

**CITY OF SOUTH SAN FRANCISCO**

**MASTER LICENSE FOR  
[DESCRIPTION OF SCWF]**

between

**THE CITY OF SOUTH SAN FRANCISCO  
and  
[WIRELESS COMPANY]**

**For City of South San Francisco Pole License Program in South San Francisco, California**

Effective as of \_\_\_\_\_, 20\_\_

## TABLE OF CONTENTS

Page

1	PURPOSE, DEFINITIONS, AND BASIC LICENSE INFORMATION.....	1
1.1	Purpose.....	1
1.1.1	Master License.....	1
1.1.2	Pole Licenses .....	1
1.1.3	Non-City Poles .....	2
1.2	Basic License Information.....	2
1.3	Definitions .....	2
2	SCOPE OF LICENSE.....	4
2.1	License Areas.....	4
2.1.1	Issuance of Pole Licenses .....	4
2.1.2	No Competing Licenses.....	5
2.1.3	Limitation on Scope .....	5
2.2	No Property Interest in License Area or City Poles.....	5
2.2.1	Limited Interest.....	5
2.2.2	Limited Rights .....	5
2.2.3	No Impediment to Municipal Use.....	5
2.3	Signs and Advertising.....	5
2.4	Light and Air.....	5
2.5	As-Is Condition of the License Area .....	5
2.5.1	As-Is Condition.....	5
2.5.2	Licensee Due Diligence .....	6
2.5.3	No City Representations or Warranties .....	6
2.5.4	Disclosure.....	6
3	TERM.....	6
3.1	Term of Master License and Pole Licenses .....	6
3.1.1	Term.....	6
3.1.2	Minimum Term.....	6
4	LICENSE FEES; ADDITIONAL FEES; AND OTHER CHARGES.....	6

4.1	Commencement Date and Pole License Effective Date .....	6
4.1.1	Definition.....	6
4.1.2	Acknowledgment Letter.....	6
4.1.3	City Demand for Acknowledgment Letter .....	7
4.1.4	Correct Commencement Date.....	7
4.1.5	Countersigned Acknowledgment Letter.....	7
4.2	License Fees .....	7
4.2.1	License Fee Schedule .....	7
4.2.2	Amount of License Fee.....	7
4.2.3	Pole Replacement Discounts.....	7
4.2.4	In-Lieu Public Benefits .....	7
4.2.5	Due Dates.....	8
4.3	Adjustments in License Fee.....	8
4.4	Late Charge .....	8
4.5	Default Interest.....	8
4.6	Master License Application Processing Payments	
4.6.1	Initial Payment .....	8
4.6.2	Subsequent Payments .....	8
4.6.3	Early Termination .....	8
4.6.4	Refunding of Excess Amounts .....	9
4.7	Pole License Administrative Processing Payments .....	9
4.7.1	Initial Payment .....	9
4.7.2	Account.....	9
4.7.3	Subsequent Payments .....	9
4.7.4	Early Termination .....	9
4.8	Refunding of Excess Amounts .....	9
4.9	Additional Fees.....	9
4.9.1	Defined .....	9
4.9.2	Exclusions.....	9
4.10	Manner of Payment.....	9
4.11	Reasonableness of Liquidated Charges and Fees.....	10
5	USE RESTRICTIONS .....	10
5.1	Permitted Use .....	10
5.2	No Illegal Uses or Nuisances .....	10
6	POLE LICENSE APPROVALS .....	10

6.1	City Approval Required.....	10
6.1.1	City Rights Superior.....	10
6.1.2	Changes in Application .....	11
6.1.3	Consultation with the Planning Division .....	11
6.2	Regulatory Approval Required.....	11
6.3	Pole License Application.....	11
6.4	Pole License Application Review Process.....	12
6.5	Administrative Payments .....	12
6.6	Pole License Approval.....	12
7	INSTALLATION OF EQUIPMENT.....	12
7.1	Approved Plans and Specifications.....	12
7.1.1	Strict Compliance Required.....	12
7.1.2	Identification and Other Signage.....	12
7.1.3	Required Changes.....	13
7.1.4	Corrections .....	13
7.2	Installation .....	13
7.3	Notice Required Prior to Installation .....	13
7.4	Cost of Labor and Materials.....	13
7.5	No Alteration of City's Existing Equipment or Infrastructure .....	13
7.6	Standard of Work.....	13
7.7	Project Manager.....	14
7.8	Coordination of Work.....	14
7.9	Fiber-Optic Cables.....	14
7.10	Installation; Parking Regulations.....	14
8	ALTERATIONS.....	14
8.1	Licensee's Alterations .....	14
8.2	Title to Improvements and Removal of Licensee's Equipment.....	14
9	CITY WORK ON POLES.....	15
9.1	City Repairs, Maintenance, and Alterations .....	15
9.2	Notice to Licensee.....	15
9.3	Licensee's On-Call Representative .....	15
9.4	Emergencies .....	15
10	LICENSEE'S MAINTENANCE AND REPAIR OBLIGATIONS.....	15
10.1	Damage to City Property .....	15
10.2	Alterations to City Property.....	16
10.3	No Right to Repair City Property.....	16

10.4	Notice of Damage to City Property .....	16
10.5	Licensee's Equipment.....	16
10.5.1	Maintenance and Repair.....	16
10.5.2	City Approval.....	16
10.5.3	Graffiti.....	16
10.6	Standard of Work.....	16
11	LIENS.....	17
12	UTILITIES; TAXES AND ASSESSMENTS .....	17
12.1	Utilities .....	17
12.2	Taxes and Assessments .....	17
12.2.1	Possessory Interest Taxes .....	17
12.2.2	Licensee's Obligation if Assessed.....	17
12.2.3	Taxes on Equipment.....	17
13	COMPLIANCE WITH LAWS.....	17
13.1	Requirement .....	18
13.1.1	Current Laws.....	18
13.2	Personnel Safety Training.....	18
13.2.1	CPUC Certification.....	18
13.2.2	Licensee's Indemnity.....	18
13.2.3	City's Indemnity.....	18
13.3	Compliance with CPUC General Order 95 .....	18
13.4	Compliance with Electric Codes.....	18
13.5	City's Exercise of its Proprietary Interests .....	19
13.6	Regulatory Approvals. ....	19
13.7	Radiofrequency Radiation and Electromagnetic Fields .....	19
13.8	Compliance with City's Risk Management Requirements .....	19
14	DAMAGE OR DESTRUCTION .....	19
14.1	No Statutory Rights for Damaged City Pole .....	19
14.2	Licensee's Rights after Termination.....	19
15	ASSIGNMENT.....	20
15.1	Restriction on Assignment.....	20
15.2	Notice of Proposed Assignment.....	20
15.3	City Response.....	20
15.3.1	Timing.....	20
15.3.2	Effect of Default .....	20
15.4	Effect of Assignment.....	20

15.5	Assumption by Transferee.....	20
15.6	Permitted Assignment .....	21
15.6.1	Defined .....	21
15.6.2	Conditions .....	21
15.6.3	Licensee Carrier Customers.....	21
16	DEFAULT .....	21
16.1	Events of Default by Licensee .....	22
16.1.1	Nonpayment of Fees .....	22
16.1.2	Lapsed Regulatory Approvals.....	21
16.1.3	Prohibited Assignment .....	22
16.1.4	Interference with City .....	22
16.1.5	Failure to Maintain Insurance.....	22
16.1.6	Failure to Cure .....	22
16.1.7	Other Terms.....	22
16.1.8	Abandonment .....	22
16.1.9	Insolvency.....	22
16.2	City's Remedies.....	22
16.2.1	Continuation of License.....	22
16.2.2	Termination of Pole License .....	22
16.2.3	Termination of Master License.....	22
16.2.4	Default Fees .....	23
16.3	Licensee's Remedy for City Defaults .....	23
16.4	Cumulative Rights and Remedies .....	23
17	LICENSEE'S INDEMNITY .....	23
17.1	Scope of Indemnity.....	23
17.2	Indemnification Obligations.....	24
18	INSURANCE.....	24
18.1	Licensee's Insurance .....	24
18.1.1	Coverage Amounts.....	24
18.1.2	Required Endorsements .....	24
18.1.3	Notice of Cancellation.....	24
18.1.4	Claims-Made Policies .....	25
18.1.5	General Aggregate Limit .....	25
18.1.6	Certificates .....	25
18.1.7	Insurance Does Not Limit Indemnity .....	25
18.1.8	Right to Terminate .....	25

	18.1.9	Ratings.....	25
	18.1.10	Effective Dates .....	25
	18.1.11	Self-Insurance Alternative.....	25
	18.1.12	Excess/Umbrella Insurance .....	25
	18.2	Insurance of Licensee’s Property.....	25
	18.3	City’s Self Insurance.....	25
	18.4	Waiver of Subrogation.....	26
	18.5	Contractors’ Bonds and Insurance .....	26
19		LIMITATION OF CITY’S LIABILITY.....	26
	19.1	General Limitation on City’s Liability.....	26
	19.2	Consequential Damages .....	26
	19.3	No Relocation Assistance .....	26
	19.4	Non-Liability of City Officials, Employees, and Agents .....	26
	19.5	Scope of Waivers .....	27
20		CITY ACCESS TO LICENSE AREA .....	27
	20.1	City’s Right of Access.....	27
	20.2	Emergency Access.....	27
	20.3	No Liability for Emergency Access.....	27
21		REQUIRED RECORDS.....	27
	21.1	Records of Account.....	27
	21.2	Estoppel Certificates.....	28
	21.3	Regulatory and Bankruptcy Records.....	28
	21.3.1	Copies for City Records .....	28
	21.3.2	Production of Documents.....	28
22		RULES AND REGULATIONS .....	28
23		FINANCIAL ASSURANCES.....	28
	23.1	Security Deposit, Bond or Other Form of Financial Assurance .....	28
24		SURRENDER OF LICENSE AREA .....	29
	24.1	Surrender .....	29
	24.1.1	Obligations Upon Surrender .....	29
	24.1.2	Equipment Abandoned After Termination .....	29
	24.2	Holding Over .....	29
	24.2.1	With Consent. ....	29
	24.2.2	Without Consent .....	29
25		HAZARDOUS MATERIALS.....	29
	25.1	Hazardous Materials in License Area.....	29

25.2	Licensee's Environmental Indemnity.....	29
26	SPECIAL PROVISIONS.....	30
26.1	Early Termination by Either Party .....	30
26.2	Licensee's Termination Rights .....	30
26.2.1	No-Fault Termination of Master License.....	30
26.2.2	Pole License Termination .....	30
26.2.3	Master License Termination .....	30
26.2.4	Interference Caused by City Work .....	30
26.3	City's Termination Rights .....	30
26.3.1	Absolute Right to Terminate Pole Licenses.....	30
26.3.2	Removal of Equipment .....	31
26.3.3	City Pole Removal.....	31
26.3.4	Replacement, Relocation, or Upgrading of City Poles.....	31
26.3.5	Future Use of Existing City Conduit .....	31
26.4	Licensee's Rights after Termination.....	32
26.5	Special Remedies for Interference with Operations.....	32
26.5.1	Licensee's Obligation Not to Cause Interference.....	32
26.5.2	Impairment Caused by Change in City Use.....	32
26.5.3	Impairment Caused by City Access.....	33
27	GENERAL PROVISIONS.....	33
27.1	Notices.....	33
27.1.1	Writings Required .....	33
27.1.2	Manner of Delivery.....	33
27.1.3	Effective Date of Notices.....	33
27.1.4	Special Requirements.....	33
27.2	No Implied Waiver.....	33
27.3	Amendments.....	34
27.4	Interpretation of Licenses.....	34
27.4.1	General .....	34
27.4.2	Multi-party Licensee .....	34
27.4.3	Captions.....	34
27.4.4	Time for Performance.....	34
27.4.5	City Actions .....	34
27.4.6	Words of Inclusion.....	34
27.4.7	Laws .....	34
27.5	Successors and Assigns .....	34



27.6	Brokers.....	35
27.7	Severability .....	35
27.8	Governing Law and Venue .....	35
27.9	Entire Agreement.....	35
27.10	Time of Essence.....	35
27.11	Survival .....	35
27.12	Recording.....	35
27.13	Counterparts .....	35
27.14	Cooperative Drafting.....	35
27.15	Authority to Approve Agreement.....	36
27.16	Conflicts of Interest .....	36
27.17	Included Exhibits and Schedules .....	36

**EXHIBIT A** Form of Pole License Agreement

Exhibit A1 – Licensee’s Plans and Specifications

Exhibit A-2 – Form of Acknowledgement Letter

Exhibit A-3 – License Fee and Default Fee Schedule

Exhibit A-4 – City Installation Guidelines

**EXHIBIT B** Requirements for License Equipment

BASIC LICENSE INFORMATION	
City:	City of South San Francisco, a California municipal corporation
Licensee:	[Wireless Company], a [Ca. corporation, LLC, etc.]
Term (§ 3.1.1):	Ten (10) years, beginning on the Master License Effective Date, renewable for subsequent five (5)-year intervals, subject to each party's option to not renew upon one hundred and eighty (180) days' notice to the other party.
Master License Effective Date (§ 3.1.1):	The first day of the month after the date the parties have fully executed this Master License.
Pole License Effective Date (§ 3.1.1):	For each individual Pole License under the Master License, the date on which Licensee has obtained all applicable and necessary Regulatory Approvals following upon the parties fully executing the Pole License.
Master License and Pole License Expiration Date:	<p>For the Master License, the tenth anniversary of the Effective Date, unless otherwise renewed or extended.</p> <p>For the Pole License, six months from the execution of the Pole License, if Licensee fails to obtain all applicable and necessary Regulatory Approvals within that six months.</p> <p>If Licensee obtains all applicable and necessary Regulatory Approvals after the Pole License is executed, the Pole License shall remain effective from the Effective Date till the last day of the Pole License term or the earlier termination of the Master License.</p>
License Fee Commencement Date (§ 4.1); Pole License Effective Date (§ 4.1); Acknowledgment Letter (§ 4.1.2):	For each Pole License, the Commencement Date is the first day of the month after the Pole License Effective Date. The Pole License Effective Date is the date on which Licensee has obtained all Regulatory Approvals. The City will confirm the Commencement Date for each Pole License in the countersigned Acknowledgment Letter.
License Fee Rate (§ 4.2.1):	<p>After the Commencement Date, Licensee will be obligated to pay City an annual License Fee at the rate in effect at the time of full execution of the Pole License, as specified in the current License Fee schedule as adopted by the City Council, unless Licensee is eligible to receive a Pole-Replacement Discount or the City Council has approved in-lieu benefits.</p> <p>City will provide the License Fee schedule for each Pole License with the signed Acknowledgment Letter, and the schedule will be deemed to be attached to the Pole License as Exhibit A-3.</p>

License Fee Adjustment Dates (§ 4.3):	License Fee rates will be increased by three percent (3%) on January 1 of each year of the Master License.
Master License Application Processing Payments (§ 4.6):	\$4,000 to be delivered with Licensee's partially executed counterpart of this Master License. The payment, and any additional amounts required, will be used for City's ordinary processing and administrative costs related to the Master License application.
Pole License Administrative Payments (§ 4.7):	\$950 per Standard City Pole, to be delivered with Licensee's application for each Pole License. This initial payment, and any necessary replenishment(s) thereof, will be used to cover the City's costs to review and administer the application process upon delivery of each Pole License application.
Permitted Use (§ 5.1):	Installation, operation, and maintenance of Equipment on the License Area specified in each Pole License and no other location.
Prohibited Use:	Use of the License Area for any other purpose without City's prior consent is prohibited.
Equipment installation (Art. 7):	All Equipment to be installed on the License Area is subject to City's final approval through the applicable Pole License. Licensee shall install Equipment at its sole cost only at the Pole Locations specified in each Pole License.
Utilities (§ 12.1):	Licensee shall be solely responsible for obtaining and maintaining the provision of electricity to Licensee's Equipment, including but not limited to, making payments to electric utilities and installation of separate electric meters, if necessary.
Emissions Report (§ 13.7):	As a condition to issuance of any Pole License, Licensee must provide City a copy of the Emissions Report submitted for Licensee's Small Cell Attachment Permit.
Default Fee schedule (§ 16.2.4):	Exhibit A-3 to each Pole License.
Security Deposit/Bond/Financial Assurances (Art. 23):	A bond, security deposit, or other forms of financial assurance acceptable to the City shall be provided prior to erecting or installing facilities and equipment, for the removal of such facilities and equipment in the event of termination or abandonment. The amount of the bond, security deposit or other forms of financial assurance shall be determined based on each application.
Notice address of City (§ 27.1):	City of South San Francisco 400 Grand Avenue South San Francisco, CA 94080 Attn: City Manager Re: Master License - [Wireless Company] Telephone No.: (650)877-8501

With a copy to:	Meyers Nave 555 12th Street, Suite 1500 Oakland, CA 94607 Attn: Jason Rosenberg, Esq. Re: Master License - [Wireless Company]
Project manager and day-to-day contact for City (§ 7.7):	Sailesh Mehra staff person to be assigned Telephone No.: _____
Emergency contact for City (§ 9.4):	During Business Hours: Public Works Call in Line Telephone No.: 650-877-8550  Off-Hours Police Dispatch Telephone No.: _____
Instructions for payments due to City:	Checks should be made payable to “City of South San Francisco” and delivered to:  City of South San Francisco 400 Grand Avenue South San Francisco, CA 94080 Attn: Finance Director Re: Master License - [Wireless Company]  Wire transfers should be directed as follows:  _____  Send remittance information to: _____ [email address(es)]
Notice address of Licensee (§ 27.1):	_____
With a copy to:	_____
Project manager for Licensee (§ 7.7):	_____

On-call and emergency contact for Licensee (§§ 9.3, 9.4):	
Notice to License Applicants:	The City's acceptance of the application payment(s) will not obligate the city to enter into any Master License if application requirements are not satisfied. If the City disapproves any Master License, it will notify the applicant by a letter specifying the application.

[Page intentionally left blank.]

DRAFT

## MASTER LICENSE FOR [SMALL CELL WIRELESS FACILITY]

This **MASTER LICENSE AGREEMENT FOR SMALL CELL ANTENNA FACILITIES** (“**Master License**” or “**Agreement**”), effective as of \_\_\_\_\_, 20\_\_, is made by and between the **CITY OF SOUTH SAN FRANCISCO**, a California municipal corporation (the “**City**”) and [Wireless Company], a \_\_\_\_\_ [California corporation, etc.] (“**Licensee**”).

### RECITALS

**A.** The City owns street light poles, traffic signal poles, safety poles, and other poles (each, a “**City Pole**”) within the public right-of-way and owns or controls public right-of-way within the City of South San Francisco located in San Mateo County, State of California.

**B.** Licensee is a \_\_\_\_\_ [California corporation, etc.] organized under the laws of the State of \_\_\_\_\_, legally qualified to do business within the State of California whose business includes the installation and maintenance of small cell antenna facilities.

**C.** Licensee has the authority under applicable Laws to install and maintain telephone lines in the public right-of-way to provide wireless telecommunications services.

**D.** The City has the authority under applicable Laws to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.

**E.** Licensee has requested to use City Poles to install, maintain, and operate Small Cell Wireless Facilities (“SCWF”) as specified in this Master License.

**F.** In order to encourage wireless infrastructure investment and promote the management of the rights-of-way in the overall interests of the public health, safety and welfare, the City desires to permit Licensee to license the City Poles in accordance with the terms, conditions, and covenants contained in this Agreement.

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

### AGREEMENT

#### **1 PURPOSE, DEFINITIONS, AND BASIC LICENSE INFORMATION**

##### **1.1 Purpose.**

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

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

**1.1.3 Non-City Poles.** The parties agree that Licensee may seek to install Equipment on poles owned by any other public or private party, or as otherwise permitted by Laws, which is not subject to the terms of this Master License.

## **1.2 Basic License Information.**

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

## **1.3 Definitions.**

Capitalized and other defined terms used in this Master License and all exhibits have the meanings given to them in this Section or in the text where indicated below, subject to the rules of interpretation set forth in Section 27.4 (Interpretation of Licenses).

“**Acknowledgment Letter**” is defined in Subsection 4.1.2.

“**Additional Fees**” is defined in Subsection 4.9.

“**Adjustment Date**” is defined in Section 4.3.

“**Administrative Payments**” is defined in Section 4.7.

“**Affiliate**” means an entity that directly or indirectly controls, is controlled by, or is under the common control with Licensee and has a net worth of at least \$10 million.

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

“**Approved Plans**” is defined in Subsection 7.1.1.

“**Assignee**” is defined in Section 15.2.

“**Assignment**” means any of the following: (a) a merger, acquisition, or other transfer of a controlling interest in Licensee, voluntarily or by operation of Law; (b) Licensee's sale, assignment, encumbrance, pledge, or other transfer of any part of its interest in or rights with respect to the License Area; and (c) any action by Licensee to permit any portion of the License Area to be occupied by anyone other than itself, including a sublicensee.

“**Assignment Response Period**” is defined in Subsection 15.3.1.

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

“**Broker**” is defined in Section 27.6.

“**Business Day**” is defined in Subsection 27.4.4.

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

“**City**” is defined in the preamble.

“**City Pole**” is defined in Recital A.

“**Claim**” is defined in Section 17.1.

“**Commencement Date**” is defined in Subsection 4.1.1.

“**Common Control**” means two entities that are both Controlled by the same third entity.

“**Control**” means: (a) as to a corporation, the ownership of stock having the right to exercise more than 50% of the total combined voting power of all classes of stock of the controlled corporation, issued and



outstanding; and (b) as to partnerships and other forms of business associations, ownership of more than 50% of the beneficial interest and voting control of such association.

“**CPUC**” is defined in Subsection 13.2.1.

“**Default Fee**” is defined in Subsection 16.2.4.

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

“**EMFs**” is defined in Section 13.7.

“**Emissions Report**” is defined in Section 13.7.

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

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

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

“**FCC**” is defined in Section 7.1.2.

“**Hazardous Material**” means any material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any Regulatory Agency to pose a present or potential hazard to human health, welfare, or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” in CERCLA or section 25316 of the California Health & Safety Code; and any “hazardous waste” listed in section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

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

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

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

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

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

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

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

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

“**NESC**” is defined in **Section 13.4**.

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

“**Notice of Proposed Assignment**” is defined in **Section 15.2**.

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

“**Pole**” means a street light pole or other utility pole in South San Francisco, whether owned and operated by the City or another entity.

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

**Pole License Effective Date** is defined in **Subsection 4.1.1**.

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

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

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

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

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

“**RFs**” is defined in **Section 13.7**.

“**Standard City Pole**” means a standard steel or aluminum tapered City street light pole installed in the City right-of-way. Standard City Poles conform to then-applicable Public Works standards, as may be amended from time to time.

“**Subsidiary**” means an entity controlled by Licensee that has a net worth of at least \$5 million.

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

“**Small Cell Attachment Permit**” is defined in **Section 6.2**.

## **2 SCOPE OF LICENSE**

### **2.1 License Areas.**

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

**2.1.2 No Competing Licenses.** The City, absent prior written consent from Licensee, will not issue a Pole License to any third party for any City Pole that is licensed to Licensee under a valid Pole License.

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

## **2.2 No Property Interest in License Area or City Poles.**

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

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

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

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

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

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

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

## **2.3 Signs and Advertising.**

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

## **2.4 Light and Air.**

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

## **2.5 As-Is Condition of the License Area.**

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

**2.5.2 Licensee Due Diligence.** Licensee represents and warrants to the City that Licensee has conducted a reasonably diligent investigation, either independently or through Agents of Licensee's choosing, of the condition of the License Area and of the suitability of the License Area for Licensee's intended use, and Licensee is relying solely on its independent investigation. Licensee further represents and warrants that its intended use of the License Area is the Permitted Use as defined in **Section 1.3** (Definitions) and as described in the Basic License Information.

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

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

### 3 TERM

#### 3.1 Term of Master License and Pole Licenses.

**3.1.1 Term.** The term of this Master License shall be ten (10) years commencing on the first day of the month after the date the parties have fully executed this Master License ("**Master License Effective Date**") and ending at midnight on the last day of the term, unless earlier terminated (the "**Term**"). The Term shall be renewable for subsequent five (5)-year intervals, subject to each parties' option to not renew the Master License, for any reason, upon one hundred and eighty (180) days' written notice to the other party. Each Pole License will be effective on the date on which Licensee has obtained all applicable and necessary Regulatory Approvals following the parties fully executing the Pole License, and shall terminate upon the last day of the term or earlier termination of this Master License, which may result in a partial License Year (as defined in **Subsection 4.1.1** below) at the end of the Pole License Term.

**3.1.2 Minimum Term for License Fee Purposes.** The minimum Term for the purpose of establishing the License Fee for each Pole License will be one License Year immediately following the Commencement Date under **Section 4.1** (Commencement Date). This minimum Term provision will prevail over any rights of abatement or termination afforded to Licensee under this Master License except under **Section 26.1** (Early Termination by Either Party).

### 4 LICENSE FEES; ADDITIONAL FEES; AND OTHER CHARGES

#### 4.1 Commencement Date and Pole License Effective Date.

**4.1.1 Definition.** Licensee shall pay an annual License Fee under each Pole License beginning on its "**Commencement Date**," which will be the first day of the month after the Pole License Effective Date, as defined below. Each 12-month period beginning on the Commencement Date of each Pole License is a "**License Year**" for that Pole License. Each Pole License shall only become effective upon the date on which Licensee has obtained all applicable and necessary Regulatory Approvals after the Pole License is fully executed ("**Pole License Effective Date**"). Licensee's failure to obtain all Regulatory Approvals within six (6) months from Licensee execution of a Pole License ("**Pole License Expiration Date**") shall automatically terminate the Pole License, and the underlying Pole associated with such license shall become available for application and licensing by other applicants.

**4.1.2 Acknowledgment Letter.** Within 10 business days after obtaining all Regulatory Approvals for the Permitted Use on any License Area, Licensee shall deliver to the City a letter in the form of **Exhibit A-2** to the Pole License (each, an "**Acknowledgment Letter**"). The purposes of the Acknowledgment Letter are to: (i) confirm the Commencement Date and the Effective Date; (ii) tender or confirm payment by wire transfer of the License Fee for the first License Year, and the

Security Deposit/Bond/Financial Assurance under **Article 23**, all in the amounts specified in the Basic License Information; (iii) provide to the City copies of all Regulatory Approvals; and (iv) provide to the City copies of required insurance certificates and endorsements related to the requirements under **Article 18** (Insurance).

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

**4.1.4 Correct Commencement Date.** In all cases, the City will have the right to correct the Commencement Date stated in Licensee's Acknowledgment Letter after examining Regulatory Approvals. The City will notify Licensee of any such correction by notice delivered in accordance with **Section 27.1** (Notices). The City's determination under this subsection or under **Subsection 4.1.3** (City Demand for Acknowledgment Letter) will be final for all purposes under this Master License.

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

## **4.2 License Fees.**

**4.2.1 License Fee Schedule.** Licensee shall pay to the City the License Fee for the initial License Year at the rate in effect at the time of full execution of the Pole License, as specified in the current License Fee schedule as adopted by the City Council, and attached to each Pole License (the "**License Fee**"), unless Licensee is eligible to receive a Pole-Replacement Discount or the City Council has approved in-lieu benefits as set forth in **Subsections 4.2.3 and 4.2.4**. The License Fee schedule will reflect annual calendar-year adjustments as provided in Section 4. The License Fee schedule will reflect annual calendar-year adjustments as provided in Section 4.3 (Adjustments in License Fee). The License Fee must be delivered in cash or its equivalent in the manner specified in **Section 4.10** (Manner of Payment).

**4.2.2 Amount of License Fee.** Licensee must take into account annual License Fee adjustments under **Section 4.3** (Adjustments in License Fee) when calculating the amount of each annual License Fee. Each annual License Fee is payable in advance without prior demand or any deduction, setoff, or counterclaim, except to account for a partial year at the end of the Term or earlier termination of this Master License or a right of abatement or refund expressly granted under this Master License. Any amounts calculated for less than a full year or a full month will be calculated based on a 360-day year and 30-day months.

**4.2.3 Pole-Replacement Discounts.** In the event that Licensee replaces a City-owned wooden Pole with a standard steel tapered pole conforming to applicable City Public Works standards, as may be amended from time to time, as part of a Pole License, Licensee shall receive a twenty-percent (20%) discount in the annual License Fee applicable to the Pole License covering the replacement pole ("Pole-Replacement Discount"). Receipt of the Pole-Replacement Discount pursuant to this subsection shall not relieve Licensee of the obligations to pay any other required Master License Application Processing Payments and Additional Fees as prescribed under **Sections 4.6 through 4.10** of this Agreement.

**4.2.4 In-Lieu Public Benefits.** Subject to City Council review and approval, Licensee may provide the City with public benefits in lieu of paying a License Fee for a Pole License. In the event that Licensee provides the City with such in-lieu public benefits, the City Council shall review and shall

approve those public benefits in lieu of paying a License Fee. The in-lieu benefits shall be identified in a separate agreement for each Pole License for which a License Fee is waived or reduced, and such agreement shall become an exhibit to this Master License Agreement, and shall set forth the terms and conditions under which the Licensee shall provide in-lieu benefits to the City. The terms and conditions may include, but are not limited to the in kind contributions, public improvements, other charges, and/or contributions as mutually agreed, and any such other terms which promote the public health, safety, and welfare of the City. Providing in-lieu benefits pursuant to this subsection shall not relieve Licensee of the obligations to pay any other required Master License Application Processing Payments and Additional Fees as prescribed under **Sections 4.6 through 4.10** of this Agreement.

#### **4.2.5 Due Dates.**

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

(b) The annual License Fee for each subsequent License Year of the Term of each Pole License will be due and payable to the City on each anniversary of the Commencement Date and will be late if the City has not received payment by the due date.

#### **4.3 Adjustments in License Fee.**

On each anniversary of the Commencement Date (each, an "**Adjustment Date**"), the License Fee will be increased by three percent (3%).

#### **4.4 Late Charge.**

If Licensee fails to pay any License Fee, Additional Fee, or other amount payable to the City under this Master License within 30 days after the City's delivery of notice that the same is due and unpaid, such unpaid amounts will be subject to a late charge equal to 1% of the unpaid amounts. For example, if a License Fee in the amount of \$40,000 is not paid on its due date and remains unpaid after the 30-day cure period has expired, the late charge would be \$400.

#### **4.5 Default Interest.**

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

#### **4.6 Master License Application Processing Payments.**

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

**4.6.1 Initial Payment.** Licensee shall pay to City an initial payment in the amount of Four Thousand Dollars (\$ 4,000) upon delivery of a partially executed counterpart of this Master License to the City. The City will not be obligated to process this Master License or any Pole License applications until the initial payment is submitted. Upon Licensee's request, City shall provide to Licensee a monthly accounting of the account with a description of City's costs and expenses withdrawn from the account.

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

**4.6.3 Early Termination.** Licensee shall have the right to terminate processing of the application by providing written notice to the City. Upon receipt of such notice by City (for purposes

of this section, “**Termination Date**”), City shall cease all processing on Licensee’s application as of the Termination Date and shall pay all costs incurred by City prior to such Termination Date from the account.

**4.6.4 Refunding of Excess Amounts.** Any funds remaining in the account upon termination of the Master License, shall be returned to Licensee within 60 days following the Termination Date.

#### **4.7 Pole License Administrative Processing Payments.**

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

**4.7.1 Initial Payment.** Licensee shall pay to City an initial Administrative Payment in the amount of One Thousand Dollars (\$950) upon delivery of each Pole License application to the City. City will not be obligated to begin its review of any Pole License application until the initial Administrative Payment is paid.

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

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

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

#### **4.8 Refunding of Excess Amounts.**

Any funds remaining in the account upon issuance of all approvals and installation of equipment authorized under the Pole, or upon termination of processing by Licensee, shall be returned to Licensee within 90 days following such equipment installation or the Termination Date, respectively. If further staff time is required to administer or process a Pole License and the excess amounts have been returned to Licensee, the City is authorized to utilize available funds in the Master License Application Processing Payment, set forth in Section 4.6.

#### **4.9 Additional Fees.**

**4.9.1 Defined.** Sums payable to the City by Licensee, including any late charges, default interest, costs related to a request for the City’s consent to an Assignment under **Section 15.2** (Notice of Proposed Assignment), and Default Fees under **Subsection 16.2.4** (Default Fees), are referred to collectively as “**Additional Fees**.” Additional Fees are not regulatory fees.

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

#### **4.10 Manner of Payment.**

Licensee shall pay License Fees, Administrative Payments, Additional Fees, and all other amounts payable to the City under this Master License in cash or other immediately available funds by: (i) check payable to the “City of South San Francisco” and delivered to the City in care of the Finance Director of the City of South San Francisco at the address for payment specified in the Basic License Information; or (ii) wire transfer in accordance with the instructions in the Basic License Information, unless the City directs otherwise by notice given in accordance with **Section 27.1** (Notices). A check that is dishonored will be deemed unpaid.

#### **4.11 Reasonableness of Liquidated Charges and Fees.**

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

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

Initials: Licensee \_\_\_\_\_ City \_\_\_\_\_

### **5 USE RESTRICTIONS**

#### **5.1 Permitted Use.**

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

#### **5.2 No Illegal Uses or Nuisances.**

Licensee shall not use or occupy any of the License Area in any unlawful manner or for any illegal purpose or in any manner that constitutes a nuisance as determined by the City in its reasonable judgment. Licensee shall not do or permit to be done anything that unreasonably disturbs the City’s use of City poles. Licensee shall take all precautions to eliminate any nuisances or hazards in connection with its use of the License Area, including but not limited to unreasonable odors, noise, vibration, power emissions which exceed the level permitted by the FCC or other item to emanate from the Licensee’s antennas, facilities or equipment. No materials or articles of any nature shall be stored outside adjacent to any portion of the License Area without City’s consent.

### **6 POLE LICENSE APPROVALS**

#### **6.1 City Approval Required.**

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



proprietary interests in accordance with applicable Laws. Examples of municipal and proprietary concerns include:

- (a) the resulting total load on the City Pole if the Equipment is installed;
- (b) the impact of the installation on the City's street light operations, including whether the Equipment would compromise the City's street light circuits serving City Poles;
- (c) whether the installation complies with electrical codes;
- (d) whether the Equipment would create a hazardous or unsafe condition;
- (e) any impacts the Equipment would have in the vicinity of the City Pole, including size, materials, and visual clutter;
- (f) aesthetic concerns; and
- (g) municipal plans for the City Pole.

**6.1.2 Changes in Application.** If the City reasonably and lawfully determines for any reason that the Permitted Use at any particular Pole Location would impede its municipal functions or otherwise affect its proprietary interests negatively, it will provide notice to Licensee of the City's concerns as soon as reasonably practicable in the application review process. Licensee will have the opportunity to change the Pole License application to address the City's concerns for a period ending 14 days after delivery of the City's notice without affecting the priority of Licensee's application in relation to other potential licensees. Any other changes that Licensee makes in the Pole License application will cause the date that the application is deemed submitted to be changed to the date that Licensee delivers the proposed changes to the City.

**6.1.3 Consultation with the Planning Division.** In reviewing a Pole License application, the City's Public Works Department may consult with the City's Planning Division to assess whether Licensee's proposed Equipment is appropriate for a given location or, for historic and decorative Nonstandard City Poles, whether the proposed Equipment poses particular aesthetic concerns. Licensee acknowledges and agrees that any consultation between Public Works Department and the Planning Division in accordance with the preceding sentence and any resulting actions by the City would be in its proprietary capacity as the owner of the City Poles and would not be an exercise of regulatory authority.

## **6.2 Regulatory Approval Required.**

Licensee's installation of Equipment is also subject to the prior approval of, and Licensee's compliance with all conditions of, applicable staff-level design review as outlined in **Requirements for Licensee Equipment (Exhibit B to Pole License)** and a Small Cell Attachment Permit as required by the South San Francisco Municipal Code or Zoning Code (generally, a "**Small Cell Attachment Permit**"), other applicable City requirements, and implementing regulations and orders, if any.

## **6.3 Pole License Application.**

Licensee shall submit Pole License applications to the City, which will review, approve, or deny each application in its reasonable and lawful discretion. Each application will consist of: (a) partially executed duplicate counterparts of a Pole License application in the form attached as **Exhibit A**, including the location and other identifying information about each City Pole covered by the Application, including whether it is a Standard City Pole or a historic or decorative Nonstandard City Pole; (b) **Exhibit A-1**, consisting of all plans and specifications required under **Subsection 7.1.1** (Strict Compliance Required); (c) the initial Administrative Payment as specified in **Section 4.7** (Pole License Administrative Processing Payments); and (d) if not previously provided, a copy of the Emissions Report submitted for the Small Cell Attachment Permit. For Pole License applications relating to the use a License Area that is not solely owned by the City, including, but not limited to, City easements located on private property, Licensee shall also provide evidence demonstrating, to the satisfaction of the City Attorney, Licensee's entitlement to use the proposed License Area for the Permitted Use.

#### **6.4 Pole License Application Review Process.**

The City will review and process Pole License applications in a reasonably prompt manner in the chronological order (date and time) in which complete applications are submitted or deemed submitted. Except as stated in the preceding sentence or as otherwise specified in this Master License, the City will not give priority to any application or licensee over another application or licensee. Licensee acknowledges that staff and budget considerations will limit the City's ability to review and process Pole License applications. During its review process, the City will provide to Licensee the applicable License Fee and Default Fee Schedule (Exhibit A-3 to Pole License), City Installation Guidelines (Exhibit A-4 to Pole License), and Requirements for Licensee Equipment (Exhibit B to Pole License) each of which will be deemed to be attached to the Pole License upon execution by the City.

#### **6.5 Administrative Payments.**

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

#### **6.6 Pole License Approval.**

The City will notify Licensee that the City has approved each Pole License by returning one fully executed counterpart of the Pole License to Licensee, and City will endeavor to do so within sixty (60) days after receiving a complete Pole License application. The City requires as a condition to approval of any Pole License that Licensee provide proof that contractors installing Equipment have bonds and insurance coverage as required by Section 18.5 (Contractors' Bonds and Insurance). A City decision to grant or deny a Pole License application is not a regulatory determination subject to appeal, but is an exercise of the City's proprietary authority over its facilities.

### **7 INSTALLATION OF EQUIPMENT**

#### **7.1 Approved Plans and Specifications.**

**7.1.1 Strict Compliance Required.** Licensee must submit its plans and specifications for the City's review as Exhibit A-1 to its Pole License application. Plans and specifications must cover all Equipment, including signage required or permitted under Subsection 7.1.2 (Identification and Other Signage). Licensee's plans and specifications and any Equipment installed, if authorized, shall comply with the minimum requirements provided in Exhibit B to this Master License, attached to and incorporated herein. Licensee expressly agrees that these minimum requirements are an exercise of the City's proprietary interests as the owner of the City Poles and are not an exercise of the City's regulatory authority. Licensee is authorized to install Equipment at the License Area covered by the Pole License only in strict compliance with the plans and specifications approved by the City and, if applicable, in Regulatory Approvals ("**Approved Plans**").

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

**7.1.3 Required Changes.** Licensee may amend previously Approved Plans if required to obtain or comply with other Regulatory Approvals necessary for installation of Equipment, including construction or installation-related temporary street occupancy permits, traffic control permits, and building permits, as may be required by City codes. Amendment of Approved Plans will require the City's approval. Licensee acknowledges that as of the Effective Date of this Master License, the City has not approved or promised to approve any plans, specifications, or permits necessary for Licensee to install Equipment on any City Poles. The City will provide notice of its decision in accordance with **Section 27.1** (Notices).

**7.1.4 Corrections.** The City's approval of plans, specifications, and amendments to Approved Plans, and the issuance of related Regulatory Approvals will not release Licensee from the responsibility for and obligation to correct any errors or omissions that may be contained in the Approved Plans and related Regulatory Approvals. Licensee shall notify the Public Works Department and the Community Development Director, if applicable, immediately upon discovery of any omissions or errors, and Licensee shall obtain required approvals of any amendments to previously Approved Plans.

## **7.2 Installation.**

Licensee shall not commence installation of Equipment on the License Area until the City has given Licensee notice to proceed by delivery of the countersigned copy of the Acknowledgment Letter or letter confirming the Pole License Effective Date under **Section 4.1.2**. When installing Equipment, Licensee must strictly comply with Approved Plans as originally approved, or, if applicable, as amended or corrected. Licensee's Equipment as installed must be high quality, safe, fire-resistant, modern in design, and attractive in appearance, all as approved by the City. Licensee shall paint and properly maintain any cabling, support brackets, and other supporting elements to match adjacent surfaces. If required by the Public Works Director, and consistent with the Approved Plans, Licensee shall paint the entirety of existing City Poles and any new Poles. If necessary, Licensee must use custom matching paint to ensure a high quality of consistency in paint texture and appearance.

## **7.3 Notice Required Prior to Installation.**

Upon submittal of the Pole License application, Licensee shall provide the City with a draft of a written construction notice, a draft address list and address map indicating the parcels that will receive the construction notice described below. If the City requests any modifications to the draft construction notice or address list to comply with this Section, the City must provide Licensee with written comments within ten (10) business days within receipt. Licensee shall not commence installation of Equipment on the License Area until Licensee has provided at least 10 business days' prior written notice of the installation, by first class U.S. mail, to the owner(s) of each parcel within 150 foot radius.

## **7.4 Cost of Labor and Materials.**

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

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

Licensee shall not remove, damage, or alter in any way any City Property, including City Poles and supporting infrastructure, pull boxes, electrical equipment, wiring, and electrical vaults, without the express permission of the Public Works Director.

## **7.6 Standard of Work.**

Licensee must install and perform all other work on Equipment in strict compliance with Approved Plans diligently and in a skillful and workmanlike manner. Licensee must use qualified and properly trained persons and appropriately licensed contractors in conformance with **Section 13.2** (Personnel Safety Training)

for all work on the License Area. No later than 10 business days before commencing installation or any other work on any License Area, Licensee shall provide the City with: (a) a schedule of all activities; and (b) a list of the names, places of business, and license numbers of all contractors who will perform the work. After performing any work on the License Area, Licensee shall leave it and other City Property in a condition as good as it was before the work.

#### **7.7 Project Manager.**

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

#### **7.8 Coordination of Work.**

Licensee shall be responsible for coordination of its installation work to avoid any interference with existing utilities, substructures, facilities, or street light operations. Licensee shall be the City's point of contact for all Equipment installation and except in case of emergency, all communications concerning all engineering, construction, and installation issues relating to the Equipment.

#### **7.9 Fiber Optic Cables.**

The City understands that Licensee's Equipment on the License Area may include fiber-optic cables and associated conduits. By entering into this Master License, Licensee agrees that if it proposes the installation of conduits in a License Area, then Licensee shall have an obligation to engage in good faith negotiations that would result in the installation of conduit for the exclusive use of the City for municipal use. Nothing in this agreement would require Licensee or the City to reach agreement on the terms of such installation.

#### **7.10 Installation; Parking Regulations.**

During installation, alteration, repair, and maintenance of Equipment, Licensee must abide by all City construction regulations, including, but not limited to construction hours, waste management, noise abatement, and traffic management ordinances and regulations. Licensee must pay all parking fees and citation fines incurred by Licensee and its contractors for vehicle parking. The City will not pay or void any citations or reimburse Licensee for traffic citations or fines.

### **8 ALTERATIONS**

#### **8.1 Licensee's Alterations.**

Other than installation in accordance with Approved Plans, Licensee shall not make or permit any alterations to the License Area or anything that is part of, installed on, or appurtenant to the License Area, except with the City's prior consent in each instance, which the City may not unreasonably withhold, condition or delay n. The City may condition its consent reasonably in each instance based on the scope and nature of the alterations to be made. All alterations must be at Licensee's sole expense in accordance with plans and specifications approved by the City and be performed only by duly licensed and bonded contractors or mechanics. Licensee shall not be required to seek consent for the maintenance, replacement, modification or other installation of Equipment or signage in a License Area as provided in Section 10.5.

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

Except as otherwise provided in this Master License, the City has no claim of ownership of Licensee's Equipment installed on the License Area, but any structural improvements to a City Pole, or replacement of a City Pole, will become City Property and remain on the Pole Location should Licensee vacate or abandon use of the City Pole. Licensee may remove all of its Equipment (which excludes structural improvements to or

replacement of any City Pole) from the License Area after 30 days' prior notice to the City, subject to **Section 7.9** (Fiber-Optic Cables), **Article 24** (Surrender of License Area), and **Article 26** (Special Provisions), unless the City has previously elected to require Licensee to remove at Licensee's sole expense all or part of any structural improvements to the License Area or City Pole, whether made by the City or Licensee.

## **9 CITY WORK ON POLES OR LICENSE AREA**

### **9.1 Repairs, Maintenance, and Alterations.**

City will: (a) maintain and repair the City Poles as needed, in its sole but reasonable judgment, for its street light, utility, or municipal operations; and (b) correct any immediately life-threatening or hazardous condition. Except as specified in **Article 26** (Special Provisions), neither City work on the City Poles, nor the condition of the City Poles, will entitle Licensee to any damages, relieve Licensee of the obligation to pay the License Fees and Additional Fees or perform each of its other covenants under this Master License, or constitute or be construed as a constructive termination of this Master License.

### **9.2 Notice to Licensee.**

The City reserves the right at any time to make alterations, additions, repairs, removals, and improvements to all or any part of the License Area for any operational purpose, including maintenance and improvement of street lighting services, City compliance with mandatory regulations or voluntary controls or guidelines, subject to: (i) making good faith efforts to give Licensee at least 72 hours' prior notice, except in a case of emergency as provided in **Section 9.4 and Section 20.2**, of any City work in accordance with **Section 9.3** (Licensee's On-Call Representative); (ii) allowing a representative of Licensee to observe the City's work; and (iii) taking reasonable steps not to disrupt Licensee's normal use of Equipment on the License Area. But Licensee's use of the License Area may not impede or delay in any way the City's authority and ability to make changes to any License Area necessary to maintain its street lights, utility services, or other municipal services.

### **9.3 Licensee's On-Call Representative.**

Licensee shall at all times have a representative assigned to be on call and available to the City regarding the operation of Licensee's Equipment. Licensee's representative shall be qualified and experienced in the operation of Licensee's Equipment, and shall be authorized to act on behalf of Licensee in any emergency and in day-to-day operations of the Equipment. The contact information for Licensee's on-call representative is listed in the Basic License Information and will be listed on identification plates as required by **Subsection 7.1.2** (Identification and Other Signage). Before the City performs non-emergency maintenance, repair, or other activities on the License Area in the regular course of its business that may impair the operation of Licensee's Equipment on the License Area, the City will attempt to provide at least 48 hour's telephonic notice to Licensee's on-call representative. The City will not be required to delay non-emergency repair or maintenance activities more than 48 hours after attempting to contact Licensee's on-call representative.

### **9.4 Emergencies.**

The parties agree to notify each other of any emergency situation related to any City Poles at the emergency phone numbers listed in the Basic License Information at the earliest opportunity. In an emergency, however, the City's work and needs will take precedence over the operations of any of Licensee's Equipment on the License Area, and the City may access any portion of the License Area that it determines is necessary in its sole discretion in accordance with **Section 20.2** (Emergency Access), whether or not the City has notified Licensee of the emergency. Licensee acknowledges that City personnel will be entitled to exercise their judgment in an emergency caused by any person, and in the exercise of judgment may determine that the operation of Licensee's Equipment must be interrupted, the power must be shut off or terminated, or that the circumstances require the removal of any part of Licensee's Equipment. Licensee agrees that the City will bear no liability to Licensee for the City's interruption of Licensee's Equipment operations, shutting down or termination of the power source, removal of Equipment, or other actions with respect to Licensee's Equipment in an emergency except to the extent caused by the gross negligence or willful misconduct of the City, and that Licensee shall be solely responsible for the costs required to resume operations or repair or replace Equipment following the emergency.

## **10 LICENSEE'S MAINTENANCE AND REPAIR OBLIGATIONS**

### **10.1 Damage to City Property.**

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

### **10.2 Alterations to City Property**

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

### **10.3 No Right to Repair City Property.**

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

### **10.4 Notice of Damage to City Property.**

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

### **10.5 Licensee's Equipment.**

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

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

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

## **10.6 Standard of Work.**

All work by or on behalf of Licensee under this Article must: (a) be at Licensee's sole expense; (b) be performed by duly licensed and bonded contractors or mechanics; (c) be performed in a manner and using equipment and materials that will not interfere with or impair the City's operations; and (d) comply with all applicable Laws relating to the License Area or Licensee's activities.

## **11 LIENS**

Licensee shall keep the License Area free from any liens arising out of any work performed, material furnished, or obligations incurred by or for Licensee. Licensee shall inform each and every contractor and material supplier that provides any work, service, equipment, or material to Licensee in any way connected with Licensee's use of the License Area that the License Area is public property and is not subject to mechanics' liens or stop notices for Equipment, other materials, or services provided for Licensee's Equipment. If Licensee does not cause the release of lien of a mechanic's lien or stop notice by any contractor, service provider, or equipment or material supplier purporting to attach to the License Area or other City Property as a result of work performed, material furnished, or obligations incurred on behalf of Licensee within 60 days after notice or discovery of the lien, the City will have the right, but not the obligation, to cause the same to be released by any means it deems proper, including payment of the Claim giving rise to such lien. Licensee must reimburse the City for all expenses it incurs in connection with any such lien (including reasonable attorneys' fees) within 20 days following receipt of the City's demand, together with evidence of the City's expenses. Licensee shall give the City at least 10 days' prior notice of commencement of any construction or installation on any part of the License Area except for minor and routine repair and maintenance of Licensee's Equipment. Licensee shall not create, permit, or suffer any other encumbrances affecting any portion of the License Area.

## **12 UTILITIES; TAXES AND ASSESSMENTS**

### **12.1 Utilities.**

Licensee shall be solely responsible for obtaining and maintaining the provision of electricity to Licensee's Equipment, including, but not limited to, making payments to electric utilities and installation of separate electric meters, if necessary. Licensee shall comply with all Laws and rules and regulations of the electric utility relating to installation and connection of Licensee's Equipment to electricity.

### **12.2 Taxes and Assessments.**

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

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

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

## 13 COMPLIANCE WITH LAWS

### 13.1 Requirement.

**13.1.1 Current Laws.** Licensee shall install, use, and maintain the Equipment in strict compliance with Laws and conditions to Regulatory Approvals relating to the use or occupancy of the License Area, including all Laws relating to health and safety and radio signal transmission. Any work or installations made or performed by or on behalf of Licensee or any person or entity claiming through or under Licensee is subject to applicable Laws. The parties agree that Licensee's obligation to comply with all Laws is a material part of the bargained-for consideration under this Master License, irrespective of the degree to which such compliance may interfere with Licensee's use or enjoyment of the License Area, the likelihood that the parties contemplated the particular Law involved and whether the Law involved is related to Licensee's particular use of the License Area. No occurrence or situation arising during the Term arising under any current or future Law, whether foreseen or unforeseen and however extraordinary, will relieve Licensee from its obligations under this Master License or give Licensee any right to terminate this Master License or to otherwise seek redress against the City, except that Licensee may terminate a Pole License by removing its Equipment and surrendering rights to the License Area if Licensee determine in its judgment that compliance with a future law makes continued use of the Equipment in the License Area undesirable. After termination of any Pole License under this Section, the City will refund the portion of the previously-paid License Fee attributable to the terminated portion of the License Year, subject to the Minimum Term.

### 13.2 Personnel Safety Training.

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

**13.2.2 Licensee's Indemnity.** During any period when Licensee or any Agent of Licensee is installing, operating, or maintaining its Equipment, Licensee acknowledges and agrees that the City has delegated control of the License Area to Licensee, which will be solely responsible for any resulting injury or damage to property or persons, except for injury or damage resulting from the City's negligence, recklessness, or willful misconduct. The City is not a co-employer of any employee of Licensee or any employee of Licensee's Agents, and the City will not be liable for any Claim of any employee of Licensee or any employee of Licensee's Agents, except for Claims arising from the City's negligence, recklessness, or willful misconduct. Licensee agrees to Indemnify the City fully (as provided in **Article 17** (Licensee's Indemnity)) against any Claim brought by any employee of Licensee, any employee of Licensee's Agents, or any third party arising from or related to Licensee's access to and use of the License Area and other activities of Licensee or its Agents in or around the License Area, except to the extent the Claims result from the City's negligence, recklessness, or willful misconduct.

**13.2.3 City's Indemnity.** During any period when the City or any Agent of the City is installing, operating, or maintaining its Equipment, the City acknowledges and agrees that the City has control of the License Area and will be solely responsible for any resulting injury or damage to property or persons, except for injury or damage resulting from Licensee's negligence. Licensee is not a co-employer of any employee of the City or any employee of the City's Agents, and Licensee will not be liable for any Claim of any employee of the City or any employee of Licensee's Agents, except for Claims arising from Licensee's negligence. The City agrees to Indemnify Licensee fully (as provided in **Article 17** (Licensee's Indemnity)) against any Claim brought by any employee of the City or any employee of the City's Agents or any third party arising from or related to the City's access to and use of the License Area and other activities of the City or its Agents or around in the License Area, except



to the extent of or damage or injury resulting from Licensee's negligence, recklessness, or willful misconduct.

### **13.3 Compliance with CPUC General Order 95.**

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

### **13.4 Compliance with Electric Codes.**

Licensee shall conduct all activities on the License Area in accordance with the requirements of California Electric Code, National Electric Safety Code IEEE C2 (“**NESC**”), and any applicable local electrical code, as any of those codes may be amended. To the extent that CPUC General Order 95 does not address installation of cellular telephone antennas on Poles carrying electrical lines, Licensee shall apply applicable provisions of the NESC, with particular attention to paragraphs 224, 235C, 235F, 238, 239, and 239H and sections 22, 41, and 44. Where any conflict exists between the NESC, the California Electric Code, any local code, and CPUC General Order 128, the more stringent requirements will apply, as determined by the City.

### **13.5 City's Exercise of its Proprietary Interests.**

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

### **13.6 Regulatory Approvals.**

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

### **13.7 Radiofrequency Radiation and Electromagnetic Fields.**

Licensee's obligation to comply with all Laws includes all Laws relating to allowable presence of or human exposure to Radiofrequency Radiation (“**RFs**”) or Electromagnetic Fields (“**EMFs**”) on or off the License Area, including all applicable FCC standards, whether such RF or EMF presence or exposure results from Licensee's Equipment alone or from the cumulative effect of Licensee's Equipment added to all other sources on or near the License Area. Licensee must provide to the City a copy of the report required for Licensee's Small Cell Attachment Permit, of an independent engineering consultant analyzing whether RF and EMF emissions at the proposed Pole Locations would comply with FCC standards, taking into consideration the Equipment installation specifications and distance to residential windows (each, an “**Emissions Report**”). If not provided earlier, Licensee must submit the Emissions Report to the City with the applicable Pole License application. If the Emissions Report does not identify the type(s) of frequencies or bandwidth used by the Equipment, Licensee shall include such information in its Pole License application. If deemed necessary by the City, City has a right to hire a third party to validate the information provided by Licensee. Licensee shall be responsible for all costs of the third party hired by the City under this Section 13.7.

### **13.8 Compliance with City's Risk Management Requirements**

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

at Licensee's expense, shall comply with all reasonable rules, orders, regulations, and requirements of the City Manager and City's Risk Manager.

## **14 DAMAGE OR DESTRUCTION**

### **14.1 No Statutory Rights for Damaged City Pole.**

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

### **14.2 Licensee's Rights after Termination.**

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

## **15 ASSIGNMENT**

### **15.1 Restriction on Assignment.**

Except as specifically provided in **Section 15.6** (Permitted Assignment), Licensee shall not directly or indirectly Assign any part of its interest in or rights with respect to the License Area without the City's prior consent. The City will not unreasonably withhold, condition or delay its consent to an Assignment other than an Assignment covered by **Article 11** (Liens).

### **15.2 Notice of Proposed Assignment.**

This **Section 15.2** shall apply to all Assignments other than Permitted Assignments under **Section 15.6** (Permitted Assignment). If Licensee desires to enter into an Assignment of this Master License or any Pole License issued under this Master License, Licensee shall give notice (a "**Notice of Proposed Assignment**") to the City, stating in detail the terms and conditions for such proposed Assignment and complete information, including financial statements or information, business history, and references and other information about the proposed assignee (the "**Assignee**") that the City needs to make a fully informed decision about Licensee's request. If Licensee does not deliver all information that the City reasonably requires simultaneously with the Notice of Proposed Assignment, the date of Licensee's delivery of notice will be deemed to have occurred only when it has delivered any additional information the City requests.

### **15.3 City Response.**

**15.3.1 Timing.** The City will grant or deny any request for consent to an Assignment within 30 days after the City's receipt or deemed receipt, if delayed under **Section 15.2** (Notice of Proposed Assignment), of the Notice of Proposed Assignment (the "**Assignment Response Period**"). If the City consents to the proposed Assignment, then Licensee will have 180 days following the date the City delivers its consent notice to Licensee to complete the Assignment. As a condition of the City's consent, the City shall be entitled to seventy-five percent (75%) of the bonus rent and/or net bonus consideration under any Assignment, to the extent that such rent or other consideration is attributable to the value of the interest in the License Area created by this Master Agreement and related Pole License. The City shall be entitled to review Licensee's books and records relating to the economic value of the Assignment as it may relate to the value of the interest in the License Area, provided that the City agrees in writing to keep the information in such books and records confidential, to the extent permitted by law, with the agreement to be in a form of commercially reasonable confidentiality agreement.

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

#### **15.4 Effect of Assignment.**

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

#### **15.5 Assumption by Transferee.**

Each Assignee shall assume all obligations of Licensee under this Master License and each assigned Pole License and will be and remain liable jointly and severally with Licensee for all obligations to be performed by Licensee. No Assignment will be binding on the City unless Licensee or the Assignee delivers to the City evidence satisfactory to the City that the Assignee has obtained all Regulatory Approvals required to operate as a wireless telecommunications service provider on the assigned License Area, a copy of the assignment agreement (or other document reasonably satisfactory to the City in the event of a Permitted Assignment under [Section 15.6](#) (Permitted Assignment)), and an instrument in recordable form that contains a covenant of assumption by such Assignee satisfactory in substance and form to the City, consistent with the requirements of this Article. However, the failure or refusal of an Assignee to execute such instrument of assumption will not release such Assignee from its liability as set forth in this Section. Except for a Permitted Assignment as provided in [Section 15.6](#) (Permitted Assignment), Licensee shall reimburse the City on demand for any reasonable costs that the City incurs in connection with any proposed Assignment, including the costs of investigating the acceptability of the proposed Assignee and legal costs incurred in connection with considering any requested consent. The City agrees that its right to reimbursement under this Section during the Term will be limited to \$2,000 for each request.

#### **15.6 Permitted Assignment.**

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

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

- (a) The Assignee uses the License Area only for the Permitted Use and holds all Regulatory Approvals necessary to lawfully install, operate, and maintain Equipment on the License Area.
- (b) Licensee provides the City with notice no later than thirty (30) days before the effective date of the Permitted Assignment, stating the contact information for the proposed Assignee and providing financial information establishing that the proposed Assignee meets the capital and fiscal qualifications stated in this Section.
- (c) Licensee is in good standing under this Master License.

##### **15.6.3 Licensee Carrier Customers.**

(a) The Parties acknowledge that Equipment deployed by Licensee in the License Areas pursuant to this Agreement may be owned and/or remotely operated by third-party wireless carrier customer ("Carriers") and installed and maintained by Licensee pursuant to existing agreements between Licensee and a Carrier. Such Equipment shall be treated as Licensee's Equipment for all purposes under this Master License and any applicable Pole License. A Carrier's ownership and/or operation of such Equipment shall not constitute an Assignment under this Master License, provided that Licensee shall not actually or purport to

sell, assign, encumber, pledge, or otherwise transfer any part of its interest in the License Area to a Carrier, or otherwise permit any portion of the License Area to be occupied or any work to be performed by anyone other than itself. Licensee shall remain solely responsible and liable for the performance of all obligations under this Master License and applicable Pole Licenses with respect to any Equipment owned and/or remotely operated by a Carrier.

## **16 DEFAULT**

### **16.1 Events of Default by Licensee.**

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

**16.1.1 Nonpayment of Fees.** Licensee fails to pay any License Fee or Additional Fees as and when due, if the failure continues for 10 days after the receipt of written notice from City to Licensee of such failure.

**16.1.2 Lapsed Regulatory Approvals.** Licensee fails to maintain all Regulatory Approvals required for the Permitted Use, if the failure continues for 30 days after receipt of written notice from City to Licensee of such failure.

**16.1.3 Prohibited Assignment.** Licensee enters into an Assignment in violation of **Article 15** (Assignment) if the failure continues for thirty (30) days after written notice from City to Licensee of such failure.

**16.1.4 Interference with City.** Licensee interferes with the City's operations in violation of **Section 26.5.1** (Licensee's Obligation Not to Cause Interference) if the failure continues for 30 days after written notice from City to Licensee of such failure.

**16.1.5 Failure to Maintain Insurance.** Licensee fails to maintain insurance as required by **Article 18** (Insurance) if the failure continues for thirty (30) days after written notice from City to Licensee of such failure.

**16.1.6 Failure to Cure.** Licensee fails to cure noncompliance with the specified requirements of this Master License after initial and follow-up notices or to pay the Default Fees as set forth in **Subsection 16.2.4** (Default Fees).

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

**16.1.8 Abandonment.** Licensee removes its Equipment or abandons the License Area for a continuous period of more than sixty (60) days, such that the License Area is longer being used for the Permitted Use. The City shall not deem a License Area abandoned if the Licensee is diligently pursuing completion of the work necessary to make the facility operational, which the City acknowledges may include separate fiber optic network connections.

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

### **16.2 City's Remedies.**

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

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

**16.2.2 Termination of Pole License.** If a default specific to one or more Pole Licenses is not cured by Licensee within the applicable cure period, if any, specified in **Section 16.1** (Events of Default by Licensee), the City may terminate each Pole License in default.

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

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

- (a) Licensee constructs or installs any alteration or improvement without the City's prior approval as required by **Article 6** (Pole License Approvals), **Article 7** (Installation of Equipment), or **Article 8** (Alterations) of this Master License.
- (b) Licensee fails to make a repair required by **Article 10** (Licensee's Maintenance and Repair Obligations) on a timely basis.
- (c) Licensee fails to notify the City, through its project manager, before accessing the License Area or following the plan approval procedures as set forth in **Article 7** (Installation of Equipment).
- (d) Licensee fails to provide evidence of the required bonds and insurance coverage described in **Article 18** (Insurance) on a timely basis.

### **16.3 Licensee's Remedy for City Defaults.**

Licensee's sole remedy for the City's breach or threatened breach of this Master License or any Pole License issued under it will be termination of this Master License and any or all Pole Licenses, and an action for damages, subject to **Article 19** (Limitation of City's Liability).

### **16.4 Cumulative Rights and Remedies.**

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

## **17 LICENSEE'S INDEMNITY**

### **17.1 Scope of Indemnity.**

Licensee, on behalf of itself and its successors and assigns, shall Indemnify the City, its officers, employees and agents (“Indemnified Parties”) from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind (each, a “**Claim**”), incurred in connection with or arising in whole or in part from: (a) injury to or death of a person, including employees of Licensee, or loss of or damage to property, occurring on or about the License Area or arising in connection with Licensee’s or its Agents’ or Invitees’ authorized or unauthorized use of the License Area; (b) any default by Licensee in the observation or performance of any of the terms, covenants, or conditions of this Master License to be observed or performed on Licensee’s part; (c) the use or occupancy or manner of use or occupancy of the License Area by Licensee, its Agents, or Invitees, or any person or entity claiming through or under any of them; (d) the presence of or exposure to RFs or EMFs resulting from Licensee’s failure to comply with FCC standards in its use of the License Area; (e) the condition of the License Area or any occurrence on the License Area from any cause attributable to the events described in clauses (a), (b), (c), or (d) of this Section; or (f) any acts, omissions, or negligence of Licensee, its Agents, or Invitees, in, on, or about the License Area; all regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Master License and further except to the extent such Claim is caused by the willful misconduct or gross negligence of the Indemnified Parties.

## **17.2 Indemnification Obligations.**

Licensee’s Indemnification obligation includes reasonable fees of attorneys, consultants, and experts and related costs, including the City’s costs of investigating any Claim. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and the other Indemnified Parties from any Claim that actually or potentially falls within the scope of **Section 17.1** (Scope of Indemnity) even if allegations supporting the Claim are groundless, fraudulent, or false, which obligation arises at the time such Claim is tendered to Licensee by the Indemnified Party and continues at all times until finally resolved. Licensee’s obligations under this Article will survive the termination of the Master License.

## **18 INSURANCE**

### **18.1 Licensee’s Insurance.**

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

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

- (a)** Commercial General Liability insurance (including premises operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability; independent contractors; personal injury) with limits of at least \$2 million combined single limit for each occurrence.
- (b)** Worker’s Compensation Insurance with Employer’s Liability Limits not less than \$1 million each accident, or such other amount as required by Law, whichever is greater.
- (c)** Commercial Automobile Liability Insurance with limit not less than \$2 million each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles.

**18.1.2 Required Endorsements.** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide the following:

- (a)** Name as additional insured the “*City of South San Francisco, and its officers, agents, and employees;*” and
- (b)** That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any Claims arising out of this Master License, and that insurance applies separately to each insured against whom Claim is made or suit is brought.

Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all Claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

**18.1.3 Notice of Cancellation.** All insurance policies required to be maintained by Licensee under this Master License shall be endorsed to provide written notice of cancellation for any reason, including intent not to renew or to reduce coverage to both Licensee and the City. Licensee must provide a copy of any notice of intent to cancel or cancellation of its required coverage to the City within one business day of Licensee's receipt and take prompt action to prevent cancellation, reinstate the cancelled coverage, or obtain it from a different insurer meeting the qualifications of **Subsection 18.1.9 (Ratings).**

**18.1.4 Claims-Made Policies.** Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years after the expiration or termination of this Master License, to the effect that, should occurrences during the Term give rise to Claims made after expiration or termination of this Master License, such Claims shall be covered by such claims-made policies.

**18.1.5 General Aggregate Limit.** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that Claims investigation or legal defense costs will be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or Claims limits specified above.

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

**18.1.7 Insurance Does Not Limit Indemnity.** Licensee's compliance with the provisions of this Section shall in no way relieve or decrease Licensee's liability under **Article 17** (Licensee's Indemnity) or any other provision of this Master License.

**18.1.8 Right to Terminate.** The City may elect, in the City's reasonable discretion, to terminate this Master License if Licensee allows any required insurance coverage to lapse by: (i) providing Licensee notice of the event of default; and (ii) including in the notice of default or a notice of termination if Licensee fails to reinstate the lapsed coverage within three (3) business days after the City delivers notice.

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

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

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

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

**18.2 Insurance of Licensee's Property.**

Licensee shall be responsible, at its expense, and in its sole discretion, for separately insuring Licensee's property if it chooses to do so.

**18.3 City's Insurance.**

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

**18.4 Waiver of Subrogation.**

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

**18.5 Contractors' Bonds and Insurance.**

Licensee shall require its contractors that install, maintain, repair, replace, or otherwise perform work on the License Area: (a) to provide bonds to guarantee the performance of the work and the payment of subcontractors and suppliers for any installation of Equipment; and (b) to have and maintain insurance of substantially the same coverage with substantially the same limits as required of Licensee.

**19 LIMITATION OF CITY'S LIABILITY**

**19.1 General Limitation on City's Liability.**

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

**19.2 Consequential Damages.**

Licensee expressly acknowledges and agrees that the License Fees and Additional Fees payable under this Master License do not take into account any potential liability of the City for consequential or incidental damages. The City would not be willing to enter into this Master License or issue any Pole Licenses in the absence of a complete waiver of liability, to the fullest extent permitted by Law, for consequential or incidental damages due to the acts or omissions of the City or its Agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Licensee or other waivers contained in this Master License, and as a material part of the consideration for this Master License, Licensee fully releases, waives, and discharges forever any and all Claims against the City for consequential and incidental damages arising out of this Master License or any Pole License, including lost profits arising from the disruption to Equipment, any interference with uses conducted by Licensee under this Master License and Pole Licenses, regardless of the cause, and whether or not due to the active or passive negligence or willful



misconduct of the City or its Agents, and covenants not to sue for such damages the City or its officers, directors, and employees, and all persons acting by, through, or under each of them.

### **19.3 No Relocation Assistance.**

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

### **19.4 Non-Liability of City Officials, Employees, and Agents.**

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

### **19.5 Scope of Waivers.**

Licensee acknowledges the City's rights under this Article and waives any Claims arising from the exercise of its rights. In connection with the preceding sentence and releases and waivers under **Section 10.3** (No Right to Repair City Property), **Section 14.1** (No Statutory Rights for Damaged City Pole), **Section 18.4** (Waiver of Subrogation), **Section 19.1** (General Limitation on City's Liability), **Section 19.2** (Consequential Damages), **Section 19.3** (No Relocation Assistance), **Section 20.3** (No Liability for Emergency Access), and any other waiver by Licensee under this Master License, Licensee acknowledges that it is familiar with section 1542 of the California Civil Code, which reads:

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

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

## **20 CITY ACCESS TO LICENSE AREA**

### **20.1 City's Right of Access.**

Except as specifically provided otherwise, the City and its designated Agents have the right of access to any part of the License Area at any time without notice for any purpose.

### **20.2 Emergency Access.**

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

emergency or exigent circumstances may not be deemed to be a forcible or unlawful entry into or interference with Licensee's rights to the License Area.

### **20.3 No Liability for Emergency Access.**

The City will not be liable in any manner, and Licensee hereby waives any Claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the City's entry onto the License Area, including the removal of Licensee's Equipment from a City Pole in an emergency as described in **Subsection 20.2**(Emergency Access), except damage resulting directly and exclusively from the negligence or willful misconduct of the City or its Agents and not contributed to by the acts, omissions, or negligence of Licensee, its Agents, or Invitees.

## **21 REQUIRED RECORDS**

### **21.1 Records of Account.**

Licensee shall maintain during the Term and for a period ending three (3) years after the Expiration Date or earlier termination of this Master License the following records at a place of business within the Alameda County area or in an electronic format: (a) identification and location of all City Poles under active Pole Licenses; (b) amounts and dates of License Fees paid to the City; (c) Regulatory Approvals issued for the installation, operation, and maintenance of Equipment on City Poles; and (d) correspondence with the City concerning any matter covered by this Master License. The City, or a consultant acting on its behalf, will have the right to inspect and audit Licensee's records at Licensee's place of business during regular business hours on 10 days' notice to Licensee. Such inspection and audit shall be at City's sole expense, except for any costs incurred by the Licensee in making Licensee's records available for inspection.

### **21.2 Estoppel Certificates.**

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

### **21.3 Regulatory and Bankruptcy Records.**

**21.3.1 Copies for City Records.** Licensee shall provide to the City without request copies of: (a) any pending applications, communications, or other documents related to any filing by or against Licensee of an action for bankruptcy, receivership, or trusteeship; and (b) all relevant non-privileged petitions, applications, communications, and reports submitted by Licensee to the FCC or any other Regulatory Agency having jurisdiction directly related to Licensee's installation or operation of Equipment on City Poles or other property.

**21.3.2 Production of Documents.** The City will attempt to notify Licensee promptly after delivery of any request for copies of these records made under any public records Law or in any court proceeding and of the date on which the records are to be made available. If Licensee believes that any of the requested records are confidential or contain proprietary information, Licensee must identify those records to the City before the date of required production. If the request is made through any court or administrative proceeding, or the requesting party otherwise makes a formal complaint regarding nondisclosure, Licensee will have the burden to obtain any protective order needed to withhold production at its sole cost and expense. Licensee acknowledges that the City's compliance

with any court order, including a subpoena duces tecum, will not violate this Subsection. The City's failure to notify Licensee will not affect the City's legal obligation to produce records or give rise to any Claim by Licensee against the City.

## **22 RULES AND REGULATIONS**

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

## **23 FINANCIAL ASSURANCES**

### **23.1 Security Deposit, Bond or Other Forms of Financial Assurance.**

Prior to erecting or installing facilities and equipment, Licensee shall either secure a bond, make a security deposit, or provide other forms of financial assurance acceptable to the City, for the removal of the facility in the event that its use is abandoned or the approval is otherwise terminated pursuant to the terms of this Master License. The amount of the bond, security deposit or other forms of financial assurance shall be determined based on each application.

## **24 SURRENDER OF LICENSE AREA**

### **24.1 Surrender.**

**24.1.1 Obligations Upon Surrender.** No later than 60 days after the Expiration Date or other termination of this Master License or any Pole License, Licensee shall peaceably remove its Equipment from applicable portions of the License Area, repair any damage resulting from the removal, and surrender it to the City in good order and condition, normal wear and tear excepted, free of debris and hazards, and free and clear of all liens and encumbrances. Licensee's obligations under this Article will survive the Expiration Date or other termination of this Master License.

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

### **24.2 Holding Over.**

**24.2.1 With Consent.** Any holding over after the termination of any Pole License with the express consent of the City will be construed to automatically extend the Term of this Master License for a period of one License Year at a License Fee equal to 150% of the License Fee in effect immediately before such termination, and the Master License otherwise will be on its express terms and conditions.

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

## **25 HAZARDOUS MATERIALS**

### **25.1 Hazardous Materials in License Area.**

Licensee covenants and agrees that neither Licensee nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, disposed of, or Released in, on, under, or about the License Area or any other part of City Property, or transported to or from any City Property in violation of Environmental Laws, except that Licensee may use small quantities of Hazardous Materials as needed for routine operation, cleaning, and maintenance of Licensee's Equipment that are

customarily used for routine operation, cleaning, and maintenance of such equipment and so long as all such Hazardous Materials are contained, handled, and used in compliance with Environmental Laws. Licensee shall immediately notify the City if and when Licensee learns or has reason to believe any Release of Hazardous Material has occurred in, on, under, or about the License Area or other City Property.

## **25.2 Licensee's Environmental Indemnity.**

If Licensee breaches any of its obligations contained in this Article, or if any act, omission, or negligence of Licensee or any of its Agents or Invitees in the performance of activities pursuant to this license results in any contamination of the License Area or other City Property, or in a Release of Hazardous Material from, on, about, in, or beneath any part of the License Area or other City Property, or the violation of any Environmental Law, then Licensee, on behalf of itself and its successors and assigns, shall Indemnify the City, its Agents, and their respective successors and assigns from and against any and all Claims (including damages for decrease in value of the License Area or other City Property, the loss or restriction of the use of usable space in the License Area or other City Property and sums paid in settlement of Claims, attorneys' fees, consultants' fees, and experts' fees and related costs) arising during or after the Term of this Master License relating to such Release or violation of Environmental Laws; provided, however, Licensee shall not be liable for any Claims to the extent such Release was caused by the gross negligence or willful misconduct of the City or its Agents. Licensee's Indemnification obligation includes costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought onto the License Area or other City Property by Licensee or any of its Agents or Invitees and to restore the License Area or other City Property to its condition prior to Licensee's introduction of such Hazardous Material or to correct any violation of Environmental Laws. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and the other Indemnified Parties from any Claim that actually or potentially falls within this Indemnity provision even if the allegations supporting the Claim are or may be groundless, fraudulent, or false, which obligation arises at the time such Claim is tendered to Licensee by the Indemnified Party and continues until the Claim is finally resolved. Without limiting the foregoing, if Licensee or any of its Agents or Invitees causes the Release of any Hazardous Material on, about, in, or beneath the License Area or other City Property, then in any such event Licensee shall, immediately, at no expense to any Indemnified Party, take any and all necessary actions to return the License Area or other City Property, as applicable, to the condition existing prior to the Licensee's Release of any such Hazardous Materials on the License Area or other City Property or otherwise abate the Release in accordance with all Environmental Laws, except to the extent such Release was caused by the gross negligence or willful misconduct of the City or its Agents. Licensee shall afford the City a full opportunity to participate in any discussions with Regulatory Agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

## **26 SPECIAL PROVISIONS**

### **26.1 Early Termination by Either Party.**

If Licensee does not obtain all Regulatory Approvals for any Pole License within six (6) months of the full execution by both parties of the Pole License, either party will have the right to terminate that Pole License on 60 days' notice ("Notice Period"), which the terminating party must deliver to the other party the Pole License to be terminated. If a Pole License is terminated under this provision, the Commencement Date will be deemed not to occur, and Licensee will have no obligation to pay the License Fee. If Licensee obtains all Regulatory Approvals within the 60 day Notice Period, the termination shall be revoked and the Pole License shall remain in full force and effect.

### **26.2 Licensee's Termination Rights.**

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

**26.2.2 Pole License Termination.** Absent the circumstances described in **Subsection 26.2.1** (No-Fault Termination of Master License), Licensee may terminate a Pole License on 90 days' notice at any time following the first anniversary of the applicable Pole License Effective Date. Licensee may remove its Equipment from the applicable License Area at any time after giving the required notice.

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

**26.2.4 Interference Caused by City Work.** If any City work described in **Section 9.1** (Repairs, Maintenance, and Alterations) prevents Licensee from using a City Pole or other License Area for more than 30 days, Licensee will be entitled to: (i) a pro rata abatement of the License Fee for the period Licensee is unable to use the City Pole; (ii) terminate the Pole License on 30 days' notice; or (iii) both abatement of the License Fee under clause (i) and termination under clause (ii).

### **26.3 City's Termination Rights .**

#### **26.3.1 Absolute Right to Terminate Pole Licenses.**

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

(b) If the condition is susceptible to cure, the City will provide notice to Licensee of the City's determination, the underlying reasons for the determination, and provide a 30-day cure period following which the affected Pole Licenses will terminate if Licensee has not effected a cure. Provided, however, that the Agreement shall not be terminated if the condition cannot reasonably be cured within thirty (30) days of such notice and Licensee commences the cure within such thirty (30) day period and thereafter diligently and continuously pursues the cure to completion.

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

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

**26.3.2 Removal of Equipment.** The City in its sole but reasonable discretion may determine that exigent circumstances require, for reasons of public, health, safety, or needs of the City to provide street lighting, utilities, or other municipal services, that Licensee remove the Equipment from a particular City Pole on 48 hours' notice. Licensee shall remove the Equipment from the identified City Pole within the 48-hour period or any longer time to which the City agrees. The applicable Pole License will terminate as to the identified City Pole upon expiration of the 48-hour period. After termination of any Pole License under this section, the City will (i) refund the portion of the previously-paid License Fee attributable to the terminated portion of the License Year, subject to Section 3.1.2 (Minimum Term); and (ii) give priority to Licensee's Pole License application for a replacement City Pole.

**26.3.3 City Pole Removal.** The City has the right to remove any City Pole that it determines in its sole judgment is unnecessary for its street light operations. If the City decides to remove a City Pole, it will make reasonable efforts to provide at least 60 days' notice to Licensee, but the City's rights under this Subparagraph will not be affected by its failure to provide less than 60 days' notice. Upon removal of a City Pole, either party will have the right to terminate the Pole License as to the affected City Pole as of the last day of the month of removal. After termination of any Pole License under this section, the City will (i) refund the portion of the previously-paid License Fee attributable to the terminated portion of the License

Year, subject to Section 3.1.2 (Minimum Term); and (ii) give priority to Licensee's Pole License application for a replacement City Pole.

**26.3.4 Replacement, Relocation, or Upgrading of City Poles.** The City has the right to replace, relocate, or add City equipment to, and remove Licensee's Equipment from, any City Pole that the City determines in its sole but reasonable judgment is necessary for its municipal operations, including, but not limited to, LED conversion or installation of solar capabilities. If the City decides to replace or relocate a City Pole or add equipment requiring the removal of Licensee's Equipment, the City will make reasonable efforts to provide at least 60 days' notice to Licensee, but the City's rights under this Subparagraph will not be affected by its failure to provide less than 60 days' notice. Licensee may choose either to terminate the applicable Pole License as to the replacement, relocated, or upgraded City Pole or, only if feasible in the discretion of the City's Public Works Department, install Licensee's Equipment on the replacement, relocated, or upgraded City Pole at Licensee's sole cost. The City will endeavor to accommodate a request by Licensee to relocate the Pole License and related Equipment, at Licensee's sole cost and expense, to another City Pole mutually acceptable to Licensee and City.

**26.3.5 Future Use of Existing City Conduit.**

(a) If City conduit space is part of a License Area, and the City needs to use such City conduit space for future upgrade and expansion of its street light system, the City may require Licensee's wiring to be removed from the City's conduit. The City will use reasonable efforts to give Licensee at least 180 days' notice that the wiring will be removed, but the City's failure to give notice or delivery of less than 180 days' notice will not affect the City's rights under this Subsection. In either case, the City will provide Licensee with a date by which its wiring must be removed.

(b) Unless Licensee notifies the City within the time specified in the City's notice under Subsection (a) above that Licensee has identified an alternative to using City conduit to enable use its Equipment without using the City conduit, the Pole License as to the affected City Pole will terminate automatically as of the last day of the month specified in the notice, but City shall grant Licensee an alternate Pole License without demanding reimbursement of its Administrative Costs as consideration for loss of the affected Pole License.

**26.4 Licensee's Rights after Termination.**

Promptly after the effective date of any termination of any Pole License under **Subsection 26.2.4** (Interference caused by City Work) or **Section 26.3** (City's Termination Rights), the City will refund the portion of any previously-paid License Fee attributable to the terminated portion of the License Year, subject to **Section 3.1.2** (Minimum Term). In addition, if Licensee wishes to replace the City Pole with a different Pole Location, the City will give priority to Licensee's Pole License applications for an equal portion of replacement City Poles, but the grant of priority will not affect Licensee's obligations under this Master License, including the requirement to obtain all Regulatory Approvals for the replacement City Poles.

**26.5 Special Remedies for Interference with Operations.**

**26.5.1 Licensee's Obligation Not to Cause Interference.**

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

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

#### **26.5.2 Impairment Caused by Change in City Use.**

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

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

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

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

**26.5.3 Impairment Caused by City Access.** Licensee agrees that it will not be entitled to any abatement of License Fees if the City exercises its rights of access under **Article 20** (City Access to License Area) unless the City's activities cause Licensee to be unable to operate Equipment on the License Area for its permitted use for a period of more than 10 days, in which case, subject to proof, License Fees will be abated ratably for the entire period that Licensee is unable to operate any Equipment on any affected City Pole.

## **27 GENERAL PROVISIONS**

### **27.1 Notices.**

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

**27.1.1 Writings Required.** All notices will be effective only if given in writing and delivered in accordance with this Section.

**27.1.2 Manner of Delivery.** Except as provided in **Subsection 27.1.4** (Special Requirements), notices may be delivered by: (i) personal delivery; ; (ii) certified mail, postage prepaid, return receipt requested; or (iii) prepaid overnight delivery, return receipt requested. Notices must be delivered to: (1) Licensee at Licensee's address set forth in the Basic License Information, or at any

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

**27.1.3 Effective Date of Notices.** All notices under this Master License will be deemed to have been delivered: (i) 5 days after deposit if delivered by first class mail; (ii) 2 days after deposit if delivered by certified mail; (iii) the date delivery is made by personal delivery or overnight delivery by a Nationally recognized courier; or (iv) the date an attempt to make delivery fails because a party has failed to provide notice of a change of address or refuses to accept delivery. The parties will transmit copies of notices by email to the email addresses listed in the Basic License Information, but failure to do so will not affect the delivery date or validity of any notice properly delivered in accordance with this Section.

**27.1.4 Special Requirements.** Any notice of default, demand to cure, or notice of termination must be sent by certified mail, overnight delivery by a Nationally recognized courier, or personally delivered.

## **27.2 No Implied Waiver.**

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

## **27.3 Amendments.**

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

## **27.4 Interpretation of Licenses.**

The following rules of interpretation apply to this Master License.

**27.4.1 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 correlating forms of the terms (e.g., the definition of "indemnify" applies to "indemnity," "indemnification," etc.).

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

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

**27.4.4 Time for Performance.** Provisions in this Master License relating to number of days mean calendar days, unless otherwise specified. "**Business day**" means a day other than a Saturday, Sunday, or a bank or City holiday. If the last day of any period to give notice, reply to a notice, or to



undertake any other action occurs on a day that is not a business day, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding business day.

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

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

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

**27.5 Successors and Assigns.**

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

**27.6 Brokers.**

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

**27.7 Severability.**

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

**27.8 Governing Law and Venue.**

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

**27.9 Entire Agreement.**

This Master License, including all exhibits and schedules, contains the entire agreement between the parties, and all prior written or oral agreements regarding the same subject matter are merged into this document. The parties further intend that this Master License, all Pole Licenses, and all exhibits and schedules will constitute one agreement that contains the complete and exclusive statement of its terms and that no extrinsic evidence (including prior drafts and revisions) may be introduced in any judicial, administrative, or other legal proceeding involving this Master License. Licensee hereby acknowledges that neither the City nor

the City's Agents have made any representations or warranties with respect to the City Poles or this Master License except as expressly set forth herein, and no rights, easements, or additional licenses are or will be acquired by Licensee by implication or otherwise unless expressly set forth herein.

**27.10 Time of Essence.**

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

**27.11 Survival.**

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

**27.12 Recording.**

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

**27.13 Counterparts.**

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

**27.14 Cooperative Drafting.**

This Master License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters it addresses and was drafted through a cooperative effort of both parties, each of which has had an opportunity to have this Master License reviewed and revised by legal counsel. No party will be considered the drafter of this Master License, and no presumption or rule (including that in Cal. Civil Code § 1654) that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this Master License.

**27.15 Authority to Approve Agreement.**

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

**27.16 Conflicts of Interest.**

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

**27.17 Included Exhibits and Schedules.**

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

**EXHIBIT A – Form of Pole License**

Exhibit A-1 – Licensee's Plans and Specifications

Exhibit A-2 – Form of Acknowledgment Letter

Exhibit A-3 – License Fee and Default Fee Schedule

Exhibit A-4 – City Installation Guidelines

**EXHIBIT B** – Requirements for Licensee Equipment

DRAFT

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

**CITY:**

CITY OF SOUTH SAN FRANCISCO, a  
California municipal corporation

**LICENSEE:**

[Wireless Company], a [California corporation, etc.]

By: \_\_\_\_\_

Mike Futrell  
City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Krista Martinelli  
City Clerk

Approved as to Form:

By: \_\_\_\_\_

Jason Rosenberg  
City Attorney

2928039.7

[Remainder of page intentionally left blank.]

**EXHIBIT A**  
**FORM OF POLE LICENSE**

Master License between [Wireless Company] and City of South San Francisco Pole License No. [Start with 1 and number each subsequent application consecutively.]

In accordance with **Section 6.3** of the Master License, Licensee submits to the City two partially executed counterparts of this form of Pole License and each of the following as its Pole License application:

1. Pole Location/License Area:  
Pole License No.:
2. Exhibit A-1, complete and final plans and specifications for Equipment to be installed in the License Area subject to Regulatory Approvals;
3. The sum of \$\_\_\_\_\_ for the initial Administrative Payment in amounts based on the number of City Poles identified in Exhibit A-1, subject to **Section 6.5** of the Master License; and
4. If not previously provided, the Emissions Report.

Licensee acknowledges that: (a) this Pole License will not be effective until Licensee obtains all applicable and necessary Regulatory Approvals after the Pole License is fully executed; (b) the City may require Licensee to supplement the Administrative Payment on conditions specified in **Section 6.5** of the Master License; (c) Licensee will not have the right to access or install Equipment on the License Area until after Licensee has: (i) submitted a complete Acknowledgment Letter to the City with all information and funds required; (ii) submitted insurance information to City as required by the Master License Agreement; and (iii) the City has provided notice to proceed by returning to Licensee a countersigned copy of the Acknowledgment Letter.

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

**LICENSEE:**

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

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVAL:

**CITY:**

CITY OF SOUTH SAN FRANCISCO, a California municipal corporation

By: \_\_\_\_\_

Mike Futrell (or designee)  
City Manager

Date: \_\_\_\_\_

DRAFT

EXHIBIT A-1

LICENSEE'S PLANS AND SPECIFICATIONS

Pole License No. \_\_\_\_

*[Licensee to attach plans and specifications for all Equipment, including required and permitted signage, to this cover sheet and submit with Pole License application.]*

DRAFT

**EXHIBIT A-2**

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

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

[Date]

City of South San Francisco  
835 East 14th Street  
South San Francisco, CA 94577  
Attention: [REDACTED]

Re: Pole License No. \_\_\_\_\_ Dear \_\_\_\_\_:

This letter will confirm the following: (1) that Licensee has obtained the Small Cell Attachment Permit and all other Regulatory Approvals required for the Permitted Use under this Pole License, copies of which are attached to this letter, as specified below; (2) the Commencement Date of this Pole License is \_\_, 20\_\_, which is the first day of the month after the Pole License Effective Date pursuant to section 4.1.1; and (3) the Effective Date of this Pole License is \_\_\_\_, 20\_\_, which is the date on which Licensee obtained all applicable and necessary Regulatory Approvals after the Pole License is fully executed.

This letter also confirms that Licensee has submitted all required insurance information to the City. The Security Deposit/Bond/Financial Assurance (if not already provided) and the License Fee for the first License Year of this Pole License is provided herewith or have been wired to the City.

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

Very truly yours,

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Enc.

- ☐ Small Cell Attachment Permit
- ☐ [List other Regulatory Approvals.]
- ☐ [List other Regulatory Approvals.]
- ☐ [List other Regulatory Approvals.]
- ☐ Insurance certificates and endorsements
- ☐ Contractor's bonds, insurance certificates, and endorsements
- ☐ First License Year's License Fee





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

Dear [Licensee]:

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

The City concurs with the Pole License Effective Date for this Pole License as specified above. [After reviewing the Regulatory Approvals, the City has determined that the correct Commencement Date for this Pole License is: \_\_\_\_\_, 20\_\_\_\_.] The Licensee Fee and Default Fee Schedule and City Installation Guidelines for the Pole License are attached. Upon receipt, they will be deemed to be attached to the Pole License as Exhibits A-3 and A-4, respectively.

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

CITY OF SOUTH SAN FRANCISCO, a California municipal corporation

By: \_\_\_\_\_

Mike Futrell (or designee)  
City Manager

Date: \_\_\_\_\_

Enc.

☐ Licensee Fee and Default Fee Schedule

☐ City Installation Guidelines

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

Dear [Licensee]:

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

The City concurs with the Commencement Date for this Pole License as specified above. The Licensee Fee and Default Fee Schedule and City Installation Guidelines for the Pole License are attached. Upon receipt, they will be deemed to be attached to the Pole License as Exhibits A-3 and A-4, respectively.

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

By: \_\_\_\_\_

Mike Futrell (or designee)  
City Manager

Date: \_\_\_\_\_

Enc.

- ☐ Licensee Fee and Default Fee Schedule
- ☐ City Installation Guidelines

**SCHEDULE A-3**

**LICENSEE FEE AND DEFAULT FEE SCHEDULE**

**Pole License \_\_\_\_\_**

<b>LICENSE FEE SCHEDULE</b>	
2018 Annual License Fee per City Pole	\$1,500 *
Replace a City-Owned Wooden Pole pursuant to Subsection 4.2.3	20% Annual License Fee Decrease
Provision of in-lieu public benefits pursuant to Subsection 4.2.3, subject to City Council review and approval	Annual License Fee waived

**\* Annual License Fee will be increased 3% annually, as set forth in Section 4.3**

<b>DEFAULT FEE SCHEDULE</b>			
<b>Violation</b>	<b>Master License location</b>	<b>Initial notice</b>	<b>Follow up notice</b>
Installation of equipment or alterations that are not approved by the City.	Arts. 6, 7, 8	\$350	\$400
Failure to make required repairs.	Art. 10	\$300	\$350
Violation of requirements regarding access to License Area.	Art. 7	\$300	\$350
Failure to provide evidence of insurance and bonds or maintain insurance	Art. 18	\$300	\$350

## **EXHIBIT A-4**

### **CITY INSTALLATION GUIDELINES**

#### **[To be updated with each Pole License.]**

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

Licensee shall pull a dedicated electrical wire through the new conduit or City street light conduit from the electrical provider's point of service connection to a new Licensee pull box, and shall not share the City pull box, on each licensed City Pole without splicing. If there is no City pull box, Licensee shall install a new pull box and conduit for the City's future use.

Licensee shall apply for and install an electric meter, if required by the City and PG&E, and, and shall obtain any necessary building permits from the City for the installation and connection.

Licensee shall install the correct fuses and fuse holders for the dedicated circuit used for Licensee's Equipment at the point of interconnection of the main service and the Licensee's pull box. Fuse and fuse holder specifications shall be provided by Licensee and shown on the Approved Plans and Specifications.

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

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

Licensee shall provide the City's Public Works Department with as-built drawings showing all circuits installed by Licensee in existing street light conduits promptly after installation is complete. Licensee shall provide a laminated copy of the as-built drawings to the City and place a copy within any new or existing cabinet at each Pole Location, if applicable.

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

Licensee shall not: (a) connect or use any electrical equipment that exceeds the capacity of the electrical system available to service the City Pole; or (b) connect any apparatus, machine, or device through the electrical service except in the manner for which such service is designed or as otherwise approved by the City in the Approved Plans.

Licensee shall not open any City pull boxes unless a member of the City's street light maintenance crew is present or City's Public Work department approves opening the pull boxes unattended by City's maintenance crew. Licensee shall contact the City's Public Works Department to complete the service connection.

## **EXHIBIT B**

### **REQUIREMENTS FOR LICENSEE EQUIPMENT**

Licensee's plans and specifications submitted with each Pole License application, and any Pole License application approved by the City shall comply with the following minimum requirements:

1. Licensee's Equipment shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. All equipment and facilities shall be constructed out of non-reflective materials (visible exterior surfaces only), or materials and colors consistent with surrounding backdrop.
2. All ancillary equipment, equipment shelters, cabinets, or electrical distribution panels shall not be installed at ground level, except after all reasonable alternative pole locations have been explored and found unavailable or lacking in some substantial way and only with prior City approval upon a good faith showing of necessity, in City's sole discretion. Ground-mounted equipment, if any, shall incorporate appropriate techniques to camouflage, disguise and/or blend the equipment into the surrounding environment. Any ground-mounted equipment shall not inhibit or block pedestrian path of travel and shall comply with the Americans with Disabilities Act (ADA) standards. Any ground-mounted equipment shall not obstruct or interfere with storm drainage facilities, drainage channels, or change the existing drainage pattern. The ideal installation shall:
  - a. Minimize aesthetic impacts and visual clutter:
    - i. The licensee shall conform its facilities to the City's preferred pole design standards, including having the antenna concealed in radome, the Remote Radio Units incorporated into the pole, and all other associated, ancillary equipment be incorporated at the base of the pole or undergrounded consistent with the requirements of this Exhibit, as shown in the attached Exhibit B-1: Sample Acceptable Pole Design attached hereto and incorporated herein. All small cell facilities shall employ the latest technology and equipment. If new, smaller/compact technology becomes available, the carrier shall replace the older equipment with new equipment.
    - ii. The City will not allow installations that degrade the aesthetics of the community at-large and/or add to the visual clutter of the neighborhood. An example of an unacceptable design is attached hereto as Exhibit B-2: Sample Unacceptable Pole Design and incorporated herein.
    - iii. The City will not allow small cell facilities to be installed on historic poles in the downtown.
  - b. Minimize noise to abutting residents and occupants:
    - i. Noise – All small cell facilities shall be constructed and operated in such a manner as to minimize the amount of noise impacts and to comply with the noise standards set forth under the Municipal Code. Noise attenuation measures shall be required for all equipment.
    - ii. Testing and maintenance activities of small cell facilities, which generate audible noise, including the idling of maintenance vehicle(s), shall occur between the hours of 8:00 a.m. and 5:00 p.m., weekdays (Monday through Friday, non-holiday) excluding emergency repairs. Testing and maintenance activities which do not generate audible noise may occur at any time. Generators may be allowed only for temporary equipment testing, and such temporary operations shall comply with noise standards set forth under the Municipal Code.

- iii. The proposed equipment associated with small cell facilities is not expected to produce significant noise; however, the cooling fan may produce sound emissions that do not exceed 65 dBs when it is activated. The City anticipates that any noise-generating equipment will be housed in a sound-rated enclosure. Moreover, the distance of the equipment from the adjacent properties, will effectively mitigate noise and vibration to an insignificant level as perceived by adjoining neighbors.
- iv. The small cell facilities are anticipated to require maintenance at a maximum of once a month. All maintenance activities shall occur on weekdays during daytime hours. Noise from these maintenance activities is not expected to adversely impact adjacent neighbors.

3. Licensee shall verify each Pole's condition, size and foundation, and provide structural calculations and drawings for any pole-mounted equipment. Any pole-mounted equipment shall be placed at least eight (8) feet above sidewalks or sixteen (16) feet above streets on the street side of the pole, and shall not obstruct line of sight to any intersection, signage, traffic control devices or other directional markings. Any pole-mounted equipment shall be incorporated into the design of the pole with the use of a shroud or other stealthing techniques.

4. The antennas and related equipment shall be constructed out of non-reflective materials, painted and/or textured to match the existing support structure and painted to blend with their surroundings. Paint shall be reviewed and shown on the Approved Plans and Specifications.

5. Any fiber optic cable or wiring connecting the antenna to the equipment cabinet or pedestal shall be located inside the City Pole and shall be located underground to the equipment cabinet.

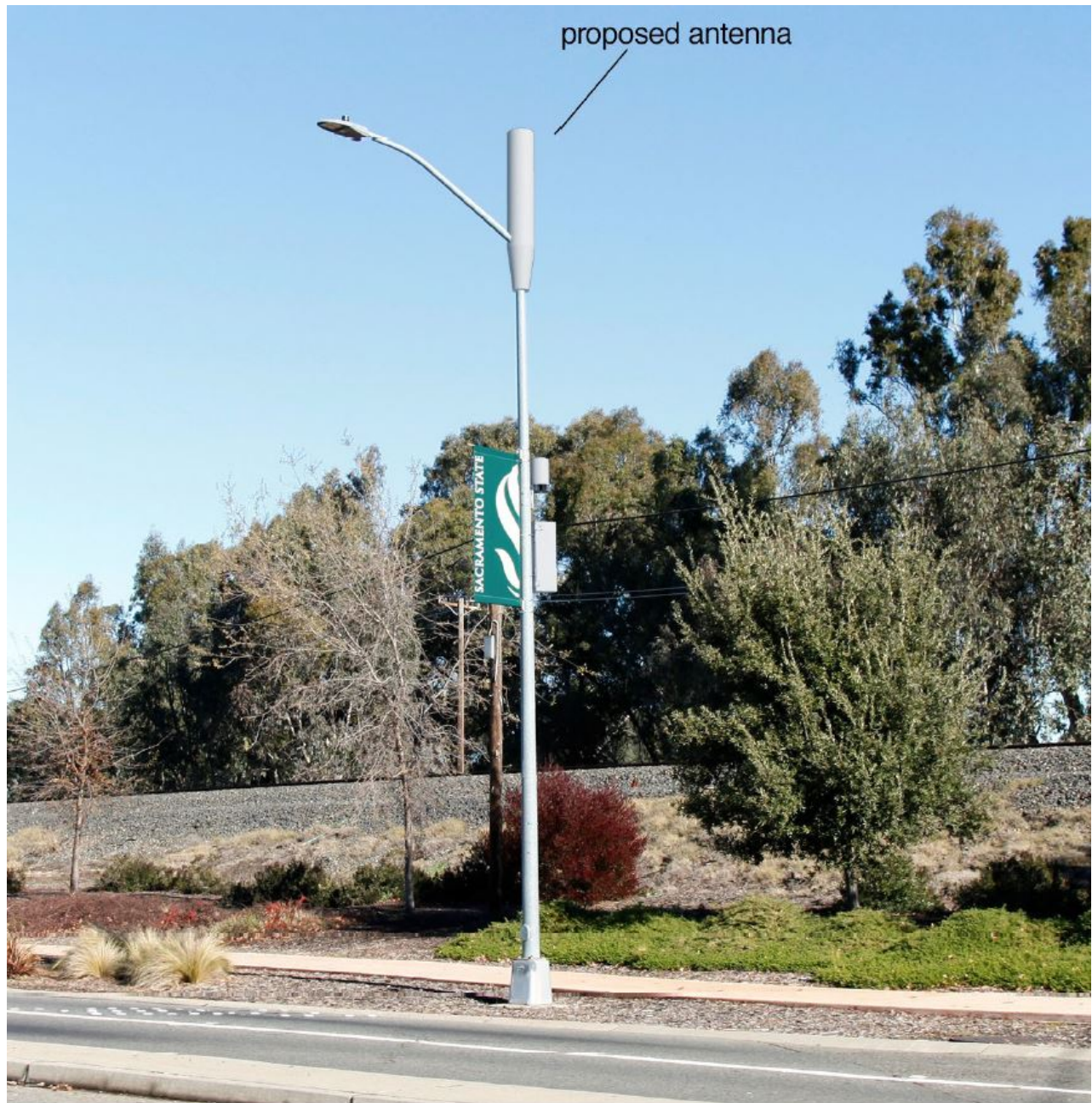
6. All other conduit, cable and wiring shall be located underground; if undergrounding is infeasible, antennas and associated cables, connectors,, and hardware shall be placed within a shroud or equivalent.

7. The height of a pole that includes pole-mounted equipment shall not exceed more than five (5) feet above the height of the average street light in the area.

8. Licensee is required to maintain and preserve design and aesthetic features for each facility, equipment and any support infrastructure, including but not limited to color, tint, shade, treatment, painting, surface treatment, replacement landscaping, stealth design, and concealment.

9. Licensee may not attach any Equipment to any decorative pole.

**EXHIBIT B-1**  
**ACCEPTABLE POLE DESIGN**





**EXHIBIT B-2**  
**UNACCEPTABLE POLE DESIGN**

