in the City's sole discretion, that Licensee's operations on or about the License Area 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. If the City terminates this License for reasons unrelated to Licensee's failure to perform under this License, the City shall make good faith efforts to prioritize its review of any request by Licensee for a substantially similar license on a different pole as a replacement for this License.

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 sole active 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 by the sole active negligence or willful misconduct of the City, the Indemnified City Parties, or any of them. 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. PERFORMANCE BOND

Before the City issues any Regulatory Approval required to commence construction, installation or other work in connection with the Equipment, Licensee shall, at its sole cost and expense, post a performance bond from a surety and in a form acceptable to the City in an amount reasonably necessary to cover the cost to remove the Equipment and all associated improvements and completely restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all the Equipment and all associated improvements, which includes, without limitation, all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the Equipment, plus the cost to completely restore any areas affected by the removal work to a condition that is neat, clean, safe and compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the City shall take into consideration any information provided by Licensee regarding the cost to remove the Equipment as provided in this Section 25. The performance bond shall expressly survive the Term to the extent required to completely remove the subject Equipment and restore the affected areas in accordance with this

Section 25. This Section 25 shall only apply to the same extent that a substantially similar performance bond requirement is required by the City Council's Policy Regulating Small Wireless Facilities, as this Policy may be amended or superseded from time to time.

26. SURRENDER OF LICENSE AREA

Within a reasonable time, as determined by the City Engineer, which absent an emergency as determined by the City Engineer shall be no less than thirty (30) days after Licensee's receipt of a written demand from the City following the expiration or earlier termination of this License, Licensee shall, at Licensee's sole cost and expense, remove all Equipment from the License Area 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 was installed, reasonable wear and tear excepted, and to the City's satisfaction. The City may, in its discretion, extend the thirty (30)-day period by written notice to Licensee. In addition to the foregoing, in the event that this License involves replacement Vertical Infrastructure, Licensee shall, at the City's sole discretion, replace the Vertical Infrastructure with either (i) a standard City pole, or (ii) the Vertical Infrastructure that existed immediately prior to Licensee's replacement of same with the replacement Vertical Infrastructure. The City's acceptance of any replacement Vertical Infrastructure shall be in accordance with Section 6.12. 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 is 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) the City's removal and restoration costs performed on behalf of Licensee shall be deemed to be Reimbursable Fees, and Licensee shall promptly reimburse the City for the same within thirty (30) days of Licensee's receipt of the City's invoice accompanied by reasonable evidence of the Reimbursement Fees so incurred by the City. Within ninety (90) days after Licensee completes the removal of Licensee's Equipment, Licensee shall file a punch list of any remaining improvements not removed, including but not limited to conduits, utility boxes and handholes, as depicted on the most current as built plans and maps on file with the City.

27. INSPECTIONS AND REPORTS

27.1. License Area Inspections

At all reasonable times throughout the Term, the City 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 pertaining to this License; and (b) evaluate Licensee's compliance

with this License and any Regulatory Approval in connection with the Equipment. In the event that any such inspection or evaluation concludes that any Equipment was installed, operated or maintained without all Regulatory Approvals or there is a “Material Defect” in the Equipment installed, operated or maintained pursuant to any Regulatory Approval, then the costs of the City’s inspection or evaluation, including any costs or expenses by any third-party inspectors or consultants, shall be deemed a Regulatory Fee, and Licensee shall promptly reimburse the City for the same within thirty (30) days of Licensee’s receipt of the City’s invoice accompanied by reasonable evidence of the Regulatory Fee so incurred by the City. A “Material Defect” means: (1) a substantial deviation from the Approved Plans; and/or (2) an existing violation of an objective health and safety standard which materially and adversely affects the public health or safety of the general public.

27.2. Records Maintenance and Audits

Licensee shall maintain throughout the Term (and for at least four (4) 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; and (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. To determine whether Licensee has fully and accurately paid all sums payable to the City under this License, if any, 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 thirty (30) days’ prior written notice to Licensee once every three (3) years, but if the City discovers any material discrepancies in payment by Licensee, the City shall have the right to conduct additional audits within such three (3)-year period. Any City copying of records pursuant to this Section 27.2, shall be subject to the City’s written agreement that the City shall only disclose such records to the extent that the City is required under applicable Laws to make such records available for review by or disclosure to third parties.

27.3. Annual Licensee Build-Plan Forecasts

With Licensee’s first filing of a new application for a License during each year of the Term of this License, Licensee shall submit a non-binding forecast of the number and general areas within the City that Licensee is then forecasting to apply for new applications and modifications to existing Equipment pursuant to then existing Licenses. The forecast shall include to the extent known by Licensee at the time of the filing, the anticipated schedules for all new Equipment and repairs, replacements and modifications to existing Equipment. The Parties acknowledge that the non-binding forecast is designed to try and generally assist the City to coordinate its own public improvements and other capital improvement projects by third parties; however, Licensee shall have no liability to the City resulting from any inaccuracies in the information presented in Licensee’s forecast. If Licensee has filed a non-binding forecast with the City in connection with any other License, then Licensee’s

annual filing requirement of a non-binding forecast for this License shall be deemed fully satisfied.

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 of Richmond
450 Civic Center Plaza
Richmond, California 94804
Attn: City Manager

with copies to: City of Richmond
450 Civic Center Plaza
Richmond, California 94804
Attn: City Attorney

City of Richmond
450 Civic Center Plaza
Richmond, California 94804
Attn: IT Director

TO LICENSEE: New Cingular Wireless PCS, LLC
Attn: Tower Asset Group – Lease Administration
Re: AT&T-City of Concord Pole License
Fixed Asset # _____
1025 Lenox Park Blvd. NE, 3rd Floor
Atlanta, GA 30319

with copies to: New Cingular Wireless PCS, LLC
Attn: Legal Department – Network Operations
Re: AT&T-City of Concord Pole License
Fixed Asset # _____
208 S. Akard Street
Dallas, TX 75202-4206

All notices, demands or other correspondence in connection with this License will be deemed to have been delivered: (a) the date delivery is received by personal delivery, certified or registered U.S. Mail with return receipt requested, or overnight delivery; or (b)

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 and the Richmond City Charter, without regard to the principles of conflicts of law. This License is made, entered and will be performed in the City of Richmond, County of Contra Costa, State of California. Any action concerning this License must be brought and heard in the California Superior Court for the County of Contra Costa.

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]

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

THE CITY:

City of Richmond,
a California municipal corporation
and charter city

By: _____

Its: City Manager

Date: _____

LICENSEE:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Teresa Stricker
City Attorney

ATTEST:

By: _____
Pamela Christian
City Clerk

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

SCHEDULE 1

ANNUAL LICENSE FEE

YEAR OF TERM	YEAR	ANNUAL LICENSE FEE
1	2021	\$270.00
2	2022	\$278.10
3	2023	\$286.44
4	2024	\$295.04
5	2025	\$303.89
6	2026	\$313.00
7	2027	\$322.39
8	2028	\$332.07
9	2029	\$342.03
10	2030	\$352.29

SCHEDULE 2

CITY'S ESTIMATED FAIR MARKET LICENSE FEES

YEAR	ANNUAL LICENSE FEE
2021	\$1,500.00
2022	\$1,545.00
2023	\$1,591.35
2024	\$1,639.09
2025	\$1,688.26
2026	\$1,738.91
2027	\$1,791.08
2028	\$1,844.81
2029	\$1,900.16
2030	\$1,957.16
2031	\$2,015.87
2032	\$2,076.35
2033	\$2,138.64
2034	\$2,202.80
2035	\$2,268.88
2036	\$2,336.95
2037	\$2,407.06
2038	\$2,479.27
2039	\$2,553.65
2040	\$2,630.26

EXHIBIT A-1

LICENSE AREA

(A site survey that depicts the location of the Vertical Infrastructure within the City and the location of the Licensee's attachments to such Vertical Infrastructure appears behind this coversheet. Pursuant to Section 6.11 of this License, the City shall have the right to substitute post-construction surveys and/or as-built drawings of the completed facility(ies) in place of the Approved Plans.)

EXHIBIT A-2

APPROVED PLANS

(Prior to the issuance of a construction permit(s), the Licensee shall tender its Preliminary Plans as this exhibit. After the City issues a construction permit(s), the Approved Plans shall be substituted in place of the Preliminary Plans in accordance with Section 6.2 of this License. Pursuant to Section 6.11 of this License, the City shall have the right to substitute post-construction surveys and/or as-built drawings of the completed facility(ies) in place of the Approved Plans.)

EXHIBIT B

INSURANCE REQUIREMENTS

In all instances where LICENSEE or its representatives will be licensing or using City of Richmond (City) property for an extended period, the City requires the following insurance requirements and limits.

LICENSEE shall carry and maintain for the duration of the License insurance against claims for injuries to persons or damages to property which may arise from or in connection with the LICENSEE's, its agents', representatives', employees' or vendor's use of the License Area. **Maintenance of proper insurance coverage is a material element of the License. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material default of the License subject to the terms and conditions of Section 21.1 of the License.**

LICENSEE agrees that in the event of loss due to any of the perils for which it has agreed to provide Commercial General Liability insurance, LICENSEE shall look solely to its insurance for recovery. LICENSEE hereby grants to CITY, on behalf of any insurer providing Commercial General Liability insurance to either LICENSEE or CITY with respect to the services of LICENSEE herein, a waiver of any right to subrogation which any such insurer of said LICENSEE may acquire against the CITY by virtue of the payment of any loss under such insurance.

Original, signed certificates and separate policy endorsement, including the City as an additional insured by endorsement for commercial general liability coverage with respect to this License, as well as a waiver of subrogation for Workers' Compensation insurance, shall be received by the City **before occupancy may occur**. However, failure to do so shall not operate as a waiver of these insurance requirements.

City reserves the right to modify or require additional coverages for specific risk exposures depending on scope of the License once in any consecutive three (3) year period with at least sixty (60) days' prior written notice to LICENSEE.

Required coverage is detailed below. The policy limits of coverage shall be made available to the full limits of the policy. The limits stated herein shall not serve to reduce the policy limits of coverage of LICENSEE.

Scope of Insurance – the following forms shall be provided and coverage shall be at least as broad as the following:

1. Insurance Services Office Commercial General Liability coverage (ISO Occurrence Form CG 0001).
2. Insurance Services Office Automobile Liability coverage (ISO Form CA 0001, Code 1, Any Auto).

3. Original Additional Insured Endorsements for Commercial General Liability (ISO Form CG 20 10 or its equivalent) with primary and non-contributory language.
4. Workers' Compensation insurance as required by the State of California including Employer's Liability (for LICENSEE's with employees).
5. Original Waiver of Subrogation for Workers' Compensation Insurance (if applicable).
6. Property self-insurance against all risks of loss to LICENSEE improvements, betterments and contents.

Required Coverage	Minimum Limits
Workers' Compensation and Employers' Liability	Statutory limits as required by the State of California including \$1 million Employers' Liability per accident, per employee for bodily injury or disease and policy limit. If LICENSEE is self-insured, provide a certificate of Permission to Self-Insure, signed by the California Department of Industrial Relations and Self-Insurance. If LICENSEE is a sole proprietor (has no employees) than LICENSEE must sign "Contractor Release of Liability" found at: http://www.ci.richmond.ca.us/index.aspx?nid=61 .
Commercial General Liability (primary and excess limits combined)	\$2,000,000 per occurrence for bodily injury, personal injury and property damage. If the policy includes a general aggregate, either the general aggregate shall apply separately to this project, service or location or the minimum required aggregate limit shall be twice the per occurrence limit (\$4 million aggregate) . Policy shall also include coverage for liability arising out of the use and operation of any City-owned or City-furnished equipment used or operated by the LICENSEE, its employees, agents or others with LICENSEE's permission. Policy shall be endorsed to include the City of Richmond as an additional insured by endorsement with respect to this License.
Automobile Liability	\$1,000,000 per accident for bodily injury and property damage.
Property Self-Insurance – Only applicable to licenses of City property involving LICENSEE	Total value of all LICENSEE improvements, betterments, and contents. The City of Richmond shall be named as joint loss payee as its interest may appear. LICENSEE self-insures its property insurance and in satisfaction of the waiver of subrogation requirement LICENSEE will include the City as

improvements, betterments and contents	a joint loss payee to the extent of its insurable interest which would have been covered had LICENSEE purchased property insurance.
LICENSEE'S Contractors and Consultants	LICENSEE'S contractors and consultants of every type that will perform work on the City's property must meet the insurance requirements listed above (except property insurance), and the City shall be included by each contractor and consultant as an additional insured on the commercial general liability coverage. Such coverage shall remain in place for the duration of the contractor's or consultant's work on the License Area subject to the License.

Required Conditions		Policy
Additional Endorsement	Insured	Applicable to Commercial General Liability Coverage. The City of Richmond, its officers, officials, employees, agents and volunteers are to be covered as insureds for liability caused, in whole or in part, by ownership, maintenance or use of that part of the License Area licensed or used by the LICENSEE.
Primary Noncontributory	and	The LICENSEE's insurance coverage must be primary as it pertains to the City, its officers, officials, employees, agents and volunteers. Any insurance or self insurance maintained by the City is wholly separate from the insurance of the LICENSEE, shall be excess of the LICENSEE's insurance, and shall not contribute with it.
A. M. Best Rating		A:VII or Better. If the A.M. Best Rating falls below the required rating, LICENSEE must replace coverage immediately and provide notice to City.
Waiver of Subrogation Endorsement Form		LICENSEE's insurer will provide a Waiver of Subrogation in favor of the City for Workers' Compensation Insurance during the life of this contract. SAMPLE Endorsements can be found at http://www.ci.richmond.ca.us/index.aspx?nid=61 .
Deductibles and Self-Insured Retentions		Any self-insured retention must be declared to the City. LICENSEE is responsible for satisfaction of the deductible and/or self-insured retention for each loss.

Umbrella/Excess Liability Policies

If an Umbrella or Excess Liability Policy is used to meet the liability limits, coverage shall be as broad as specified for underlying coverages and cover those insured in the underlying policies.

Sublets

Sublicensees shall be subject to all of the requirements stated herein. Sublicensee(s) must furnish to the City for review and approval, separate certificates and endorsements.

LICENSEE agrees to defend and indemnify the City of Richmond for any damage resulting to it from failure of either LICENSEE or any sublicensee(s) to take out or maintain the required insurance policies. The fact that insurance is obtained by LICENSEE, and/or LICENSEE's Sublicensees, will not be deemed to release or diminish the liability of LICENSEE, including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by CITY from LICENSEE or any third party will not be limited by the amount of the required insurance coverage.

Verification of Coverage

All original certificates and required endorsements shall be received by the City **before LICENSEE may occupy the License Area.** In the event that the City has tendered a claim to LICENSEE, or its insurer, or its insurer has denied coverage to the City, LICENSEE (in a local California office) will make available to the City within fifteen (15) days of the City's written request to LICENSEE, a copy of actual, authentic and applicable insurance policies for review (but not for copying, faxing or otherwise reproducing any part of any policy or other insurance correspondence), subject to the City first executing LICENSEE's standard non-disclosure agreement. The policy review is limited to no more than three (3) days during a consecutive six (6) month period and must be conducted during LICENSEE's normal business hours while the City's representative is accompanied by a LICENSEE Risk Management professional. Upon completion of review no copies will be made and all policies will be returned to LICENSEE's Corporate Risk Management Department.

Original insurance certificates and required policy endorsements shall be mailed or delivered to the Designated Project Manager for the City of Richmond.

Insurance certificates and required endorsements may be faxed to the Designated Project Manager. However, LICENSEE must mail the original certificates and required endorsements to Designated Project Manager once faxed.

Continuous Coverage

LICENSEE shall maintain the required insurance for the life of the License.

If LICENSEE's use or occupancy of the License Area extends beyond the expiration dates of the required insurance policies initially approved by the City, LICENSEE must provide

updated certificates and required endorsements indicating that the required coverage, terms and conditions are still in place. **Renewal certificates and updated endorsements shall be mailed to the Designated Project Manager.**

Cancellation

LICENSEE shall provide at least thirty (30) days' prior written notice to the City of cancellation or nonrenewal of any required coverage that is not replaced.

Reporting Requirements

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Consistent with Public Policy

The insuring provisions, insofar as they may be judged to be against public policy shall be void and unenforceable only to the minimum extent necessary so that the remaining terms and provisions herein may be consistent with public policy and thus enforceable.

EXHIBIT C

DEFAULT FEE SCHEDULE

DEFAULT FEE SCHEDULE		
VIOLATION	INITIAL NOTICE	EACH FOLLOW-UP NOTICE*
unauthorized installations	\$1,000	\$1,500
failure to make required repairs	\$300	\$350
access violations	\$300	\$350
insurance violations	\$300	\$350

*By mutual agreement, the City shall not issue a follow-up Default Fee notice to Licensee more than one (1) time in any consecutive thirty (30) day period, or until the expiration of the applicable cure period under the License, whichever date is later to occur.