

**MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES
ON CITY POLES IN THE RIGHT-OF-WAY**

This MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON CITY POLES IN THE RIGHT-OF-WAY (“**Master License**”) dated _____, 2019 (the “**Effective Date**”) is between the CITY OF SAN MATEO, a California municipal corporation (the “**City**”) and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (the “**Licensee**”).

BACKGROUND

- A. WHEREAS**, technology developments and demand for high-speed mobile data service and capacity has extended beyond the capabilities of traditional macrocell wireless communications facilities. To meet this demand, wireless providers have accelerated their small cell and distributed antenna system (“**DAS**”) deployments in the public right-of-way and the City has a clear incentive to manage these accelerated deployments in a way that preserves local aesthetics and public health and safety; and
- B. WHEREAS**, Licensee is in the business of installing, maintaining and operating wireless communication facilities and typically installs, maintains and operates its wireless communications facilities on existing vertical infrastructure in the public right-of-way; and
- C. WHEREAS**, the City owns as its personal property a number of existing Poles (defined below) within the public right-of-way that are potentially suitable for installing wireless communications facilities within the City’s jurisdiction; and
- D. WHEREAS**, Licensee desires to install, maintain and operate wireless communications facilities on the City’s Poles in the public right-of-way and Licensee is willing to compensate the City for the right to use the City’s Poles for wireless communications purposes; and
- E. WHEREAS**, consistent with California state law, the City intends this Master License and any Wireless Permit (defined below) to be applicable only to City-owned Poles; and
- F. WHEREAS**, consistent with all applicable Laws, the City does not intend this Master License to grant the Licensee any exclusive right to use or occupy the public rights-of-way within the City’s territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the City may enter into similar or identical agreements with other entities, which include without limitation Licensee’s competitors; and
- G. WHEREAS**, the City desires to authorize Licensee’s access to individual City-owned poles based on a comprehensive and uniform Master License according to the terms and conditions set forth in this Master License, any applicable Wireless Permit, and pursuant to all the applicable permits issued by the City to protect public health and safety; and

H. WHEREAS, on September 16, 2019, the City Council of the City of San Mateo approved the form and material terms for this Master License, and further delegated authority to the City Manager to enter into such agreements.

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

AGREEMENT

1. GENERAL DEFINITIONS

“Agent” means agent, employee, officer, contractor, subcontractor, and representative of a party in relation to this Master License and the License Area.

“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 sublicense.

“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; or (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” means the California Public Utilities Commission established in the California Constitution, Article XII, Section 5, or its duly appointed successor agency.

“EMF” means electromagnetic fields or radio frequency generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.

“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 Equipment to, or adjacent to, a licensed City Pole, peripherals, and ancillary equipment and installations, including wiring, cabling, power feeds, and any approved signage attached to Equipment.

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

“FCC Order” means the Declaratory Ruling and Third Report and Order (WT Docket No. 17-79; WC Docket No. 17-84) adopted by FCC on September 26, 2018, which, *inter alia*, clarifies Sections 253 and 332(c)(7) of the Communications Act as they apply to state and local regulation of wireless infrastructure deployment, including identifying specific fee levels for small wireless facility deployments that presumably comply with the relevant standard.

“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 the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (codified as 42 U.S.C. § § 9601 et seq.) or Section 25316 of the California Health & Safety Code; and any “hazardous waste” listed California Health & Safety Code § 25140; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

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

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

“Laws” means any and all laws, regulations, ordinances, resolutions, judicial decisions, rules, permits and approvals applicable to Licensee’s use that are in force on the date of this Master License or as lawfully amended including, without limitation, the California Building Code, the City’s Municipal Code, Design and Engineering Standards, and standard Conditions of Approval. If, after the date of this Master License, the rights or obligations of either Party are materially preempted or superseded by changes in Laws, the parties agree to amend the Master License to reflect the change in Laws.

“License Area” means the area and Pole identified in each Wireless Permit that Licensee may use for its Permitted Use.

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

“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 in License Areas.

“Pole” or “City Pole” means a street light pole, traffic signal pole, utility pole or other support structure located in the public right-of-way within the City and owned by the City.

“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.

“Wireless Telecommunications Ordinance” means the City’s ordinance regulating wireless telecommunications facilities, which took effect on August 16, 2018, and is codified in Chapter 17.10 of the City of San Mateo Municipal Code.

“Wireless Permit” means a permit obtained pursuant to the City’s Wireless Telecommunications Ordinance.

“Wireless Permit Application” means the application form used by the City that will identify the City Pole(s) for installation of Equipment and describe the proposed Equipment, which shall be accompanied by other relevant information and documents as required by the City’s Wireless Telecommunications Ordinance.

2. SCOPE OF LICENSE

2.1. License Area

2.1.1. Wireless Permit Issuance and Effect

Subject to the terms and conditions in this Master License, the City will issue to Licensee one or more Wireless Permits for any Poles not already subject to a Wireless Permit, which will grant Licensee the right to use the space on the subject Pole approved for the Equipment, which includes any conduits, pull boxes or other items specifically identified in the Approved Plans attached to the Wireless Permit.

2.1.2. Limitations

This Master License applies to only Poles identified in final and fully executed Wireless Permits. This Master License does not authorize Licensee or any other persons or entities to enter on to or use any other City Property, except the areas specified in any Wireless Permits. Furthermore, neither this Master License nor any Wireless Permit authorizes or confers any rights in Licensee or any other persons or entities to use any portions of the public rights-of-way, or any improvements or other personal property within the public rights-of-way owned by any

third parties. In the event of a conflict between this Master License and a Wireless Permit, the terms of the Wireless Permit will govern.

2.1.3. Limited Interest Created

Licensee expressly acknowledges and agrees that (1) Licensee does not have any rights to use or possess interest or rights in any Pole for any purpose whatsoever until and unless the City issues a Wireless Permit for such Pole; and (2) it is the parties' intent that neither this Master License nor any Wireless Permit issued pursuant to this Master License creates or will be deemed to create any leasehold, easement, franchise or any other possessory interest or real property interest whatsoever. In the event that there is a determination that ad valorem, privilege or other taxes or assessments are to be levied as a result of this Master License, Licensee shall be obligated to pay any such possessory interest taxes as set forth in paragraph 12 below.

2.1.4. Limited Rights Created

Any Wireless Permit the City approves pursuant to this Master License grants to Licensee only a non-possessory and revocable permit to enter on to and use the permitted area for the Permitted Use. This Master License and any Wireless Permit shall be revocable only pursuant to the express terms and conditions of this Master License. Licensee expressly acknowledges and agrees that (1) neither this Master License or any Wireless Permit will be coupled with an interest; (2) the City retains legal possession and control over all Poles for the City's operations, which will be superior to Licensee's interest at all times; (3) subject to the terms and conditions in this Master License, the City may terminate a Wireless Permit in whole or in part at any time; (4) except as specifically provided otherwise in this Master License, the City may enter into any agreement with third parties in connection with use and occupancy of Poles and other City Property; (5) Licensee has no ownership rights in any Pole whatsoever; and (6) neither this Master License nor any Wireless Permit creates or will be deemed to create any partnership or joint venture between the City and Licensee.

2.1.5. No Impediment to Municipal Uses

Except as specifically provided otherwise in this Master License, neither this Master License nor any Wireless Permit limits, alters or waives the City's right to use any License Area in whole or in part as infrastructure established and maintained for the City's and the public's benefit.

2.2. Diminutions in Light, Air and Signal

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

2.3. License Area Condition

2.3.1. “As-Is and With All Faults” Condition

Licensee expressly acknowledges and agrees to enter on to and use the License Area in its **“as-is and with all faults”** condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the License Area’s condition or suitability for Licensee’s use. Licensee expressly acknowledges and agrees that neither the City nor its Agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the 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 related to the License Area.

2.3.2. Licensee’s Due Diligence

Licensee expressly represents and warrants to the City that Licensee has conducted a reasonably diligent and independent investigation, either for itself or through an Agent selected by Licensee, into the License Area condition and suitability for Licensee’s intended use, and that Licensee relies solely on its due diligence for such determination. Licensee further expressly represents and warrants to the City that Licensee’s intended use is the Permitted Use as defined in Section 5 in this Master License.

2.3.3. Certified Access Specialist Disclosure

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

3. TERM

3.1. Master License Term.

The initial term under this Master License (the “Initial Term”) will commence on the Effective Date and will expire ten (10) years from the Effective Date, unless earlier terminated in accordance with this Master License. This Master License shall be automatically renewed annually for one-year renewal terms for up to an additional fifteen (15) years (each, a “Renewal Term”), unless Licensee notifies the City in writing of Licensee’s intent not to renew this Master License at least thirty (30) days, or City notifies Licensee in writing of City’s intent not to renew this Master License at least one hundred twenty (120) days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term and all Renewal Terms shall be collectively referred to herein as the “Term.”

3.2. Wireless Permit Term.

The term of each Wireless Permit shall be for ten (10) years beginning on the Commencement Date, as defined in Section 4.1.1, unless earlier terminated pursuant to this Master License. Unless Licensee is in material breach of this Master License beyond the applicable cure period or the Master License has terminated or Licensee provides written notice to the City prior to the expiration of the then current term that Licensee will not renew the Wireless Permit term, the term will automatically renew annually for one-year renewal terms for up to an additional fifteen (15) years, upon the same terms and conditions set forth in this Master License, including the termination provisions set forth above.

4. LICENSE CHARGE; OTHER PAYMENTS

4.1. License Charges

4.1.1. Commencement Date

Licensee shall pay an annual License Charge under each Wireless Permit beginning on its “**Commencement Date**,” which is defined as either: (1) the first anniversary of the effective date of the Wireless Permit or (2) the first day of the month before the date Licensee commences construction in the License Area necessary for the Permitted Use (whichever occurs later). The parties define a “**License Year**” to mean any 12-month period (or shorter period in the event that a Wireless Permit commences less than 12 months from the next January 1 or the expiration date of this Master License) that begins on the Commencement Date for each Wireless Permit. Licensee shall provide written notice of the Commencement Date to the City. If the City does not acknowledge and return or object to such notice within 10 days of receipt, the Commencement Date shall be deemed confirmed as the date provided on such notice.

4.1.2. License Charge Amount

Licensee shall pay to the City an annual charge of \$270.00 per pole (the “**License Charge**”). Payment of the initial License Charge payment shall be made within ninety (90) days after confirmation the Commencement Date and thereafter each subsequent annual License Charge payment shall be made on or before each anniversary of the Commencement Date. City shall provide Licensee a completed, current Internal Revenue Service Form W-9 and state and local withholding forms if required. Licensee may make payments by check made out to the order of the City of San Mateo and sent to the following address or through electronic transfer subject to the City’s approval and necessary bank routing instructions.

City of San Mateo
Department of Public Works
Attn: Administration
330 W. 20th Avenue
San Mateo, CA 94403
(650) 522-7300

4.2. Administrative Fees

4.2.1. Permit Fees

Licensee will pay the permit and processing fees set forth in the City's Master Fee Schedule that is part of City's applicable ordinance for Department Public Works permit fees..

4.3. Late Charges

In the event that Licensee fails to pay any fee or any other amount payable to the City within 30 days after the City notifies Licensee in writing that such amounts are due and unpaid, such amounts will be subject to a late charge equal to 2% of unpaid amounts.

5. USES

5.1. Permitted Use

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

5.2. Prohibition on "Macro Cell" Uses

The City and Licensee intend this Master License and any Wireless Permit to cover only "small cell" installations, as defined in state and federal law and in the FCC Order. Licensee expressly acknowledges and agrees that the Permitted Use under this Master License does not include the right to use any Pole as a support structure for a "macro cell" or a traditional wireless tower typically constructed on private property.

5.3. Prohibition on Illegal Uses or Nuisances

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

5.4. Signs or Advertisements

Licensee acknowledges and agrees that its rights under this Master License and any Wireless Permit do not authorize Licensee to erect, post or maintain, or permit others to erect, post or maintain, any signs, notices, graphics or advertisements whatsoever on the License Area; except as required by the FCC and applicable Laws.

6. WIRELESS PERMITS REQUIRED

6.1. City Approval Required

Licensee shall not have any right to use the License Area in whole or in part for any purpose until and unless the City approves a Wireless Permit for that License Area. Subject to any express limitations in this Master License, the City will not be obligated to subordinate its municipal functions or proprietary interest in any manner whatsoever to Licensee's interest under any Wireless Permit. When the City considers whether to approve or disapprove any Wireless Permit Application, the City may consider any matter that affects its municipal functions or proprietary interests, which include without limitation: (1) Licensee's proposed plans and Equipment specifications; (2) compliance with any applicable Laws; (3) impacts on the City's street light operations; (4) any potential hazards or unsafe conditions that could result from Licensee's installation, operation or maintenance; (5) any potential visual or aesthetic impacts as set forth in applicable Laws; (6) the additional load on the Pole the proposed Equipment would create; and (7) any municipal plans for the Pole or right-of-way in proximity to the Pole.

Licensee shall file with the City a Wireless Permit Application for one or more City Poles where Licensee desires to install Equipment. Within the timeframes required by the FCC Order, which period may be extended by mutual written consent, the City shall, in writing, either approve the Wireless Permit Application, or reject the Wireless Permit Application by identifying the specific reasons why the Wireless Permit Application is not in compliance with this Master License, the City's Wireless Telecommunications Ordinance, or design and engineering standards, otherwise the City Pole Application shall be deemed accepted. The review period for the Wireless Permit Application will be in compliance with FCC regulations, rulings, and orders.

6.1.1. City's Right to Disapprove

Notwithstanding anything to the contrary, Licensee acknowledges that the City reserves the absolute right to disapprove any Wireless Permit Application in whole or in part when the City determines in its sole judgment that the subject Pole Location or proposed Equipment would interfere with the City's municipal functions or create a hazardous or unsafe condition.

7. EQUIPMENT INSTALLATION

7.1. Approved Plans and Equipment Specifications

Licensee must submit detailed plans and equipment specifications with Wireless Permit Application, which must include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed in connection with the License Area. Licensee acknowledges that the exhibit to any approved Wireless Permit will be deemed to be the "**Approved Plans**" and that Licensee will be permitted to install only the Equipment and other improvements shown on such Approved Plans.

7.2. Installation; Strict Compliance with Approved Plans

Licensee shall not commence any work at the License Area until the licensee has obtained a Wireless Permit. Licensee shall perform all work in connection with the License Area in strict compliance with the Approved Plans and in a diligent, skillful and workmanlike manner. All installed Equipment must be high quality, safe, fire resistant, modern in design and attractive in appearance, all as approved by the City. After any work at the License Area concludes, Licensee shall restore the License Area and any other City Property to the condition that existed immediately prior to when the work commenced.

7.2.1. Alterations to City's Property

Neither Licensee nor its Agents or Invitees may remove, damage or in any manner alter any City Property without prior written consent from the City and any other City agencies with jurisdiction over the subject City Property. The City may withhold its consent in its sole and absolute discretion, and may reasonably condition its consent in each instance based on scope and nature of the proposed alterations. Licensee shall immediately notify the City if any removal, damage or other alteration occurs to City Property for any reason and through any cause.

7.2.2. Licensee's Contractors

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

7.3. Labor and Materials Costs

Licensee shall be responsible for all direct and indirect costs (labor, materials, and overhead or prevailing wages if required) in connection with designing, purchasing and installing all Equipment in accordance with the Approved Plans and all applicable Laws. Licensee shall also bear all costs to obtain and maintain all Regulatory Approvals required in connection with the installation, which includes without limitation all direct and indirect costs to comply with any approval conditions or mitigation measures that arise from Licensee's proposed installation. Licensee shall timely pay for all labor, materials, Equipment and all professional services related to the Permitted Use or furnished to the License Area at Licensee's direction or for Licensee's benefit.

7.4. Prevailing Wages

The services to be provided under this Section 7 may be subject to prevailing wage rate payment as set forth in California Labor Code Section 1771. Accordingly, to the extent that such services are subject to the prevailing wage rate payment requirements, Licensee shall comply with all California Labor Code requirements pertaining to "public works," including the payment of prevailing wages in connection with the services to be provided hereunder (collectively, "**Prevailing Wage Policies**").

Licensee shall defend, indemnify and hold the City harmless and its officers, officials, employees, volunteers, agents and representatives (collectively, "Indemnitees") from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "Claims"), arising out of or in any way connected with Licensee's obligation to comply with all laws with respect to the work of improvements or Prevailing Wage Policies, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781, as amended and added by Senate Bill 966.

7.5. Title to Licensee's Equipment and Other Improvements

Except as specifically provided otherwise in this Master License, all Equipment and other improvements installed, constructed or placed on or about the License Area by Licensee or its Agents or Invitees will be deemed and remain at all times Licensee's personal property. All structural improvements to any Pole, and any replacement Pole, all as approved by the City and shown in the Approved Plans, will become and remain City Property should Licensee vacate or abandon such License Area, unless the City elects in a written notice to Licensee that it does not wish to take title to such structural improvements. The transfer of title to all such structural improvements shall be on an "as is, where is" basis, and confirmed in a Bill of Sale from Licensee to the City. Subject to Section 22 (Surrender of License Area), Licensee may remove its Equipment from the License Area at any time after written notice to the City.

8. PUBLIC WORKS OPERATIONS

8.1. City's Access to License Areas

Except as specifically provided otherwise in this Master License, the City and its Agents have the right to access any License Area in whole or in part at any time for any non-emergency purpose upon not less than two (2) business days prior written notice to Licensee, provided that the City shall not handle or otherwise disturb Licensee's Equipment in any License Area. Licensee shall have the right to have a representative of Licensee present during any City Access for any non-emergency purpose. The City will not be liable in any manner whatsoever, and Licensee expressly waives any claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's or its Agents' access to the License Area, which includes any Equipment removed in an emergency or other exigent circumstances pursuant to Section 8.4 (Emergencies), except to the extent that the damage arises from the negligence or willful misconduct of the City or its Agents.

8.2. Repairs, Maintenance and Alterations to Poles

The City and/or the City's Public Works Department will: (1) maintain and repair Poles as needed, in its sole judgment, for its street light operations and other municipal functions; (2) correct any immediately hazardous condition. Excluding conditions that arise from the City's or its Agents' negligence or willful misconduct, neither any City work on any Pole nor any condition on any Pole will: (a) entitle Licensee to any damages; (b) excuse or reduce any obligation by Licensee to pay any License Charges or additional fees or perform any covenant under this Master License; or (c) constitute or be construed as a constructive termination of this Master License or any Wireless Permit.

8.3. Repairs, Maintenance and Alterations to License Areas

The City may, at any time, alter, add to, repair, remove from and/or improve the License Area in whole or in part for any operational purpose, which includes without limitation maintenance and improvements in connection with street light services and compliance with Laws; provided (1) the City makes a good-faith effort to provide advance notice to Licensee's On-Call Representative as soon as reasonably practicable; (2) the City allows Licensee's representative to observe the City's work; and (3) the City takes reasonable steps not to disrupt Licensee's ordinary operations on the License Area. The provisions in this Section 8.3 will not be construed to allow Licensee's ordinary operations to impede or delay the City's authority and ability to make changes to the License Areas necessary to maintain street light services.

8.4. Emergencies

Licensee shall install an emergency cut-off switch in connection with the installation of Licensee's Equipment in each License Area, which cut-off switch may be utilized by representatives of the City in the event of an emergency. In emergencies, the City's work will take precedence over Licensee's operations, which includes without limitation any Equipment operated on the License Area, and the City may access the License Area in whole or in part as the City deems necessary in its sole determination and in accordance with this Section 8.4, whether the City has notified Licensee of such emergency or other exigent circumstances or not. When safe and practicable, the City will notify Licensee of any emergency or other exigent circumstances that requires the City to remove or replace any Pole and will allow Licensee to remove its Equipment before the City removes or replaces the Pole; provided, however, that the City will remove the Equipment from the Pole when in the City's sole determination it would (1) be unsafe to wait for Licensee to perform the work; or (2) otherwise threaten or compromise public safety or public services. The City will remove any Equipment with reasonable care and store the Equipment for retrieval by Licensee and the City will provide notice as soon as reasonably practicable after such emergency, but in no event later than 24 hours after the emergency. Licensee shall have the right to reinstall such removed Equipment or equivalent Equipment at Licensee's sole expense on the repaired or replaced Pole and in accordance with Section 7 (Equipment Installation). The City's removal of Licensee's Equipment in emergencies or other exigent circumstances will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee's contractual privilege to use the License Area.

9. LICENSEE'S MAINTENANCE OBLIGATIONS

9.1. Damage to Poles

9.1.1. Notice to the City

Licensee agrees to give the City notice of the need for any repair to a Pole promptly after Licensee discovers any 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.

9.1.2. Damage Caused by Licensee

In the event that any use or maintenance by Licensee or its Agents or Invitees cause any damage to any Pole, Licensee must repair such damage within 30 days after the City provides a written notice to Licensee that describes such damage. Such 30-day cure period may be extended to a date certain if the City agrees the cure reasonably requires more time. In the event that Licensee fails to timely cure the damage, the City may repair the damage at Licensee's expense. Licensee will reimburse the City for all costs incurred to repair such damage within 30 days after Licensee receives the City's demand for payment, together with copies of invoices or other evidence to document the costs incurred.

9.1.3. No Right to Repair

Absent notice from the City with a demand to cure any damage to a Pole, or as provided in Section 14.1.1 below, Licensee is not authorized to make any repairs to any Pole.

9.2. Equipment Maintenance

Licensee shall, at its sole cost and expense, install, maintain and promptly repair any damage to any Equipment installed on the License Area whenever repair or maintenance may be required, subject to the City's prior approval if required under Section 7 (Equipment Installation). Licensee is not required to seek the City's prior approval for any Equipment repair, maintenance, replacement or other installation on the License Area when such Equipment is shown on the Approved Plans. Licensee must obtain the City's prior written approval for any Equipment repair, maintenance, replacement or other installation that involves larger, different or additional Equipment than shown on the Approved Plans. Any work on Licensee's Equipment installed on Poles that is authorized or permitted under this Section 9.2 is subject to Licensee obtaining any required Regulatory Approvals.

9.3. Graffiti Abatement

Licensee's repair and maintenance obligation includes the removal of any graffiti or similar vandalism from the License Area within 48 hours after the City notifies Licensee in writing of said graffiti or vandalism.

9.4. Standard of Work

All work performed by or for Licensee under this Section 9.4 shall be: (1) at Licensee's sole cost and expense; (2) performed only by qualified and trained persons and appropriately licensed contractors; (3) performed in a manner and with equipment and materials that will not interfere with or impair the City's operations; (4) compliant with all applicable Laws; and (5) performed solely by Licensee and not by Licensee's Invitees.

10. LIENS

Licensee shall keep the License Area free and clear from any and all liens in connection with 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 or 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 arising from work done by or on behalf of Licensee within 30 days after written 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 30 days following receipt of the City's written demand together with copies of invoices or other evidence to document the costs incurred. 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.

11. UTILITIES

Licensee shall be solely responsible for obtaining and maintaining electric service for the Equipment, including, but not limited to, making payments to electric utilities and installation of separate electric meters, if necessary. Notwithstanding the foregoing, Licensee shall have the right to interconnect to and use the City's electrical service and related utility infrastructure serving the Licensed Area or areas in the vicinity of the Licensed Area, including the right to upgrade such electrical service and related utility infrastructure at Licensee's sole cost subject to the prior review and approval by the City. Any such interconnection shall comply with all application regulations issued by the electrical utility. Licensee shall remit payment to the electrical utility to the extent reasonably possible to do so, provided, however, that if it not reasonably possible to do so, then Licensee shall remit payments to City on a monthly basis, or other regular interval as requested by City. Payments to the City shall be in an amount equal to the actual cost of the electricity consumed by Licensee. The utility fee payment shall commence on the first day of the month following the date that Licensee first uses the City's electrical service for the applicable Equipment in the License Area until the date that Licensee discontinues such electrical power use. City agrees to give Licensee at least twenty-four (24) hours advanced notice of any planned interruptions of said electricity. City acknowledges that Licensee provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, the City agrees to allow Licensee the right to bring in a temporary source of power for the duration of the interruption at no additional cost to the Licensee. Licensee shall have the right to install at Licensee's sole cost any T-1, fiber or other telephone connection deemed necessary by Licensee for the operation of the Equipment. Licensee covenants that its use of the City's electrical service and related utility infrastructure shall not cause any adverse impacts to the City's electrical service. Licensee shall undertake electrical load studies to determine the electrical capacity of the City's existing electrical system and

service point. As plans for the City's electrical system may not be available, it will be Licensee's responsibility to establish the current electrical system load.

12. TAXES AND ASSESSMENTS

If City is required by law to collect any federal, state, or local tax, fee, or other governmental imposition (each, a "Tax") from Licensee with respect to the transactions contemplated by this Master License, then City shall bill such Tax to Licensee in the manner and for the amount required by law, and to the extent required by applicable law, Licensee shall promptly pay such billed amount of Tax to City, and City shall remit such Tax to the appropriate tax authorities as required by law; provided, however, that City shall not bill to or otherwise attempt to collect from Licensee any Tax with respect to which Licensee has provided City with an exemption certificate or other reasonable basis for relieving City of its responsibility to collect such tax from Licensee. Licensee shall be responsible for all Taxes that are assessed against or are otherwise the legal responsibility of Licensee with respect to itself and its property.

13. COMPLIANCE WITH LAWS

13.1. Compliance with Current and Future Laws

Licensee shall install, operate and maintain the Equipment, and shall perform all work in connection with such installation, operation and maintenance, in strict compliance with all applicable Laws and all conditions in any Regulatory Approvals issued in connection with the Equipment or its installation and operation on any Pole.

13.2. Licensee's Personnel

13.2.1. Personnel Training and Certification

Licensee shall ensure that all persons who install, operate or maintain the Equipment are appropriately trained and licensed by the California State Contractors Licensing Board as required under applicable CPUC rules and regulations. Licensee shall ensure that such persons are trained in and observe all safety requirements established by the City, the CPUC and the California Division of Occupational Safety and Health, Department of Industrial Relations or its duly appointed successor agency, which includes without limitation site orientation, tag-out and lock-out de-energization rules, ladder and lift restrictions and track and street right-of-way safety requirements.

13.2.2. Licensee's Indemnification for Personnel Injuries

Licensee acknowledges that (1) the City has delegated to Licensee control over the License Area at any time in which Licensee or its Agents are installing, operating or maintaining the Equipment; and (2) the City is not a co-employer of any employee of Licensee or any employee of Licensee's Agents. The City shall not be liable for any Claim (defined in Section 17 (Licensee's Indemnification Obligations)) by Licensee's or its Agent's employee(s), except where such Claim is directly caused by the sole negligence or willful misconduct of the City. Licensee agrees to fully indemnify, defend and hold the City harmless in the same manner as provided in Section 17 (Licensee's Indemnification Obligations) against any Claim by any employee of Licensee or its Agents that arises in connection with Licensee's or its Agents'

activities pursuant to this License Agreement, except to the extent such Claims arise out of the sole negligence or willful misconduct of the City, its employees or agents.

13.3. Compliance with CPUC GO 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 Building and Electric Codes

Licensee shall conduct all activities on the License Area in accordance with the requirements of the California Building Code, the California Electric Code, National Electric Safety Code IEEE C2 (the “NESC”), to the extent such requirements apply to Licensee’s Permitted Use, and any applicable local building electrical code, as those codes exist now or may be amended in the future. To the extent that CPUC General Order 95 does not address cellular telephone antenna installations on Poles carrying electrical lines, Licensee shall apply, if 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 California Building Code, 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. Compliance with EMF Exposure Regulations

Licensee’s obligation to comply with all Laws includes all Laws related to maximum permissible exposure to EMF emissions on or about the License Area, which includes all applicable FCC standards, applicable to Licensee’s Equipment. Prior to submitting, or concurrently with, a Wireless Permit Application, Licensee must comply with the City’s telecommunications ordinance and Design and Engineering Standards, for each proposed Pole on which the Licensee desires to install or operate its Equipment. In the event any subsequent EMF Compliance Report submitted by Licensee or other permittee determines that the EMF levels at the License Area exceed FCC standards for the maximum permissible exposure to EMF emissions, Licensee must promptly demonstrate to the satisfaction of the City compliance with the requirements of 47 Code of Federal Regulations Section 1.1307 or any other then-applicable Laws related to EMF levels from Licensee’s equipment.

14. DAMAGE OR DESTRUCTION

14.1. City’s Rights After Damage or Destruction

In the event the License Area in whole or in part becomes damaged due to any cause other than the negligence or willful misconduct of City, its Agents or Invitees, the City (1) will have no obligation whatsoever to repair or replace the damaged License Area or Licensee’s Equipment; and (2) may, in the City’s sole and absolute discretion, elect to take any of the following actions:

14.1.1. Election to Repair or Replace Damaged Pole

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

14.1.2. Election to Remove Damaged Pole

If the City elects to remove, rather than repair or replace, a damaged Pole, and Licensee does not elect to repair the Pole at its sole cost and expense, then the applicable Wireless Permit will automatically terminate on the last day of the month in which the removal occurs.

14.1.3. Election to Remove Equipment from Damaged Pole

If the acts of third parties or an act of nature or other force majeure circumstance outside the control of Licensee or its Agents or Invitees destroys or damages any Pole to such an extent that, in the City's reasonable determination after consultation with Licensee, the Equipment on the Pole cannot be operated, the City may decide to terminate the affected Wireless Permit on 30 days' notice to Licensee and require Licensee to remove the Equipment from the damaged Pole before the termination date specified in the City's notice, provided, however such removal date shall not be any earlier than 60 days following the City's notice. Notwithstanding anything in this Master License or any Wireless Permit to the contrary, the City will have the right to remove any damaged Pole when deemed necessary, in the City's sole determination, to protect the public or property from imminent (whether threatened or actual) harm.

14.2. Licensee's Rights upon Termination

After the City terminates a Wireless Permit pursuant to Section 14.1 (City's Rights After Damage or Destruction), the City will: (1) refund any pre-paid License Charge in connection with the terminated Wireless Permit on a pro-rata basis determined by the number of months left in the current License Year at the time such termination occurs; and (2) make efforts to prioritize Licensee's Wireless Permit Application for one replacement Pole. However, nothing in this provision shall require the City to replace any Pole or Wireless Permit that has been terminated.

14.3. Waiver of Statutory Rights

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

15. CONDEMNATION

15.1. Permanent Takings

In the event that any entity with the power to condemn permanently takes any License Area in whole or in part, or in the event that the City transfers any License Area in whole or in part to such entity in lieu of eminent domain, the following provisions will apply:

15.1.1. Termination

Any affected Wireless Permit will automatically terminate as to the part taken or transferred on the date the permanent taking or transfer occurs, and the License Charge under the affected Wireless Permit will be ratably reduced to account for the reduction in License Area.

15.1.2. Award

The City will be entitled to any award paid or made in connection with the taking or any sums paid in lieu of such taking. Licensee will have no claim against the City for the value of any unexpired Term of any Wireless Permit or otherwise except that Licensee may claim any portion of the award that is specifically allocable to Licensee's loss or damage to Licensee's Equipment.

15.1.3. No Statutory Right to Terminate

The parties understand, acknowledge and agree that this Section 15.1 (Permanent Takings) is intended to fully govern the parties' rights and obligations in the event of a permanent taking. Licensee and the City each hereby waives and releases any right to terminate this Master License in whole or in part under California Code of Civil Procedure §§ 1265.120 and 1265.130 and under any similar Laws to the extent applicable to this Master License.

15.2. Temporary Takings

Any taking that affects any License Area in whole or in part for less than 90 days will have no effect on the affected Wireless Permit, except that Licensee will be entitled to a pro-rata abatement in the applicable License Charge to the extent that such temporary taking materially impairs Licensee's use of the License Area. Furthermore, in the event that the City receives an award, if any, in connection with such temporary taking, Licensee will receive the portion from the award that represents compensation for the use or occupancy of the License Area during the Term but not to exceed the License Charges and additional fees payable by Licensee for the period of the taking, and the City will retain the balance of the award.

16. ASSIGNMENT AND OTHER TRANSFERS

16.1. General Restriction

Except as specifically provided in Section 16.3 (Permitted Assignments), Licensee shall not directly or indirectly assign its interests or rights, whether in whole or in part, in connection with this Master License, any Wireless Permit or the License Area without the City's prior written consent. The City shall not unreasonably withhold, delay or condition its consent to any proposed Assignment; provided, however, that the parties acknowledge that the City may

reasonably withhold its consent to any proposed Assignment at any time in which any monetary or other material default by Licensee under this Master License remains uncured.

16.2. Proposed Assignment Procedures

16.2.1. Proposed Assignment Notice

Other than with respect to a Permitted Assignment, in the event that Licensee desires to Assign this its interests or rights, whether in whole or in part, in connection with this Master License, any Wireless Permit or the License Area, Licensee shall first send written notice (the “**Proposed Assignment Notice**”) to the City, which states in detail the proposed terms and conditions for the Assignment and financial information sufficient to show that the proposed assignee (the “**Proposed Assignee**”) has a demonstrated ability to perform all the obligations of Licensee under this Master License and any Wireless Permit issued hereunder. In addition, upon a written request from the City, Licensee or the Proposed Assignee shall provide additional information, which includes without limitation financial statements, business track records, references and other information about the Proposed Assignee that the City reasonably requires to fully evaluate Licensee’s request and render an informed decision. In the event that Licensee does not provide all the such information simultaneously with the Proposed Assignment Notice, the Proposed Assignment Notice shall not be deemed effective until Licensee delivers all such information as the City may reasonably require.

16.2.2. City Response

The City shall approve or disapprove any request for consent to an Assignment within 30 days after the City receives a complete Proposed Assignment Notice, or 45 days after the deemed-effective date if Licensee delivers an incomplete Proposed Assignment Notice as described in Section 16.2.1 (Proposed Assignment Notice) (in either case, the “**Assignment Response Period**”). The City shall not unreasonably withhold approval if the proposed assignee has a demonstrated ability to perform all the obligations of Licensee under this Master License and any Wireless Permit issued hereunder. If the City fails to respond within the Assignment Response Period, Licensee will provide a second notice with a clear heading in bold and all capital letters indicating it is the second notice and if City does not respond with approval or written reasons for disapproval within 30 days from receipt of the second notice, the request for assignment shall be deemed approved. Notwithstanding anything in this Master License or any Wireless Permit to the contrary, the City may, in its sole and absolute discretion, refuse consent to any assignment to a Proposed Assignee with (i) liquid assets or other immediately available funds less than Ten Million Dollars (\$10,000,000); (ii) any history of discrimination or other employment practices that conflict with the City’s non-discrimination policies; or (iii) any pending or past criminal convictions or civil judgements that would impugn or damage the City’s reputation by association with said Proposed Assignee.

16.3. Permitted Assignments

16.3.1. Definition

The City agrees that Licensee will be permitted to enter into an Assignment of this Master License and Wireless Permits issued under it (a “**Permitted Assignment**”), without the City’s prior consent but with notice to the City as provided below, to: (i) Licensee’s parent; (ii) a Licensee’s 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 that Controls Licensee, is Controlled by Licensee or that, with Licensee, is under the Common Control of a third party.

16.3.2. Conditions

A Permitted Assignment is subject to all 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 30 days before the effective date of Permitted Assignment, stating the contact information for the proposed Assignee and providing financial information establishing that the proposed Assignee has the capital and fiscal qualifications greater than or equal to Licensee’s; and (c) Licensee is in good standing under this Master License.

16.4. Effect of Assignment

No Assignment by Licensee, consent to Assignment by the City, or Permitted Assignment under Section 16.3 (Permitted Assignments) to any Assignee or other third party will relieve Licensee of any obligation on its part under this Master License, until and unless the Assignee signs a written agreement in a form reasonably acceptable to the City to unconditionally assume all Licensee’s obligations under this Master License and any Wireless Permit issued hereunder. Any Assignment that is not in compliance with this Section 16 will be void ab initio 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 Charge, 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 Section.

16.5. Assumption by Transferee

Each Assignee shall assume all obligations of Licensee under this Master License and each assigned Wireless Permit and will be and remain liable jointly and severally with Licensee for all obligations to be performed by Licensee until and unless the Assignee signs a written agreement, in a form reasonably acceptable to the City, to unconditionally assume all Licensee’s obligations under this Master License and any Wireless Permit issued hereunder. No Assignment will be binding on the City unless Licensee or the Assignee delivers to the City evidence reasonably satisfactory to the City that the Assignee has obtained all required Regulatory Approvals necessary to install, maintain and operate the Equipment and any other associated improvements or personal property, a copy of the Assignment agreement (or other document reasonably satisfactory to the City in the event of a Permitted Assignment under

Section 16.3 (Permitted Assignments), and an instrument in recordable form that contains a covenant of assumption by such Assignee satisfactory in substance and form to the City, consistent with the requirements of this Article. However, the failure or refusal of an Assignee to execute such instrument of assumption will not release such Assignee from its liability as set forth in this Section. Except for a Permitted Assignment as provided in Section 16.3 (Permitted Assignments), 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, which amount shall not exceed \$5,000.

17. LICENSEE’S INDEMNIFICATION OBLIGATIONS

Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the City, its officials, employees, Agents, Invitees and their respective heirs, legal representatives, successors and assigns (the “**Indemnified Parties**”), harmless from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, whether direct or indirect (each a “Claim”), to the extent incurred in connection with or arising in whole or in part from Licensee’s performance of this Master License.

18. INSURANCE

As a condition of Wireless Permit issuance, Licensee will obtain insurance specified in Exhibit A to this Master License.

19. LIMITATIONS ON THE CITY’S LIABILITY

19.1. General Limitations on the City’s Liability

Except where otherwise 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 negligence or willful misconduct of the City other than Licensee or any third parties acting for Licensee or at Licensee’s direction), 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, or vehicle collision on or about the License Area or other City Property.

19.2. Consequential Damages

Licensee expressly acknowledges and agrees that the License Charges 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 Wireless Permits 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, 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, the parties agree that neither party will be liable to the other in connection with this Master License or any Wireless Permit for any consequential, special, indirect or incidental or

punitive damages (including lost revenues, loss of equipment, interference, interruption or loss of service, or loss of data, inconvenience, disturbance, lost business, nuisance or other damages) for any cause of action, whether in contract, tort or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

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 except as provided in Section 15 (Condemnation). 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 for City Officials, Employees and Agents

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

20. RECORDS

20.1. Accounting Records

Licensee shall maintain throughout the Term and for at least four years after this Master License expires or terminates the following records in physical format at Licensee's place of business within the State of California and in an electronic format: (1) site identification and location for all Poles under active Wireless Permits; (2) the amount and payment date for all License Charges paid to the City pursuant to this Master License; (3) all Regulatory Approvals issued in connection with the Equipment on Poles; and (4) all correspondence with the City in connection with any matter covered under this Master License. The City, or its designee, 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.

21. RULES AND REGULATIONS

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

22. SURRENDER OF LICENSE AREA

22.1. Surrender

No later than 60 days after the expiration date of this Master License or other termination of this Master License or any Wireless Permit, Licensee shall, at its sole cost and expense, peaceably remove its Equipment from the License Area except for any other Equipment or improvements that the City agrees in writing to accept, repair any damages caused by the removal work and surrender the License Area to the City in good order and condition, normal wear and tear and casualty excepted, free of debris and hazards, and free and clear of all liens and encumbrances to the extent arising out of work done by or on behalf of Licensee. Licensee's obligations under this Section 22.1 will survive the expiration date of this Master License or other termination of this Master License.

23. HAZARDOUS MATERIALS

23.1. 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.

23.2. Licensee's Environmental Indemnity

If Licensee breaches any of its obligations contained in this Section, or if any act, omission, or negligence of Licensee or any of its Agents or Invitees results in any contamination of the License Area or other City Property, or in a Release of Hazardous Material from, on, about, in or beneath any part of the License Area or other City Property, or the violation of any Environmental Law, then Licensee, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless the City, including 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 to the extent arising out of 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 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 in violation of Law 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 by Licensee. 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, or it is determined that this Indemnity provision does not apply. 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 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 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.

24. DEFAULT

24.1. Events of Default by Licensee

Any of the following will constitute an event of default under this Master License and any Wireless Permits issued under it: (1) Licensee fails to pay any License Charge or additional fees as and when due if the failure continues for 30 days after notice from the City; (2) Licensee fails to perform or comply with any other material obligation or representation made under this Master License, if the failure continues for 30 days after the date of notice from the City, or, if such default is not capable of cure within the 30- day period, Licensee fails to promptly undertake action to cure such default within such 30-day period and thereafter fails to use its best efforts to complete such cure within 60 days after the City's notice; (3) Licensee, except where otherwise permitted under this Master License, removes its Equipment or abandons the License Area for a continuous period of more than 60 days, such that the License Area is no longer being used for the Permitted Use; or (4) 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 Laws, if any such receiver, assignment, or action is not released, discharged, dismissed, or vacated within 60 days.

24.2. 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.

24.2.1. License Continuation

Without prejudice to its right to other remedies, the City may continue this Master License and applicable Wireless Permits in effect, with the right to enforce all of its rights and remedies, including the right to payment of License Charges, additional fees, and other charges as they become due.

24.2.2. Wireless Permit Termination

If a default specific to one or more Wireless Permits is not cured by Licensee within the applicable cure period, the City may terminate each Wireless Permit in default.

24.2.3. Master License Termination

If Licensee's default is of such a serious nature in the City's reasonable judgment that the default threatens public health or safety on a majority of the Poles licensed to Licensee, and the default or threatened danger to the public is likely to occur again in the future such that the City's Poles are no longer appropriate support structures for the Equipment or the Permitted Use, the City may terminate this Master License in whole or in part. Examples of reasons for termination may include, but are not limited to, malfunctions in the City's streetlights caused by or attributable to the Equipment and/or structural damage caused to the Poles such that the Poles would need to be replaced to be deemed safe. Termination of this Master License in whole will terminate all Wireless Permits issued under it automatically and without the need for any further action by the City. In either case, the City will deliver written notice to Licensee providing 30 days' notice of termination and specify the reason or reasons for the termination and whether the termination affects the entire Master License or only certain Wireless Permits in the notice. Licensee shall remove its Equipment from any affected Pole in compliance with Section 22 above. The City will have the right to make any terminated portion of the License Area available for license to other parties as of the effective date of the termination, even if Licensee's Equipment is still on the Pole.

24.3. Licensee's Remedies

Licensee's sole remedy for the City's breach or threatened breach of this Master License or any Wireless Permit issued under it will be an action for damages, subject to Section 19 (Limitations on the City's Liability), and except as otherwise stated in this Master License.

24.4. Cumulative Rights and Remedies

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

25. TERMINATION

25.1. Licensee's Rights

25.1.1. Master License and Wireless Permit Termination Rights

Licensee may, in Licensee's sole discretion, terminate this Master License or any Wireless Permit on 90 days' written notice to the City. In addition, Licensee may terminate this Master License on 30 days' written notice after any uncured default of this Master License by the City, after all applicable cure periods have expired.

25.1.2. Termination Rights after Pole Replacement

In the event that the City exercises its absolute right to replace or relocate any Pole, the City shall make a reasonable effort to provide Licensee with at least 60 days' notice. The City's failure to provide at least 60 days' notice prior to any Pole replacement shall not affect the City's rights under this Master License. Within 90 days after Licensee receives notice from the City, Licensee may elect to either (1) install Licensee's Equipment on the replacement or relocated Pole at Licensee's sole cost and expense or (2) terminate the applicable Wireless Permit as to the replacement or relocated Pole.

25.2. City's Absolute Right to Terminate Wireless Permits

The City has the absolute right to terminate any Wireless Permit on 30 days' written notice to Licensee when the City determines, in the City's sole discretion, that Licensee's continued use of the License Area materially and adversely affects or threatens public health and safety, constitutes a nuisance, or materially interferes with the City's municipal functions.

25.3. Licensee's Rights after Termination

In the event that the City terminates any Wireless Permit for reasons unrelated to Licensee's failure to perform its obligations under this Master License, the City shall refund any pre-paid Licensee Charge on a pro-rata basis, and Licensee shall not have any further liability for the License Charge. In addition, the City shall prioritize Licensee's Wireless Permit Application for any Wireless Permit to replace the terminated Wireless Permit; provided, however, that (1) the City shall prioritize only as many Wireless Permit Applications as Wireless Permits terminated by the City and (2) the City's prioritization will not affect Licensee's obligations under this Master License.

26. INTERFERENCE

26.1. Obligation Not to Cause Interference

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 used by the City or any of its Agents and that existed on the Commencement Date of the Wireless Permit associated with the Equipment causing interference. Such interference will be an event of default under this Master License by Licensee, and upon notice from the City, Licensee shall be responsible for eliminating such interference promptly and at no cost to the City. Licensee will be required to use its best efforts to remedy and cure such

interference with or impairment of City operations. 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 the Wireless Permit where the Equipment is causing interference or impairment, at the City's election. Notwithstanding any other provision of this Master License, City agrees that City will use reasonable efforts to install, or allow City Invitees to install, only such equipment that is of the type and frequency which will not cause interference to the Equipment actually installed by Licensee. In the event that Licensee discovers any such interference caused by the City or a City Invitee, the City shall reasonably cooperate with Licensee to identify the source and mitigate the interference; provided, however, that the City's cooperation shall not obligate the City to change, alter or power off any City-owned or controlled equipment used for public health and safety or other municipal functions, unless such equipment is malfunctioning. The parties acknowledge that the Licensee possesses technical expertise that puts Licensee in the best position to identify and mitigate interference sources, and Licensee shall be primarily responsible for identification and mitigation work.

26.2. Impairment Caused by Change in City Use

Subject to the City's obligations under of this Master License, 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 15 days of receiving Licensee's notice hereunder.

If the City determines in its reasonable 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.

If the City determines in its reasonable 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: (1) terminate the Wireless Permit as to the affected City Pole and receive a ratable reduction in the License Charge; or (2) take steps itself at its own cost to mitigate the adverse effect and continue to operate the Equipment on the City Pole, and setoff the cost of mitigating the adverse effect against the License Charge for the immediately following year under the affected Wireless Permit.

Licensee agrees that the City's temporary and partial abatement or waiver of the License Charge under this Section 26.2 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.

26.3. Impairment Caused by City Access

Licensee agrees that it will not be entitled to any abatement of License Charges if the City exercises its rights of access under Section 8.1 (City's Access to License Areas) 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 24 hours, in which case, subject to proof, License Charges will be abated ratably for the entire period that Licensee is unable to operate any Equipment on any affected City Pole.

27. MISCELLANEOUS PROVISIONS

27.1. Notices

Except as may be specifically provided otherwise in this Master License, all notices, demands or other correspondence required to be given under this Master License must be written and delivered through (1) an established national courier service that maintains delivery records and confirmations; (2) hand delivery; or (3) certified or registered U.S. Mail with prepaid postage and return receipt requested, and addressed as follows:

To CITY:

City of San Mateo
Department of Public Works
Attn: Director of Public Works
330 W. 20th Avenue
San Mateo, CA 94403
(650) 522-7300

To LICENSEE:

New Cingular Wireless PCS, LLC
Attn: Tower Asset Group – Lease Administration
Re: AT&T-City of San Mateo MLA for Small Cells
1025 Lenox Park Boulevard NE, 3rd Floor
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn.: Legal Dept. – Network Operations
Re: AT&T-City of San Mateo MLA for Small Cells
208 S. Akard Street
Dallas, TX 75202-4206

All notices under this Master License will be deemed to have been delivered: (i) five days after deposit if delivered by first class mail; (ii) two days after deposit if delivered by certified mail; (iii) the date delivery is made by personal delivery or overnight delivery; 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. Telephone, facsimile and email information are provided for convenience and for couriers who may require such information, and any notice given solely through electronic means will not be deemed to be effective notice. Any copies required to be given constitute an administrative step and not actual notice. The parties may change the notice addresses above from time-to-time through written notice to the addresses above or the then-current notice address.

27.2. Waiver; No Implied Waivers

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 Agents of full or partial payment of License Charges 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 material 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 Wireless Permits) 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

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. Joint and Several Liability

In the event that the City provides consent, which the City may withhold for any or no reason, to enter into this Master License with 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 sections of this Master License and in the table of contents, if any, 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. 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 Public Works Director or his or her designee, unless otherwise provided in this Master License or by the City Charter or any City ordinance.

27.4.5. 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 scope of the term, statement or matter.

27.4.6. 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 and as they are amended, replaced, supplemented, clarified, corrected or superseded at any time while any obligations under this Master License or any Wireless Permit are outstanding, whether or not foreseen or contemplated by the parties. Licensee shall comply with all Laws with respect to Licensee’s Permitted Use. This Master License does not limit any rights Licensee may have in accordance with Laws to install its own poles in the right of way or to attach Licensee’s equipment to third-party poles located in the right of way. This Master License shall in no way limit or waive either party’s present or future rights under Laws. If, after the date of this Master License, the rights or obligations of either Party are materially preempted or superseded by changes in Laws, the parties agree to amend the Master License to reflect the change in Laws.

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 claiming to be retained by Licensee perfects a claim for a commission or finder’s fee based upon any such contact, dealings or communication, Licensee shall indemnify the City from all Claims brought by the Broker. This Section 27.6 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. If any provision in this Master License is found to be invalid, illegal or otherwise unenforceable, the parties shall negotiate in good faith to modify this Master License so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally intended by the parties.

27.8. Governing Law; Venue

This Master License must be construed and enforced in accordance with the laws of the State of California. This Master License is made, entered and will be performed in the City of San Mateo, County of San Mateo, State of California. Any action concerning this Master License must be brought and heard in Superior Court for the County of San Mateo.

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

27.10. 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.

27.11. Recording

Licensee acknowledges and agrees that Licensee shall not have the right to record this Master License, any Wireless Permit or any memorandum or short form of any of them in the Official Records of the County of San Mateo.

27.12. Intentionally Omitted.

27.13. Attachments and Exhibits.

All attachments and exhibits to this Master License are hereby made a part hereof as if fully set out herein.

27.14. Approval Authority

Each person signing this Master License and any Wireless Permit on behalf of the City and Licensee, respectively, warrants and represents that: (i) he or she has the full right, power and capacity to act on behalf of the City and Licensee, respectively, and has the authority to bind the City and Licensee, respectively, to the performance of its obligations under those agreements without the subsequent approval or consent of any other person or entity; (ii) each of the City and Licensee, respectively, is a duly authorized and existing entity; (iii) Licensee is qualified to do business in California; and each of the City and Licensee, respectively, has full right and authority to enter into this Master License and Wireless Permits.

[END OF MASTER LICENSE – SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, CITY OF SAN MATEO and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, have caused this Master License to be executed as of the Effective Date by their duly authorized representatives, and hereto have accepted the terms, conditions, and provisions set forth above.

CITY:

LICENSEE:

CITY OF SAN MATEO,
a California municipal corporation

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

Drew Corbett
City Manager

By: _____
Name: _____
Its: _____
Date: _____

APPROVED AS TO FORM

Caio Arellano
Assistant City Attorney

EXHIBIT A

Insurance Requirements for Licensees

Licensee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Licensee's operation and use of the leased premises. The cost of such insurance shall be borne by the Licensee.

SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits of **\$2,000,000** per occurrence and \$4,000,000 general aggregate. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of **\$1,000,000** per accident for bodily injury or disease/disease per employee/policy limit-disease. (This applies to Licensees with employees).
3. **Property insurance** or self insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

Notwithstanding the forgoing, Licensee may, in its sole discretion, self insure any of the required insurance under the same terms as required by this License. In the event Licensee elects to self-insure its obligation under this License to include the City as an additional insured, the following conditions apply: (i) The City shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) the City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and (iii) the City shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be included as additional insureds as their interests may appear under this Master License on the CGL policy with respect to liability caused, in whole or in part, by the work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations. City's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of City, its employees, agents or independent contractors; and, (iii) not exceed Licensee's indemnification obligation under this Agreement, if any.

Primary Coverage

For any claims related to this contract, the Licensee's required general liability insurance coverage shall be primary insurance coverage as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

Notice of Cancellation

Licensee shall use commercially reasonable efforts to provide thirty (30) days advance written notice to City of cancellation of any required coverage that is not replaced.

Waiver of Subrogation

To the extent allow by law, Licensee hereby grants to City a waiver of any right to subrogation which any required insurer of said Licensee may acquire against the City by virtue of the payment of any worker's compensation or employer's liability loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers

Insurance is to be placed with insurers eligible to conduct business in the state with a current A.M. Best's rating of no less than A-: VII, unless otherwise acceptable to the City.

Self-Insured Retentions

Licensee shall have the right to self-insure the coverages required in this Exhibit. Self-insured retentions of any required coverage must be declared to the City.

The following provisions shall apply to any self-insurance program maintained by Licensee or its parent company (in addition to those set forth above): (i) Licensee or its parent company shall have and continuously maintain a tangible net worth of at least one hundred million dollars (\$100,000,000.00); (ii) Licensee shall continuously maintain appropriate loss reserves for the amount of its self-insurance obligations under this Exhibit, which reserves are annually approved by Ernst & Young, or any successor auditing company; (iii) Licensee shall undertake the defense of any self-insured claim for which a defense and/or coverage would have been available from the insurance company, including a defense of the City, at Licensee's sole cost and expense, with counsel selected by Licensee and reasonably acceptable to the City; (iv) Licensee shall use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for Licensee's election to self-insure; (v) Licensee shall pay any and all amounts due in lieu of insurance proceeds which would have been payable if Licensee had carried the insurance policies, which amounts shall be treated as insurance proceeds for all purposes under this Agreement; and (vi) All amounts which Licensee pays or is required to pay and all loss or damages resulting from risks for which Licensee has elected to self-insure shall not limit Licensee's indemnification obligations set forth in this Agreement.

Verification of Coverage

Licensee shall furnish the City with original Certificates of Insurance to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them.

Special Risks or Circumstances

The limits of liability may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease City's exposure to risk.